

# Yearbook

2019/2020

A global guide for practitioners

Greece

**Dr Helen G Papaconstantinou and Partners**

*Fotini Kardiopoulis, Miranda Theodoridou and Dimitra Nassimpian*

**WTR**



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### Legal framework

The most important pieces of legislation governing trademarks in Greece are:

- the Trademark Law (4072/2012, Part 3), as amended by Law 4155/2013;
- the Unfair Competition Law (146/1914), as amended by Law 3784/2009;
- relevant EU legislation (eg, the EU Trademark Regulation (2017/1001) governing substantive aspects of EU trademarks and secondary legislation such as the EU Delegated Regulation (2018/625) and the EU Implementing Regulation (2018/626) governing some procedural aspects);
- Chapter C of Law 2943/2001, which establishes the Greek Community trademark courts;
- Law 213/1975 ratifying the Paris Convention for the Protection of Industrial Property;
- Law 2505/1997 ratifying the Nice Agreement on the Classification of Goods and Services;
- Law 2290/1995 ratifying the Agreement on Trade-Related Aspects of Intellectual Property Rights; and
- Law 2783/2000 ratifying the Madrid Protocol on the International Registration of Marks.

### Unregistered marks

#### Protection

Unregistered signs can constitute relative grounds for refusal and are protected under Articles 13 to 15 of the Law on Unfair Competition. In particular, protection is offered to signs that are deemed to have become a distinguishing feature of the goods or services that they cover.

#### Use requirements

In order to obtain protection, an unregistered sign must have distinctive character and must have been used in commerce. No specific statutory conditions outline the extent and type of use that will satisfy these criteria; hence, courts rule on a case-by-case basis. The guiding principle is that use should be systematic, continuous and substantial.

### Registered marks

#### Ownership

Any individual or legal entity may file for the registration of trademarks, while clubs and associations may apply for the registration of collective trademarks.

### Electronic services

The Greek Trademark Office has implemented e-filing for trademarks. The e-filing system allows trademark applications to be filed 24 hours a day, seven days a week.

Electronic services of the office include renewal and recordal of changes pertaining to the owner's details. The office has yet to implement further e-services, including recordal of changes of ownership and filing of oppositions, cancellations and invalidation actions.

### Power of attorney

The trademark application must be signed by the applicant or its authorised attorney, whose appointment is optional. However, applicants must designate an addressee for the service of documents. If a lawyer is appointed, a signed power of attorney is required, which is valid for five years and may be used for further applications.

### Declaration under EU General Data Protection Regulation

Following the entry into force of the EU General Data Protection Regulation, the Trademark Office must notify applicants or owners (who are natural persons) that their personal data which has been entered into the Hellenic Trademarks Register is considered to be in the public interest and is therefore accessible by any third party. Such data is accessible by any third party and will be stored indefinitely. Personal data not included in the Trademarks Register, but which is nonetheless provided by trademark applicants, owners or other parties to procedures before the Trademarks Office and the Administrative Trademarks Committee, is also stored indefinitely unless the interested data subject requests its deletion two years from the expiry of the trademark or on completion of the relevant procedure. Therefore, along with their trademark application, applicants must file a related declaration that they have duly taken note of the above.

### Scope of protection

The graphical representation requirement still applies in Greece. A trademark must be capable of being represented graphically and of distinguishing the goods or services

of one undertaking from those of another. In particular, a trademark may consist of, among other things, words, names of natural or legal persons, pseudonyms, acronyms, slogans, designs, letters, numerals, colours, sounds (including musical phrases) or the shape of goods or their packaging.

### Absolute grounds for refusal

Article 123 of the Trademark Law provides that the following cannot be protected as trademarks:

- signs that are devoid of distinctive character;
- signs that are descriptive, commonly used, customary or functional – distinctive character may be acquired through use, except in the case of signs that consist exclusively of the shape of the goods or a shape which is necessary to obtain a technical result or gives the goods substantial value. Distinctive character will be assessed at the time of filing;
- signs which may deceive the public as to, among other things, the nature, quality or geographical origin of the goods or services intended to be covered;
- signs that are against public policy or morality; and
- signs that consist of the flags, emblems, symbols, escutcheons, signs or hallmarks of the Greek state or any other state covered by Article 6ter of the Paris Convention, and signs of great symbolic value and special interest – particularly religious symbols, representations and words.

Signs consisting of or comprising geographical indications for wine and alcoholic beverages, and geographical indications or appellations of origin for agricultural products, are expressly exempt from trademark protection.

Finally, a trademark will not be registered if it has been filed in bad faith.

