

European Union - Dr Helen Papaconstantinou John Filias & Associates

In *Galaktoviomichania Larisis AE v I Kesioglou & Sia OE* (Opposition No B 2 107 822, December 18 2013), the Opposition Division of the Office for Harmonisation in the Internal Market has upheld in part an opposition against the registration of the trademark OLYMPOS FOODS-OLYMPOS COMMODITIES-OLYMPOS MEDITERRANIAN-OLYMPOS ORGANICS-K&K FINANCE.

Greek company I Kesioglou & Sis OE applied for the registration of the above mark as a Community trademark (CTM) for goods and services in Classes 29, 30, 31, 32, 33 and 43 of the Nice Classification.

Another Greek company, Galaktoviomichania Larisis AE, filed an opposition against the registration of the mark based on:

- the earlier figurative CTM OLYMPUS (CTM No 5 564 216), covering goods and services in Classes 5, 29, 30, 31, 32, 33 and 43:



- seven Greek, Community and international trademarks containing the same figurative elements and the word 'Olympus' in Latin or Greek characters ('ΟΛΥΜΠΟΣ').

The opponent argued that the mark applied for was confusingly similar to its earlier marks and invoked their reputation. The contested goods and services were those in Classes 29, 30, 31 and 36.

In assessing the similarity of the goods and services covered by the trademarks at issue, the Opposition Division found that the goods in Classes 29, 30 and 31 were identical and that the services in Class 36 were dissimilar.

Turning to the comparison of the signs, the Opposition Division held that they were visually similar to the extent that they coincided in the letters 'olymp*s', and were also similar aurally as far as the pronunciation of the same letters was concerned. Regarding the conceptual similarity, the Opposition Division held that the terms 'Olympus' and 'Olympos' would be understood as referring to the Greek mountain Olympus by the relevant public in Greece, the United Kingdom, the Netherlands, Sweden and Finland, the figurative element of the earlier marks reinforcing this conclusion. Accordingly, the Opposition Division concluded that the signs were similar.

Further, the Opposition Division examined the distinctive character of the marks. Surprisingly, the Opposition Division did not take into consideration the opponent's argument relating to the distinctiveness acquired by its trademarks through intensive use, and thus considered that the distinctiveness of these marks was average. Comparing the parties' marks, the Opposition Division found that they lacked elements that could have been considered to be more visually eye-catching than others. It also found that the goods that had been considered to be identical were everyday products directed at the public at large, whose level of attention was average.

In light of the above, the Opposition Division held that the application should be rejected for all the contested goods.

The Opposition Division then proceeded to examine the opponent's claim that its marks had a reputation. Again, the Opposition Division ignored the argument and evidence brought forward by the opponent with respect to the reputation of its marks as far as the contested goods were concerned, and focused on the lack of link between the goods and services covered by the earlier marks and the contested services. It thus came to the conclusion that consumers would not be likely to associate the parties' marks when it came to those goods and services.

Thus, the Opposition Division upheld the opposition with respect to all goods and rejected it as far as the contested services were concerned.

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