

Contributing firm

Dr Helen G Papaconstantinou, John V Filias and Associates



Authors

**Fotini Kardiopoulis, Miranda Theodoridou**  
and **Dimitra Nassimpian**

## Legal framework

The most important pieces of legislation governing trademarks in Greece are the following:

- the Trademark Law (4072/2012, Part 3), as amended by Law 4155/2013. The new legislation radically changed various aspects of trademark law in Greece and is designed to harmonise the regime with the EU IP Rights Enforcement Directive (2004/48/EC and the Community trademark procedure;
- the Unfair Competition Law (146/1914), as amended by Law 3784/2009;
- relevant EU legislation, including the EU Community Trademark Regulation (40/94), as codified by EU Regulation 207/2009;
- Chapter C of Law 2943/2001, which establishes

Greek Community trademark courts;

- Law 213/1975, ratifying the Paris Convention for the Protection of Industrial Property;
- Law 2505/1997, ratifying the Nice Agreement on the Classification of Goods and Services;
- Law 2290/1995, ratifying the Agreement on Trade-Related Aspects of Intellectual Property Rights;
- Law 2783/2000, ratifying the Madrid Protocol on the International Registration of Marks; and
- Ministerial Decision K4-307/2001, implementing the Madrid Protocol.

## Unregistered marks Protection

Although the Trademark Law does not incorporate unregistered signs, these are recognised as relative grounds for refusal and are protected under Articles 13 to 15 of the Law on Unfair Competition. In particular, protection

is offered to signs that are deemed to have become a distinguishing feature of the goods or services that they cover.

### Use requirements

In order to obtain protection, an unregistered sign must have distinctive character and must have been established in transactions. No specific statutory conditions outline the extent and type of use that will satisfy the above criteria; hence, courts rule on a case-by-case basis. The guiding principle is that use should be systematic, continuous, substantial and for a number of years.

### Registered marks

#### Ownership

There are no specific limitations as to who may apply for a trademark in Greece: individuals and legal entities may both file for the registration of trademarks, while clubs and associations may apply for the registration of collective trademarks. In case of more than one applicant, a common representative must be appointed.

#### E-filing

Compulsory electronic filing has now been introduced. The application and imprint of a mark must be filed electronically by submitting to the Trademark Office a CD or other appropriate storage medium. Trademark filing can also be carried out from a distance through such filing – the provisions on e-signatures apply. A special ministerial decision will establish the procedure, conditions and technical standards for filing from a distance.

#### Transliteration requirement

In the case of marks not written in Greek or Latin characters, the application must include their transliteration into Greek or Latin characters.

#### Power of attorney

The trademark application must be signed by the applicant or its authorised attorney. Strictly speaking, the appointment of a lawyer for the filing of the trademark application is optional. However, applicants must designate an addressee for the service of documents. If a lawyer is appointed, a simply signed power of attorney is required, which is valid for five years and may be used for further applications.

### Scope of protection

According to Article 121 of the Trademark Law, a trademark can be any sign that is capable of being represented graphically and of distinguishing the goods or services of one undertaking from those of another. In particular, a trademark may consist, among other things, of words, names of natural or legal persons, pseudonyms, acronyms, slogans, designs, letters, numerals, colours, sounds (including musical phrases) or the shape of goods or their packaging.

### Absolute grounds for refusal

Article 123 of the Trademark Law provides that the following cannot be protected as trademarks:

- signs that are devoid of any distinctive character;
- signs that are descriptive, commonly used, customary or functional. Distinctive character may be acquired through use, except in the case of signs exclusively made up of the shape resulting from the nature of the products or which is necessary to obtain a technical result or gives the product substantial value. Distinctive character will be assessed at the time of filing of the application;
- signs which may deceive the public as to, among other things, the nature, quality or geographical origin of the goods or services intended to be covered;
- signs that are against public policy or morality; and
- signs that consist of the flags, emblems, symbols, escutcheons, signs or hallmarks of the Greek state or of any other state covered by Article 6<sup>ter</sup> of the Paris Convention and signs of great symbolic value and special interest, particularly religious symbols, representations and words.

