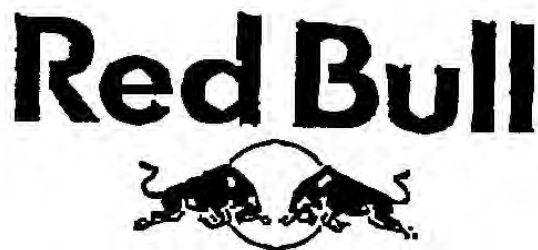


Greece - Dr. Helen G. Papaconstantinou and Partners Law Firm

Red Bull GmbH, the manufacturer and supplier of the famous Red Bull Energy Drink, filed an opposition in Greece against the trademark application 'Τρελός Ταύρος' (CRAZY BULL) and device, based on the mark RED BULL and device number 125.623, also invoking a series of its other BULL/RED BULL marks.

The opposition was accepted at first by the Trademark Committee but it was subsequently rejected by the Administrative Courts of First and Second Instance, which ruled that the two marks were not confusingly similar.



RED BULL and device number 125.623



Τρελός Ταύρος (CRAZY BULL) and device number 165.977 (the bull device is in yellow)

Following a further appeal, the Council of State, which is the Greek Supreme Administrative Court, ruled that the Second Instance Court's decision was not well reasoned since the appellate court did not conduct a global appreciation of the likelihood of confusion properly and took into account only the aural and visual similarity of the two marks, failing to pay appropriate attention to:

- their conceptual similarity;
- the identity of the products respectively covered; and
- the strong distinctive character of the RED BULL mark.

As a result, the case was remanded to the Court of Appeal for a new ruling on its merits.

In a landmark decision, under No 991/2016, the Court of Appeal confirmed the strong distinctive character of the earlier mark and found that there was a risk of confusion between the earlier and the opposed mark, taking into account not only the identity of the goods respectively covered and the distinctiveness of the RED BULL mark, but also the conceptual and visual similarity of the marks under comparison.

It is worth noting that, contrary to the prior decisions of the courts of First and Second Instance, upon remand the appellate court found that there was a visual similarity of the marks under comparison, since “the dominant and distinguishing feature in both trademarks is a device of an attacking muscular bull”. In this sense, it could be inferred that the conceptual similarity of the marks was considered so decisive that it influenced the assessment of their visual similarity.

The decision also recognised the fame and reputation of the RED BULL mark in Greece, dating back to 2003. This important decision, issued by a high court, confirmed the famous character of the RED BULL mark in Greece.

Moreover, the Court of Appeal observed in an interesting comment that the repute of a trademark does not in itself constitute a legal characterisation of a mark, but rather an *actual* condition. Therefore, as stipulated in this decision, it cannot be precluded that fame may be self-evident, thus constituting “a fact obvious to all” that does not need to be proved.

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