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INSIGHTS OF THE EUROPEAN COMMUNITIES TRADE MARK ASSOCIATION

INTERVIEW WITH
ANETTE RASMUSSEN

THE DIGITAL SERVICES
ACT- A CURRENT VIEW
WITH AN EYE TO THE
FUTURE
NICOLE VAN ROON



Contents

1. Introduction [3.]

2. Editorial board [4.]

3. Committee Section [5.]

4. Reports

4.1. Position Paper on the Concept of 'Reputation' in Geographical Indications [12.]

5. New Members [14.]

6. Interviews

6.1. Interview with ECTA President Anette Rasmussen [16.]

7. Articles

7.1. Genuine Use and Its Requirements. Study of Recent EU Case Law [20.]

7.2. New Greek Trade Mark Law [22.]

7.3. Copyright Aspects of E-sports [24.]

7.4. Eurasian Trade Marks: a New Regional System of Trade Mark Registration Is on its Way [27.]

7.5. INNs in the Context of IPRs – Ukrainian Regulation and Court Practice [30.]

7.6. Social Media – Remain Maneuverable, Flexible and Quick [32.]

7.7. The Digital Services Act – A Current View with an Eye to the Future [34.]

8. Case Law Reports

8.1. The Checks and Balances of Likelihood of Confusion [38.]

8.2. 'One, No One, and Hundred thousand'. The Continuing Unfathomable Nature of Bad Faith [40.]

8.3. Red Bull-Trade Marks Well-known Also for 'Events' [42.]

9. Book Review [44.]

Enjoy !

7. ECTA Articles



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IMPLEMENTATION OF THE DIRECTIVE

The Law introduced new forms of trade marks provided in the Directive, such as hologram marks, motion marks, multimedia marks, and pattern marks. It also abolished the requirement of graphic representation. Currently, the Greek Trade Mark Office (TMO) is making the necessary logistical and technical equipment changes in order to be able to accept applications for the new types of marks.

Filing of certification marks is now possible in Greece. The Greek legislator made use of its discretion to implement the respective Directive provisions, adding certification marks as the second category of non-individual marks, to the already existing category of collective marks.

With respect to goods in transit, the Law provides, in accordance with the Directive, that the trade mark owner may prevent any third party from bringing goods into Greece, even where the goods are not intended to be released for free circulation within the Greek market.

Prior to the Law, the non-use defence could only be put forward in opposition and cancellation proceedings. Now, a defendant in a lawsuit may request that the plaintiff provides proof of use of its mark, if registered for more than five years. The Greek law requires that the request for proof of use and the evidence of use to follow

ON 20 MARCH 2020, THE GREEK PARLIAMENT VOTED FOR THE NEW GREEK TRADE MARK LAW 4679/2020 (THE LAW), IMPLEMENTING THE TM DIRECTIVE (EU) 2015/2436 (THE DIRECTIVE). THE LAW MADE CERTAIN CHANGES TO DOMESTIC TRADE MARK LAW, AND FINE-TUNED OTHER EXISTING PROVISIONS IMPLEMENTING DIRECTIVE 2004/48/EC ON ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS, AS WELL AS EXISTING PROVISIONS ON INTERNATIONAL TRADE MARK REGISTRATIONS. THE OLD TRADE MARK LAW 4072/2012 WAS ABOLISHED. THE LAW INTRODUCED NEW FORMS OF TRADE MARKS, CERTIFICATION MARKS, NON-USE DEFENCE IN INFRINGEMENT PROCEEDINGS, ACQUIESCENCE IN INVALIDITY PROCEEDINGS, AND INTERVENING RIGHTS, AMONG OTHER THINGS. LET US LOOK AT THE MOST IMPORTANT OF THOSE.

New Greek Trade Mark Law



7. ECTA Articles

the rules of civil procedure and sets time limits with respect to such proof of use so as to be coordinated with the time limits for submission of pleadings and evidence before civil courts.

Prior the Law, it was also not possible to file a counter-claim of invalidity or revocation in the context of infringement proceedings if the lawsuit relied on a national trade mark. It was only possible to file such counter-claims if the lawsuit was filed on the basis of an EU trade mark. The Law now equalizes that and provides that such counter-claims are a defence that the defendant may put forward even against national trade marks. The Law introduces the new notion of 'intervening rights' in line with the Directive provisions. In infringement proceedings, if an owner of a later registered trade mark obtained his rights ('intervening rights') at a point in time when the prior mark would not have been enforceable against the later mark, he may raise such rights as a defence. The provision applies only to those cases where an infringement action is brought by a registered trade mark owner against another registered trade mark owner.

The last 'weapon' introduced by the Law is the extension of the defence of acquiescence to infringement proceedings. Prior to the Law, this defence was only available in invalidity proceedings. Furthermore, under the Law, this defence applies not only against holders of prior trade mark rights but also against

holders of other prior rights recognised under Greek law, such as personality rights, unregistered rights and copyright.

IMPORTANT NATIONAL PROVISIONS

Some important national origin provisions were included in the Law:

The *ex-officio* examination based on relative grounds has been abolished and the TMO is no longer able to reject a Greek trade mark application on relative grounds. The TMO shall continue to examine *ex-officio* and reject applications on absolute grounds.

Given that the competent body in Greece for hearing oppositions and cancellation actions was already the TMO, this competence remains by the Law in view of the Directive. However, appeals of TMO decisions on cancellation and invalidity actions will no longer be heard before the administrative courts as was the case before. The appeals will now be heard before civil courts.

This will be a significant change in the practice of Greek lawyers and judges, in particular civil judges, who are not used to deliberating on absolute grounds – their practice so far was tasked to deal only with relative grounds disputes.

In the framework of embracing alternative dispute resolution, the Law introduced the possibility of mediation before the Trade Mark Administrative Committee, namely the body within the TMO, competent for hearing

oppositions and invalidity / revocation actions. In this way, parties may try to mediate their respective disputes in Greece, before proceeding to a hearing, so as to save cost and time. Online mediation is possible under the Law, making this option attractive also to foreign parties.

Lastly, official fees for change of particulars of the trade mark owners (change of corporate name or address) are abolished and lower official fees are introduced for online filings.

ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

Without changing the substance of the old provisions, the Law categorised and clarified the procedures and rights that trade mark holders have under the Enforcement Directive, as implemented in Greece, in order to facilitate the application of these provisions by practitioners and courts.

INTERNATIONAL TRADE MARKS

With a view of clarifying and making the respective provisions more accessible to the public and practitioners, the Law describes in detail and step-by-step the process of national registration of international registrations designating Greece, without changing the substance of the old provisions.«