### Relative grounds for refusal

A trademark application can be refused on relative grounds if it is:

- identical to an earlier trademark and both marks cover identical goods or services;
- identical or similar to an earlier trademark, there is identity or similarity of the goods or



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services respectively covered and there exists a likelihood of confusion (including the likelihood of association) to consumers; and

- identical or similar to an earlier trademark which has acquired a reputation, even if the goods or services respectively covered are dissimilar, when the use of the later mark, without due cause, would take unfair advantage of or be detrimental to the distinctive character or repute of the earlier trademark.

In the context of the above, 'earlier trademarks' include:

- earlier registered national trademarks, EU trademarks and IP rights designating Greece;
- earlier applications, subject to registration; and
- well-known marks within the meaning of Article 6*bis* of the Paris Convention.

A trademark application can also be refused on relative grounds if it:

- conflicts with a non-registered trademark or with any other distinctive sign or feature used in the course of trade which gives the owner the right to prohibit the use of any later trademark;
- conflicts with an earlier right of personality or a prior right of intellectual or industrial property other than those regulated by trademark law; and
- causes confusion with a trademark which has been registered and used abroad at the time of filing the application, provided that it was made in bad faith by the applicant.

Letters of consent to the registration and use of a later mark have a binding effect and can be submitted at any stage of the examination process.

### Procedures Examination

An examiner checks the application with respect to both absolute and relative grounds of refusal. If there are no grounds for refusal, the application is accepted. If grounds for refusal exist, the applicant is notified and may revoke the application, limit the trademark to the extent that it becomes acceptable or submit its observations within one month of notification. If the applicant fails to reply or comply within the set term, the application is rejected.

All decisions are advertised on the website of the General Secretariat of Commerce.

The examiner's decision to reject an application can be challenged before the Administrative Trademark Committee within 60 days (90 days in the case of foreign entities) of publication of the decision. The committee's decision is subject to further recourse before the Administrative Court of First Instance.

A smooth application from filing to registration, when no opposition is filed, will usually take five to seven months.

### Opposition

Third parties may oppose a registration of a trademark on both absolute and relative grounds. The term for filing an opposition is three months from the date of publication of the decision on the website of the General

Secretariat of Commerce. If no opposition is filed, the trademark proceeds to registration. Proof of use is provided as a defence during opposition proceedings. If the trademark on which the opposition is based has been registered for more than five years, the applicant can call on the opponent to submit evidence of use of the mark in respect of the relevant goods or services on which the opposition is based in the five years preceding the date of publication of the opposed application, or to prove that there are proper reasons for non-use. Failure to meet these requirements will result in rejection of the opposition for procedural reasons.

Trademark Committee decisions are subject to recourse before the Administrative Court of First Instance within 60 days (90 days in the case of foreign entities) of notification of the decision.

### Registration

A trademark is registered when it is accepted by a decision of the examiner or the Trademark Committee, subject to no further legal remedies or by a final decision of the administrative courts. A registered mark is granted protection for 10 years as of the date of filing of the application and is indefinitely renewable every 10 years. If renewal is not requested within the specified period, the trademark can still be renewed up to six months later on payment of a fine.

### Removal from register

**Revocation:** A trademark can be revoked, either in whole or in part, if:

- it has not been put to genuine use by its owner for a continuous five-year period following registration in connection with the goods or services in respect of which it is registered, or if such use has been suspended for an uninterrupted five-year period;
- in consequence of acts or inactivity on the part of the rights holder, the trademark has become commonly used or the common name in the trade for the goods or services in respect of which it is registered; or
- by reason of the use made of a mark by the owner or with its consent in connection with the goods or services for which it has been registered, it is likely to mislead the

public, particularly as to the nature, quality or geographical origin of those goods or services.

**Invalidity:** A trademark may be declared invalid on request of a third party with a legitimate interest if it should not have been registered in the first place because it was registered in breach of the provisions regarding absolute or relative grounds for refusal. The proof of use requirement also applies in invalidity proceedings.

A trademark will not be declared invalid, even if it was devoid of distinctive character, descriptive or generic at the time of its filing, or if such grounds no longer exist at the time of the petition for a declaration of invalidity because the trademark has since acquired distinctive character through its use.

Decisions ordering the revocation of a mark or a declaration of invalidity take effect as soon as they become final.

**Surrender:** The owner may surrender the trademark for all or part of the goods or services for which it is registered at any time. If the mark is subject to a licence, the owner must prove that the licensee has been duly informed of its intentions to surrender the mark.

### Enforcement

A registered trademark confers exclusive rights on its owner, which is entitled to prevent all third parties from using in transactions without its consent any sign which:

- is identical to the mark in question in relation to identical goods or services;
- is identical or similar to the mark in relation to identical or similar goods or services, provided that a likelihood of confusion exists, including a likelihood of association; or
- is identical or similar to a trademark which has acquired reputation and whose use would take unfair advantage of the reputation of the mark without due cause or would cause detriment to the distinctive character or reputation of the famous mark, irrespective of whether the sign will cover goods or services which are similar to those of the earlier mark.

