Device held to be dominant feature of figurative mark

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Greece - Dr Helen Papaconstantinou John Filias & Associates

The Athens Three-Member Administrative Court of Appeal, Division 15, has issued its decision in a case involving the Greek trademark IZI BY TELLAS VIDEO PHONE PICTURES FROM THE FUTURE (and device) and the earlier Greek trademarks IZZY (and device) and IZZY ELEGANCE (and device) (Decision 8366/2012).

Greek company Tellas Anonymi Eteria Tilepikinonion (which later changed its name to Wind Hellas) applied for the registration of the figurative mark IZI BY TELLAS VIDEO PHONE PICTURES FROM THE FUTURE (in Greek) to cover a video telephone device in Class 9 and video telephone services in Class 38 of the Nice Classification:

Greek company Anonymos Emporiki Ke Viomichaniki Eteria Idon Ikiakis Chriseos Ke Exoplismou Xenodochion H Benroubi & Yios AE (Benroubi) filed an intervention against the application before the Administrative Trademark Committee on the basis of its prior trademark registrations for IZZY (and device) and IZZY ELEGANCE (and device) covering various goods in Classes 7, 8, 9, 10 and 11, and telecommunication services in Class 38:

The Administrative Trademark Committee accepted the application and rejected the intervention, stating that there was no risk of confusion among consumers because:

- the marks were visually and aurally different; and
- the video telephone services covered by the application exclusively targeted customers/subscribers of Tellas, while Benroubi sold household equipment, including landline phones, and was not involved in the provision of telecommunication services.

Benroubi filed a recourse against the decision before the Administrative Court of First Instance, alleging, among other things, that the Administrative Trademark Committee:

- had erred in deciding that the mark applied for and the prior marks were not similar, and had not taken into consideration the fact that 'izi' was the dominant element of the contested mark and was confusingly similar to the earlier marks;
- had not taken into consideration the fact that the services covered by the contested mark were identical to those covered by the earlier marks, since they fell within the same classes, which, if considered broadly, include telecommunication services in general; and
- had not taken into consideration a prior decision of the Single-Member Court of First Instance under the injunctions procedure, which had forbidden Tellas to use the word 'izi' on its goods and services and had ordered the removal of all goods bearing the mark from the market.

Tellas alleged that the committee had made the right decision, since the mark applied for:

- was visually and aurally different from the earlier marks, because it contained the colours of the company - namely orange, black and white - as well as the word 'Tellas', which was widely known as the distinctive title of the company; and
- was intended to cover services which did not fall within Benroubi's activities.

The court, upon assessing the similarity of the marks, held that the dominant feature of the mark applied for was its device, which consisted of a dark, circular shape. According to the court, the device created a totally different impression

than that given by the devices of the prior marks, which consisted of tangent circles and were a characteristic feature of the marks. Regarding the alleged similarity of the words 'izi' and 'izzy', the court found that the marks would not give rise to confusion among consumers from a visual point of view, since:

- 'izi' was not the only word contained in the mark applied for; and
- 'izi' did not have any particular meaning, was not established in the Greek vocabulary and was not widely known.

In light of the above, the court concluded that the general visual and aural impression given by the marks under comparison did not present a high degree of similarity and, therefore, there was no likelihood of confusion as to the origin of the goods and services, especially in view of the fact that the mark applied for included the distinctive title of the applicant (“by Tellas”). The court also stressed that the consumers to whom the goods and services were addressed were sufficiently specialised and reasonably well-informed concerning the companies selling related goods and providing related services.

The court also held that this conclusion could not be altered by the prior decision of the Single-Member Court of First Instance, which had been issued under the injunctions procedure. The court pointed out that said decision was limited to the risk of confusion caused by the use of the word 'izi', and did not concern the use of the mark applied for, in which the word 'izi' was not the dominant element.

Consequently, the court rejected the recourse, upheld the decision of the Administrative Trademark Committee and allowed the trademark applied for to proceed to registration.

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