

Greece - Dr. Helen Papaconstantinou, John Filias and Associates

The Athens Three-Member Administrative Court of First Instance, Division 24, has allowed the registration of the international trademark PROGRAM (International Registration 842316) in Greece for goods in Class 9 of the Nice Classification (Decision 1387/2012).

French company Calor, Société par Actions Simplifiée applied to extend protection to Greece of the international word mark PROGRAM to cover "electric flat irons, parts and components thereof" in Class 9. The Administrative Trademark Committee rejected the application on the grounds that the word 'program' had become common in the everyday language, since it consisted of the English word 'program', which originates from the Greek. Therefore, the Trademark Committee found that the mark lacked distinctive character.

The applicant filed a recourse against the decision, arguing that:

- The distinctive character of a sign must be examined exclusively in relation to the function that the mark will perform; the court must assess whether the mark is capable of distinguishing the origin of the goods that it covers. The mere fact that the word 'program' has a certain meaning in a foreign language does not mean that it cannot be registered as a trademark.
- There are various PROGRAM word marks in the Community Register covering goods in various classes. In support of this allegation, the applicant produced copies of the following Community trademarks:
 - PROGRAM (CTM 000340265) for goods in Class 5;
 - THE PROGRAM (CTM 004020608) for goods in Classes 18, 25 and 28;
 - PROGRAM X (CTM 003303435) for goods and services in Classes 9, 16, 18, 20, 25, 28, 37, 41 and 42; and
 - PROGRAM 16 (CTM 000699090) for goods in Classes 5 and 30.
- The Trademark Committee had erred in failing to take into consideration the fact that the mark applied for had already been registered in France (its country of origin), as well as several other countries (eg, Austria, Bulgaria, Germany, Italy, Russia, Spain and Switzerland). Therefore, the mark should

also be registered in Greece by virtue of Article 6 *quinquies* of the Paris Convention.

The court, taking into consideration the applicant's arguments, held that the foreign word 'program' had become part of the common language in Greece under the broad meaning of 'program'; however, it had not become common in the everyday language or in the course of trade to distinguish the goods covered by the mark in question ("electric flat irons, parts and components thereof"). Consequently, the court concluded that the use of the word 'program' as a trademark could not be precluded.

Accordingly, the court reversed the decision of the Trademark Committee and allowed the registration of the PROGRAM mark.

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