Signs consisting of or comprising geographical indications for wine and alcoholic beverages, and geographical indications or appellations of origin for agricultural products, are expressly exempt from trademark protection.

Finally, a trademark shall not be registered if it has been filed in bad faith.

### Relative grounds for refusal

A sign may not be adopted as a trademark if it infringes prior rights, such as:

## ☞ To obtain protection, an unregistered sign must have distinctive character and must have been established in transactions ☞

- earlier registered marks, including Community and international trademarks effective in Greece;
- trademark applications, as above, subject to their final registration;
- well-known marks within the meaning of Article 6bis of the Paris Convention;
- unregistered marks or other distinctive signs or indications used in trade where the owner thereof is entitled to prohibit the use of the later mark; and
- personality rights, copyright or other rights not covered by trademark law.

Letters of consent to the registration and use of a later mark have binding effect and can be submitted at any time during the registration procedure and at any point during the examination of a mark. Rights holders may also issue a disclaimer and limit the originally designated products or services at any time.

The law allows for the division of a trademark application or registration into two or more applications or registrations.

### **Procedures** **Examination**

After a trademark application is filed, the examiner checks each filing with respect to both absolute and relative grounds for refusal. If no grounds for refusal exist, the application is accepted. If grounds for refusal exist, the applicant is notified and may revoke the application, limit the trademark to the extent that it becomes acceptable or submit its observations within one month of notification.

If the applicant fails to reply or comply within the set term, the application is rejected and the applicant is informed of the decision. All decisions are published on the website of the

General Secretariat of Commerce.

The examiner's decision to reject an application can be challenged before the Administrative Trademark Committee within 60 days (90 days in the case of foreign entities) of notification of the decision. The committee's decision is subject to further recourse before the Administrative Court of First Instance.

### **Opposition**

Any party with a legitimate interest can oppose a trademark application. The term for filing an opposition is three months from the date of publication of the decision.

Proof of use is provided as a defence during opposition proceedings. Law 4155/2013 has extended the proof of use requirement to invalidity proceedings. If the trademark on which the opposition is based has been registered for more than five years, the applicant can call on the opponent to submit evidence of use of the mark in respect of the relevant goods or services on which the opposition is based in the five years preceding the date of publication of the opposed application, or to prove that there are proper reasons for non-use. Failure to meet these requirements will result in rejection of the opposition for procedural reasons, and the case will not be examined on its merits.

Trademark Committee decisions are subject to recourse before the Administrative Court of First Instance within 60 days (90 days in the case of foreign entities) of notification of the decision.

### **Registration**

A trademark is registered when it is accepted by an examiner or the Trademark Committee, subject to no further legal remedies or a final decision of the administrative courts. A

registered mark is granted protection for 10 years as of the date of filing of the application, indefinitely renewable every 10 years. If renewal is not requested within the specified period, the trademark can still be renewed up to six months later on payment of a fine.

*Restitutio in integrum* is available to trademark applicants, owners and other parties to proceedings before the Trademark Office or the Trademark Committee if they were unable to observe a time limit due to *force majeure* or an unforeseeable event beyond their control, provided that the non-observance had the direct consequence of causing the loss of any right or means of redress. The restoration procedure is not available in the case of failure to observe a time limit for filing an opposition or for claiming international convention priority.

An application for restoration must be filed within two months of removal of the cause of non-compliance, or in any case within one year of the expiry of the unobserved time limit.

### Removal from register

**Revocation:** A trademark can be revoked, either in whole or in part, if:

- it has not been put to genuine use by its owner for a continuous five-year period following registration in connection with the goods or services in respect of which it is registered, or if such use has been suspended for an uninterrupted period of five years;
- in consequence of acts or inactivity on the part of the rights holder, the trademark has become of common use or the common name in the trade for a product or service in respect of which it is registered; or
- by reason of the use made of a mark by the owner or with its consent in connection with the goods or services for which it has been registered, it is likely to mislead the public, particularly as to the nature, quality or geographical origin of those goods or services.

