

Kluwer Trademark Blog

New Trade Mark Law in Greece

Marina Perraki (Tsibanoulis & Partners Law Firm) · Saturday, March 14th, 2020

Last year we commented [here](#) on the Greek draft trade mark law aimed at implementing the Directive 2015/2436 (the Directive). This law was recently submitted and accepted by the Greek Parliament (the Law), almost one year after its public consultation, adding Greece to the EU countries that are now fully compliant with the Directive.

Greece had since the first Greek trade mark law a bi-furcated system, where the Trade Mark Administrative Committee / Trade Mark Office (TMO) and administrative courts were competent for opposition, cancellation and invalidity actions and the civil courts were competent for infringement actions. The Law puts an end to the competence of administrative courts on invalidity and revocation actions. The new Law also institutes the possibility to file a counter-claim for declaration of invalidity or revocation of a national mark in infringement proceedings. Indeed it now foresees that, once an infringement action is pending, the validity of the mark can no longer be questioned before the TMO but only by way of counter-claim. As regards EUTMs, counter-claims have of course been possible before Greek courts since the first CTM Regulation 40/94 took effect – leading to different procedural treatment of EUTMs and national marks.

The TMO remains competent to hear both oppositions and invalidity/revocation actions. This requirement of the Directive was already fulfilled by Greek trade mark law – in fact the TMO has always been competent for these actions ever since the existence of trade mark law in Greece. The decision of the TMO is subject to appeal before Greek courts, namely before administrative courts as regards oppositions and – under the new Law – civil courts as regards revocation and invalidity actions.

However, there is no provision in the new Law exactly equivalent to Article 132 EUTMR addressing the situation of parallel attacks on the validity of the same EUTM in different venues. This provides, in principle, that the first of these attacks will be ruled upon while later ones remain suspended in the meantime – without, as a matter of principle, favouring either the EUIPO or the EUTM court to rule on the actions but focusing on which case was brought first. There is therefore no express regulation as to what will happen if more than one courts are hearing cancellation counter-claims against the same national Greek mark at the same time. Given that the aim of the new procedural provisions was, per their preamble, to avoid lengthy trials, a stay of proceedings does not appear to be in line with such aim. On the other hand, there is no provision in the Law that safeguards the avoidance of contradictory judgments.

Furthermore, to add to the legal uncertainty for trade mark holders, there is a new provision, which

does not exist in the EUTMR, providing that the infringer / defendant has the right to file an invalidity or revocation counter-claim via interim measures. It would therefore be possible under such provision to have a temporarily declared invalid or temporarily revoked Greek trade mark. It remains to be seen how courts will apply this. Especially given that decisions declaring the invalidity or revocation of a mark have an effect *erga omnes*.

The above new procedural provisions concerning appeals against cancellation decisions of the TMO before civil courts, cancellation counter-claims against Greek marks, as well as temporary cancellation of Greek marks through interim measures, are expected to cause some confusion among courts and practitioners. Shall the experienced and specialized Greek IP judges manage to achieve a smooth and balanced application of these new provisions? Hopefully yes. The Law further abolishes the traditional in Greece relative grounds *ex officio* examination. As regards the rest of the new Law, it provides a solid legal framework, constituting an exemplary transposition of the Directive into national law. About the transposition of the provisions of Directive, all of which are included in the Law as finally adopted, please see our previous comments [here](#).

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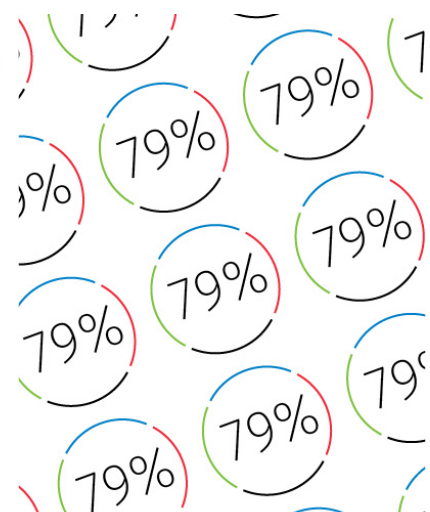
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