

# Kluwer Trademark Blog

## Greece – New trademark law draft open for public consultation

Marina Perraki (Tsibanoulis & Partners Law Firm) · Monday, January 14th, 2019

The Greek draft law implementing the European Trade Mark Directive 2015/2436 (the Directive) was uploaded on the competent Ministry website for public consultation on January 11, 2019 and it will remain open for public consultation until January 25, 2019 (<http://www.opengov.gr/ypoian/?p=9959>). Upon completion of the public consultation, the draft law shall be brought before the Parliament for voting. Upon voting it will proceed for publication in the Government Gazette with immediate effect.

The main points of the draft law include:

- **Elimination of graphic representation:** in line with art. 3 of the Directive, the requirement for graphic representation was eliminated per art. 1 of the draft law. The types of marks, including new types such as position and holographic marks, are defined in art. 2, whereas the technical details for their filing shall be determined at a later stage through a ministerial decision that the law empowers the competent Ministry to issue.
- **Goods in transit:** art. 7 par. 5, implementing art. 10 par. 4 of the Directive, provides that trademark owners have the right to stop any third party from bringing goods into Greece from third countries, even where the goods are not intended to be released for free circulation in the Greek market. Such right may not be exercised if the owner of the goods or the declarant proves that the holder of the trademark rights may not forbid the commercialization of the goods at the country of destination.
- **Representative/Attorney:** art. 11 implementing art. 13 of the Directive provides that if a mark was filed by a representative/attorney without authorization, the trademark owner has the right to forbid the use and / or request that the mark be transferred to him.
- **Acquiescence:** this already existing in Greek trade mark law limitation in the context of infringement is extended by way of art. 12 to invalidity proceedings implementing art. 9 of the Directive, making also use of the discretion provided to extend the limitation to holders of any other prior rights.
- **Proof of Use:** the right to request proof of use of the mark, which existed in the context of opposition and invalidity actions, was maintained for these proceedings and introduced also in infringement proceedings per art. 40 of the draft law, implementing art. 17 of the Directive. Furthermore, proof of use in invalidity proceedings was extended to a second possible relevant point in time, namely that of the date of filing of the later mark, implementing art. 46 par. 2 of the Directive.
- **Mediation:** the possibility of voluntary mediation has been introduced by virtue of art. 31 in the proceedings before the Trademark Administrative Committee (competent for oppositions and

cancellation/invalidity actions), in order to provide more room for the parties to find an amicable solution. Mandatory mediation is already provided in Greek law for infringement actions, to be put in force, after postponement of its initial entry into force, on 16.9.2019.

- **Effects of invalidity/revocation:** while the Trademark Office (through its competent body, the Trademark Administrative Committee) and the administrative courts remain under the draft law the sole competent for the hearing of invalidity and revocation actions, the point in time where the effects of invalidity start has been amended, from the time of filing of the action, to the time of filing of the invalid trademark, implementing art. 47 par 2 of the Directive. Possibility for the revocation action effects to start from the time of filing of the revoked trademark is provided, implementing art. 47 par. 1 of the Directive. As aforementioned, Greece already had a special body in the Trademark Office to deal with invalidity/revocation actions, so it already complied with the Directive requirements on that point.
- **No immunity of registration:** infringement action can be brought against a registered trademark. This is inferred *a contrario* from art. 48 of the draft law implementing art. 18 of the Directive that provides for an intervening right defense in the context of infringement action where both the plaintiff and the defendant are holders of trademark rights. No explicit provision allowing action against a registered trademark was included in the draft law, as such implicit effect from art. 48 was deemed adequate.
- **Intervening rights:** this new for Greek trade mark law notion was introduced. Implementing art. 18 and 8 of the Directive respectively, art. 48 of the draft law provides for the intervening rights defense in the context of infringement and art. 53 in the context of invalidity action.
- **Certification marks:** these have now been introduced into Greek trademark law, making use of the respective discretion provided in the Directive.

Greece has maintained its bi-furcated system, namely the Trademark Administrative Committee and administrative courts are competent for opposition, cancellation and invalidity actions and the civil courts are competent for infringement actions.

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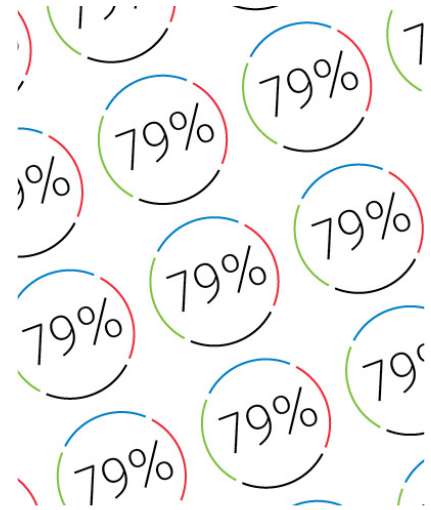
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