**Invalidity:** A trademark is declared invalid if it should not have been registered in the first place because it was registered in breach of the provisions regarding absolute or relative grounds for refusal. This is an exhaustive provision that comes into effect if there are grounds to assert that a trademark was erroneously registered when refusal or

opposition procedures are no longer available.

A trademark is not declared invalid even if registered in breach of Articles 123(1) (b), (c) and (d) of the Trademark Law (ie, devoid of any distinctive character, descriptive or generic), if such grounds did not exist at the time of filing the petition for a declaration of invalidity due to the fact that the trademark has since acquired distinctive character as a result of its use.

Decisions ordering the revocation of a mark or a declaration of invalidity take effect as soon as they become final.

**Surrender:** The owner may surrender the trademark for all or part of the goods or services for which it is registered at any time. If the mark is subject to a licence, the owner must prove that the licensee has been duly informed of its intentions to surrender the mark.

### Enforcement

A registered trademark confers exclusive rights on its owner, which is entitled to prevent all third parties from using in transactions without its consent any sign which:

- is identical to the mark in question in relation to identical goods or services;
- is identical or similar to the mark in relation to identical or similar goods or services, provided that a likelihood of confusion exists, including a likelihood of association; or
- is identical or similar to a trademark which has acquired reputation and whose use would take unfair advantage of the reputation of the mark without due cause or would cause detriment to the distinctive character or reputation of the famous mark, irrespective of whether the sign is destined to cover goods or services which are similar to those of the earlier mark.

The owner of a prior trademark cannot oppose the use of a later mark if it has acquiesced to the use of the later mark for a period of five successive years, while being aware of such use, unless registration of the later mark was obtained in bad faith.

The revised trademark legislation expressly provides that the rights holder is entitled to prevent:

- the transit of counterfeit goods through

## “ In case of commercial-scale infringement, the court may order *ex parte* the provisional seizure of the infringer’s assets ”

Greece or the import of counterfeit goods into Greece with the intention to re-export them – this provision has been adopted despite the European Court of Justice decisions in *Nokia/Philips* (C-446/09 and C-495/09);

- the affixation of a trademark on authentic goods that the owner intended to market unbranded; and
- the removal of a trademark from genuine goods and their sale unbranded or bearing another mark.

All questions regarding the enforcement of IP rights – except for injunctions and temporary restraining orders, which are heard in ordinary civil courts of first instance – fall under the jurisdiction of the IP civil courts of first instance and appeal in Athens and Thessaloniki. These courts were established in 2007. While this was a welcome development, backlogs still exist as the courts do not yet deal exclusively with IP cases.

### Civil court actions

In cases of trademark infringement, the following actions may be pursued in the civil courts.

**Temporary restraining order:** This is available only in cases of extreme urgency where the rights holder seeks a temporary court order as soon as the infringing activities have begun in order to enjoin such activities until adjudication at the injunctive stage. The proceedings may take place *ex parte*, although in most cases the judge invites the respondents to appear. Restraining orders may be requested only if an injunction petition is also filed simultaneously, and although they are not subject to appeal, a petition to revoke them may be filed.

**Injunction:** A petition for injunction also

requires that the situation be urgent. The procedure is more formal than that for a temporary restraining order, as the hearing involves the examination of witnesses from each side and the optional submission of sworn affidavits, as well as relevant pleadings and exhibits. The court will also examine the merits of the case in more detail and conclude on the likelihood of an infringement having occurred.

The trademark owner may require the disclosure of information under the suspected infringer’s control, including information with respect to the origin and distribution channels of the infringing products or services.

In case of commercial-scale infringement, the court may order *ex parte* the provisional seizure of the infringer’s assets, the freezing of its bank accounts and the disclosure of its bank, financial or commercial documents or due access to this information. In this respect, the trademark owner must prove that there are circumstances that may jeopardise actual payment of the indemnification. The filing of a related main infringement action is a prerequisite.

Injunctive relief may also be sought against intermediaries.

