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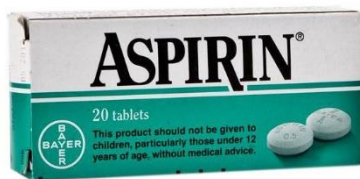
GREECE – CASE REPORT

Multi-member First Instance Court of Athens Judgment No. 270/2015

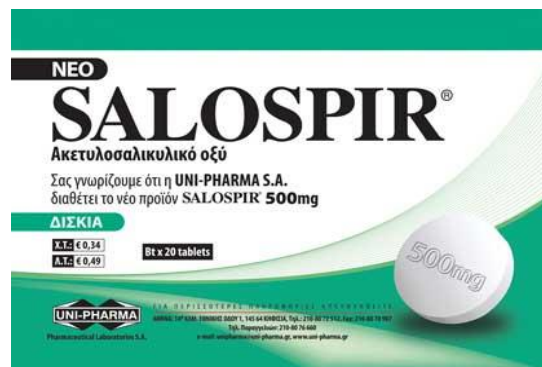
Look alike products. Colors and color combinations used in the packaging of products. Likelihood of confusion. Dilution. Psychological effects caused to consumers by colors used in the packaging of products.

We are proud to report that our firm successfully litigated a look alike case, which was particularly difficult and novel. The case related to the color combination of green and white used in the packaging of pharmaceuticals. We represented UNI-PHARMA SA, one of the leading Greek pharmaceutical manufacturers, against BAYER AG.

The packages, involved in this case, were the following:



ASPIRIN packaging



SALOSPIR packaging

The court accepted one of our main arguments, that is, that the green color caused certain emotions to consumers and that it was mentally associated with the idea of relief from pain. Moreover, that it is a color which, to the mind of Greek consumers, is closely associated with the medical science. Hence, that it should not be monopolized by solely one manufacturer.

Accepting our line of argumentation, the court found that there was neither likelihood of confusion among the two packagings, nor dilution, because of the following:

1. The dominant components of both medicines, ASPIRIN and SALOSPIR, are totally different and they are cited in the respective packaging in sizeable letters.

2. The word mark SALOSPIR has neither the same letter roots with the mark ASPIRIN nor the same suffix. The word mark SALOSPIR starts with the prefix "SALO-" and ends with the syllable "-PIR", whereas the word mark ASPIRIN starts with the prefix "ASPI-" and ends with the syllable "-RIN".

3. The green color in the packaging of ASPIRIN is that of the dark shade, known as pantone green, whereas the green color in the packaging of SALOSPIR is a lighter shade of green.

4. Through the comparison of the word mark ASPIRIN with the word mark SALOSPIR, it was deemed that these two word marks are phonetically and visually dissimilar.

5. In the Greek market, there are too many analgesics that circulate in a green and white packaging, so subsequently consumers are very familiar to distinguish the differences among the comparable trademarks (ASPIRIN and SALOSPIR).

6. Both products have co-existed and circulated in the Greek market for many years and they are very well-known to the consumers. So, consumers are capable of distinguishing them and there is no likelihood of confusion by the circulation of SALOSPIR.

7. ASRIRIN and SALOSPIR are both products that are traditionally ordered orally from the pharmacists rather than being picked from the shelves by the consumers. So, there is no likelihood of confusion deriving from the packagings or colors. The basic criteria for choosing one drug over another are the reputation and trustworthiness of the manufacturer and not the packaging per se.

8. The average consumers are reasonably well-informed and reasonably observant and circumspect regarding pharmaceutical market and they cannot be easily deceived. So, they are very cautious when they buy pharmaceutical products on account of the fact that medicines are of great importance to their health.

9. ASPIRIN and SALOSPIR are both products that are traded in pharmacies and consumers can have them only if they order them orally from pharmacists. Pharmacists are very well-educated people, who also have the appropriate knowledge to distinguish these products and recognize their producing companies (BAYER and UNI-PHARMA respectively). Consequently, they act as intermediaries between the producing company and the relevant drug and they provide consumers with all the information requested, so as to prevent any likelihood of confusion.

10. UNI-PHARMA is one of the most well-known and appreciated companies in pharmaceutical industry, as it has been operating without interruption since 1967 and its products are also well-known to the consumers. Specifically, SALOSPIR has been traded both as an

anti-thrombotic and an analgesic, so it is widely recognized. The overall impression formed in the consumers' mind when they see the drugs ASPIRIN and SALOSPIR is that they are totally different and that there is no likelihood of confusion. In addition, their distinctive elements are visually, aurally and conceptually dissimilar and this consequently means that there is no likelihood of confusion.

To fully understand the case, it is important to emphasize certain peculiarities that are particular to this case:

1. An important factual peculiarity of this case is that SALOSPIR is by itself a famous pharmaceutical trademark in Greece, as it is traded for about 40 years and is the leading anti-thrombotic in the local market.

2. Another fact that makes this case exceptional is that SALOSPIR has been traded as a pain reliever during the '80s in a green and white packaging (see attached photo) without any objection by any party.

3. There is strong scientific literature and other evidence that the green color causes specific mental associations and emotions to consumers; it is submitted that it causes a calming emotion and that it is closely associated with the idea of relief from pain. Pharmacies in Greece and other countries bear a green cross, operating rooms are painted in green colors, surgeons' clothing is green, etc. in the mind of consumers the green color has always been associated with medicine.

4. There are many other pharmaceuticals traded in green and white packaging.

5. When one attempts to establish that a particular color or color combination is distinctive in itself and enjoys reputation as such (i.e. irrespective of the word marks accompanying it), they have to prove that consumers would recognize the particular product of the particular manufacturer from the colors of the packaging alone, even in the absence of any word mark. In simple terms, this would mean that anyone, who comes across a green and white packaging without any other word indications, has no doubt that it cannot be anything else other than ASPIRIN. Establishing something like this is particularly difficult as in principle consumers are not accustomed to perceive colors as indications of origin. Establishing distinctiveness on this basis may be impossible in cases where certain colors cause particular mental associations, or emotions, and are generic of particular sectors.

Readers might also be interested to know that the ASPIRIN – SALOSPIR case is also pending for decision before the OHIM following an opposition to a CTM application for the SALOSPIR packaging.