The owner of a prior trademark cannot oppose the use of a later mark if it has acquiesced to the use of the later mark for five successive years while being aware of such use, unless registration of the later mark was obtained in bad faith.

The trademark holder is entitled, among other things, to prevent the transit of counterfeit goods through Greece or the import of counterfeit goods into Greece with the intention to re-export them.

Special divisions have been established for EU trademarks in the civil first and second-instance courts of Athens and Thessaloniki. These divisions also hear national trademark infringements when they are competent *ratione loci*.

#### Civil court actions

In cases of trademark infringement, the following actions may be pursued before the civil courts.

**Temporary restraining order:** This is available only in cases of extreme urgency where the rights holder seeks a temporary court order as soon as the infringing activities have come to its attention in order to enjoin such activities until adjudication at the injunctive stage. The judge may invite the respondents to appear at the hearing, although proceedings may also take place *ex parte*. Restraining orders may be requested only if an injunction petition has also been filed simultaneously.

**Injunction:** A petition for injunction requires that the situation be urgent. The procedure is more formal than that for a temporary

restraining order, as the hearing involves the examination of witnesses from each side and the optional submission of sworn affidavits, as well as relevant pleadings and exhibits. The court will also examine the merits of the case in some detail and decide on the likelihood of an infringement having occurred.

The trademark owner may require the disclosure of information under the suspected infringer's control.

In case of commercial-scale infringement, the court may order even *ex parte* the provisional seizure of the infringer's assets, the freezing of its bank accounts and the disclosure of its bank, financial or commercial documents or due access to this information. In this respect, the trademark owner must prove that there are circumstances that may jeopardise actual payment of the indemnification. The filing of a related main infringement action is a prerequisite.

**Main infringement action:** Proceedings are initiated via an introductory writ filed with the competent first-instance court and served on the defendant. Parties must file their written arguments and evidence within 100 days (or 130 days for parties residing abroad), the action and a reply to each other's arguments and evidence must be filed within a further 15-day period. Witness testimonies are submitted in the form of sworn affidavits. With the expiry of this term, the file is deemed closed and within a further 15 days the judge in charge of the case is appointed. The hearing takes place within the next 30 days, without examination of witnesses in court, unless the bench decides that this is absolutely necessary.



**As from 17 October 2018 there will be compulsory use of mediation in legal disputes arising from trademark infringements. It remains to be seen how the new rules will be implemented and in what way this new practice will change the landscape in IP litigation**

The first-instance decision may be appealed before the Court of Appeal within 30 days of the notification of the decision or within 60 days of its notification if the party resides abroad. In case no notification of the decision took place, the term is two years of the publication of the decision.

An appeal in cassation, only on specific points of law, may be filed before the Supreme Court.

Until the issuance of a first-instance decision, civil proceedings take on average between 10 and 14 months. Appeal proceedings usually last between eight and 10 months.

### Damages

Damages may not be sought during the injunctive stage, but may be awarded as part of the claims during a main infringement action



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Fotini Kardiopoulis graduated with first-class honours from the University of Athens with a law degree and holds an LLM from the London School of Economics and Political Science. She has been a member of the Athens Bar since 1985 and is admitted to practise before the Supreme Court and the Council of State.

Ms Kardiopoulis is one of the founding partners of Dr Helen G Papaconstantinou and Partners and heads the anti-counterfeiting and anti-piracy department. She has dealt with a broad range of IP matters since 1998, with an emphasis on trademarks, plant breeders' rights and alternative dispute resolution. She has extensive experience in IP litigation, devising and implementing anti-counterfeiting programmes, filing and administering customs actions, monitoring and enforcing IP rights online and advising on domain name disputes.

She is member of the International Trademark Association, MARQUES and the International Community of Breeders of Asexually Reproduced Ornamental and Fruit Varieties.



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Miranda Theodoridou graduated from the University of Athens with a law degree and has an MBA from the University of Derby. She is admitted to practise before the Supreme Court and the Council of State.

Ms Theodoridou is one of the founding partners of Dr Helen G Papaconstantinou and Partners, with more than 35 years' extensive experience in handling a broad spectrum of IP issues, including consultation for and legal representation of major multinational companies and market leaders in administrative proceedings and courts of all instances. She has handled numerous cases focusing on trademark and domain name matters.

She is a European patent attorney and a council member of the European Communities Trademark Association, as well as member of the International Association for the Protection of Intellectual Property and the Institute of Professional Representatives before the European Patent Office.

for actual loss and/or moral damages. The court will take into account, among other things, the negative economic consequences suffered by the rights holder, including any undue profits made by the infringer. Undue profits may be awarded to the claimant, regardless of the infringer's liability (unjust enrichment). Damages may also be calculated on the basis of hypothetical royalties.