**Main infringement action:** An infringement action forms part of regular proceedings, in which the issue at hand is examined in detail by the competent IP courts on the basis of extensive pleadings. An action is heard between 10 and 12 months after the filing date and decisions are issued between six and nine months after the hearing.

### Damages

Damages may not be sought during the injunctive stage, but may be awarded as part of the claims during a main infringement action

---

## “Acquiring an earlier trademark, cited against the registration of the new rights holder, will allow registration of the later mark”

for actual loss and/or moral damages. The court will take into account, among other things, the negative economic consequences suffered by the rights holder, including any undue profits made by the infringer. Undue profits may be awarded to the claimant, regardless of the infringer's liability (unjust enrichment). Under the new law, damages may be calculated on the basis of hypothetical royalties that the infringer would have paid to the trademark owner had a licence agreement for use of the trademark been in place.

### Criminal penalties

Criminal penalties have always been available in trademark infringement cases. Under the new law, penalties have become more severe. Professional and commercial-scale infringement can be considered as aggravating circumstances, incurring much stricter penalties (imprisonment for a minimum of two years and a financial penalty of €6,000 to €30,000).

### Ownership changes and rights transfers

Ownership changes (eg, assignments, mergers) and various other changes (eg, changes of

name/ address/legal form of the rights holder) must be recorded with the Trademarks Office in order to be enforceable against third parties. It is expressly stated that a trademark may be partially assigned, provided that such assignment does not mislead consumers.

Acquiring an earlier trademark, cited against the registration of the new rights holder, will allow registration of the later mark, even if such assignment takes place after examination of the new application, and even during proceedings before the Administrative Courts of Appeal.

A pledge or other right *in rem* may be recorded against a trademark. Such recordal may also be effected by the receiver following a bankruptcy order.

There is no longer any need for the Trademark Committee to examine and approve licence agreements. Such agreements must be in writing and may be recorded upon the petition of either the licensor or licensee, duly authorised by the licensor.

According to prevailing opinion, the recordal of a licence is no longer compulsory, but it is nonetheless highly recommended, particularly in order to avoid any contestations/ controversies and for evidentiary purposes.

### Related rights

There are clear areas of overlap between trademarks and other types of IP right. The object of trademark protection can also be protected by other IP rights, provided that the protection criteria of such rights are met.

Shapes of products or their packaging, trade dress, logos and business names, as well as other unregistered rights, may under certain circumstances enjoy similar protection to that afforded to trademarks under unfair competition law. If certain conditions are met, these may all be regarded as non-registered marks and acquire rights of priority and protection in this manner.

### Online issues

The regulation of telecommunications in Greece is vested in the Hellenic Telecommunications and Post Commission, an administrative body established by statute that began operations in 1995. The main legal framework can be found in the Regulation on the Management and Assignment of Domain

---

Names, which was amended in 2011 following a two-year consultation period. The regulation sets out the procedures for registering domain names in the country-code top-level domain ‘.gr’ and the grounds for cancellation petitions, both of which are filed and heard by the commission. The revised regulation introduced a number of long-awaited changes aimed at improving the effectiveness and speed with which registrations of ‘.gr’ domain names take place by adopting various consumer-friendly processes. Most importantly, for the first time the regulation expressly refers to the possibility of seeking cancellation of a registered domain name that is confusingly similar or identical to a name that is protected by either national or domestic legislation, if it has been registered by a party that has no rights or legitimate interest in that name or if it has been filed or is being used in bad faith.