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Dimitra Nassimpian graduated from Edinburgh University with an LLB (honours), and then carried out doctoral studies there while lecturing in EU and international law. She was subsequently appointed as a full-time lecturer at Exeter University School of Law (2004 to 2008), teaching extensively in EU and UK public law at undergraduate and master's level. She has published on EU and UK administrative law and trademark litigation, and is a member of the UK Society of Legal Scholars and a visiting research fellow at Exeter University. She is currently consulting at Dr Helen G Papaconstantinou and Partners on contentious trademark and domain name matters and aspects of EU litigation.

### Customs procedures and simplified procedure under domestic law

EU Customs Regulation 608/2013 is directly applicable in Greece and sets out the domestic customs intervention procedure.

Law 4155/2013 provides for a simplified procedure with respect to the seizure and expedited destruction of counterfeit goods (analogous to the one set out in EU Regulation 608/2013), which is implemented by a number of enforcement agencies (eg, Customs, the Economic Crime Unit, market control agencies, the police and the coast guard). The consent (express or presumed) of the owner of the infringing goods is a necessary prerequisite and implementation of the procedure depends on the discretion and availability of the competent authorities.

### Criminal penalties

Criminal penalties are provided for various acts of trademark infringement. However, criminal prosecution does not take place *ex officio*. Professional and commercial-scale infringement can be considered as aggravating circumstances.

### Mediation

According to Articles 178 to 206 of the recent Law 4512/2018 (published on 17 January 2018), as from 17 October 2018 there will be compulsory use of mediation in legal disputes arising from trademark infringements. It remains to be seen how the new rules will be implemented and in what way this new practice will change the landscape in IP litigation. However, the Administrative Plenary of the Supreme Court recently held that compulsory mediation in civil disputes is inconsistent with the Greek Constitution.

### Ownership changes and rights transfers

Ownership changes (eg, assignments, mergers) and various other changes (eg, changes of name, address and legal form of the rights holder) must be recorded with the Trademarks Office in order to be enforceable against third parties. A trademark may be partially assigned, provided that such assignment does not mislead consumers.

Assignment of an earlier trademark which has been cited against the registration

of an application will allow registration of that application, irrespective of when such assignment takes place and even during proceedings before the Administrative Court of Appeal. A pledge or other right *in rem* may also be recorded against a trademark.

Such recordal may also be effected by the receiver following a bankruptcy order.

There is no longer any need for the Trademark Committee to examine and approve licence agreements. Such agreements must be executed in writing and may be recorded on the petition of either the licensor or the licensee, duly authorised by the licensor.

Recordal of a trademark licence is necessary in order for the licensee to claim and enforce its rights against third parties.

#### Related rights

There are clear areas of overlap between trademarks and other IP rights. The object of trademark protection can also be protected by other IP rights, provided that the protection criteria of such rights are met.

Shapes of products or their packaging, trade dress, logos and business names, as well as other unregistered rights, may under certain circumstances enjoy similar protection to that afforded to trademarks under unfair competition law. If certain conditions are met, these may all be regarded as non-registered marks and acquire rights of priority and protection in this manner.

#### Online issues

The regulation of telecommunications in Greece is vested in the Hellenic Telecommunications and Post Commission.

The main legal framework can be found in the Regulation on the Management and Assignment of Domain Names, which was most recently amended in March 2018.

The regulation sets out the procedures for registering domain names in the country code top-level domain 'gr' or 'ελ.' and the grounds for cancellation petitions that are heard by the commission, which may also include a request for the transfer of the contested domain name to the petitioner. Commission decisions can be appealed to the Athens Administrative Court within 30 days of their official notification to the parties. **WR**



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**Examination/registration**

Representative requires a power of attorney when filing? Legalised/notarised?

Yes/No



Examination for relative grounds for refusal based on earlier rights?

Yes



Non-traditional marks registrable?

3D (shape of products or package); colours.

**Unregistered rights**

Protection for unregistered rights?

Yes



Specific/increased protection for well-known marks?

Yes

**Opposition**

Opposition procedure available? Term from publication?

Yes: three months from publication on Trademark Office website.

**Removal from register**

Can a registration be removed for non-use? Term and start date?

Yes: five years' non-use from registration or suspension of use.



Are proceedings available to remove a mark that has become generic?

Yes



Are proceedings available to remove a mark that was incorrectly registered?

Yes

**Enforcement**

Specialist IP/trademark court?

Yes



Punitive damages available?

No



Interim injunctions available? Time limit?

Yes: urgency required.

**Ownership changes**

Is registration mandatory for assignment/ licensing documents?

No; but highly recommended.

**Online issues**

National anti-cybersquatting provisions?

No; but concept of cybersquatting applicable to bad faith.



National alternative dispute resolution policy (DRP) for local ccTLD available?

Yes: Hellenic Telecommunications and Post Commission.