Thus, the rights of trademark owners are now expressly acknowledged in respect of domain names, while the previous problematic bad-faith requirement has been replaced by a more straightforward and sensible approach. Another welcome development introduced by the amended regulation is the possibility of requesting the transfer of the relevant domain name in cancellation petitions on the issuance of an uncontested committee decision, provided that the petitioner has a legitimate interest in the name. As was the case previously, committee decisions can be appealed to the Athens Administrative Court within 30 days of their notification. [WTR](#)

<b>Examination/registration</b>		
<b>Representative requires a power of attorney when filing? Legalised/notarised?</b>	<b>Examination for relative grounds for refusal based on earlier rights?</b>	<b>Non-traditional marks registrable?</b>
Yes/No ✓ / ✓ / ✗	Yes ✗	3D (shape of products or package); colours. ✓
<b>Unregistered rights</b>		<b>Opposition</b>
<b>Protection for unregistered rights?</b>	<b>Specific/increased protection for well-known marks?</b>	<b>Can a registration be removed for non-use? Term and start date?</b>
Yes ✗	Yes ✓	Yes: three months from publication on Trademark Office website. ✓
<b>Removal from register</b>		
<b>Can a registration be removed for non-use? Term and start date?</b>	<b>Are proceedings available to remove a mark that has become generic?</b>	<b>Are proceedings available to remove a mark that was incorrectly registered?</b>
Yes: five years' non-use from registration or suspension of use. ✓	Yes ✓	Yes ✓
<b>Enforcement</b>		
<b>Specialist IP/trademark court?</b>	<b>Punitive damages available?</b>	<b>Interim injunctions available? Time limit?</b>
Yes ✓	No ✗	Yes: requirement of urgency. ✓
<b>Ownership changes</b>	<b>Online issues</b>	
<b>Mandatory registration for assignment/licensing documents?</b>	<b>National anti-cybersquatting provisions?</b>	<b>National alternative dispute resolution policy (DRP) for local ccTLD available?</b>
No: but highly recommended. ✗	No: but concept of cybersquatting applicable to bad faith. ✗	Yes: Hellenic Telecommunications and Post Commission Policy. ✓

**Dr Helen Papaconstantinou, John Filias and Associates**

2 Coumbari Street, Kolonaki

10674 Athens, Greece

**Tel** +30 210 362 6624

**Fax** +30 210 362 6742

**Web** [www.hplaw.biz](http://www.hplaw.biz)



**Fotini Kardiopoulis**

Attorney at law

[f\\_kardiopoullis@hplaw.biz](mailto:f_kardiopoullis@hplaw.biz)

Fotini Kardiopoulis graduated with first-class honours from the University of Athens with a law degree, and holds an LLM from the London School of Economics and Political Science. She has been a member of the Athens Bar since 1985 and is admitted to practise before the Supreme Court and the Council of State. Ms Kardiopoulis deals with a broad range of IP matters, with an emphasis on trademarks and alternative dispute resolution. She is responsible for the anti-counterfeiting/anti-piracy department of the firm, and has particular experience in devising and implementing anti-counterfeiting programmes, filing and administering customs actions and monitoring and enforcing rights in relation to counterfeit goods on the Internet.



**Miranda Theodoridou**

Attorney at law

[m\\_theodoridou@hplaw.biz](mailto:m_theodoridou@hplaw.biz)

Miranda Theodoridou graduated from the University of Athens with a law degree and is admitted to practise before the Supreme Court and the Council of State.

Ms Theodoridou has more than 30 years' extensive experience in handling a broad spectrum of IP issues, including consultation for and legal representation of major multinational companies in administrative proceedings and courts. She has handled numerous cases, mostly focusing on trademark and domain name matters, and has made several contributions to professional publications in this area.

Mrs Theodoridou is a European patent attorney and a member of numerous professional organisations. Patent Office and the European Communities Trademark Association.



**Dimitra Nassimpian**

Legal consultant

[d\\_nassimpian@hplaw.biz](mailto:d_nassimpian@hplaw.biz)

Dimitra Nassimpian graduated from Edinburgh University with an LLB (honours), and then carried out doctoral studies there while lecturing in EU and international law. She was then subsequently appointed as a full-time lecturer at Exeter University School of Law (2004 to 2008), teaching extensively in EU and UK public law at undergraduate and master's level. She has published on EU and UK administrative law and trademark litigation, and is a member of the UK Society of Legal Scholars and a visiting research fellow at Exeter University. She is currently consulting at Dr Helen Papaconstantinou, John Filias and Associates on contentious trademark and domain name matters and aspects of EU litigation.