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GREECE – CASE REPORT

Multi-member First Instance Court of Athens Judgment No. 5246/2014

Trademarks. Company names. Personal names. Limitation of trademark rights. Likelihood of confusion. Use by a natural person of its personal name in the label of products. Conflict with earlier rights of a legal entity consisting in trademarks and company name comprising of the personal name of the above natural person.

Our firm is proud of successfully handling litigation in a much discussed and legally demanding case involving one of the most well-known foodstuffs brand in Greece (i.e. the NIKAS brand). The cases raised difficult legal issues relating to personal names and limitation of trademark rights, which have not been dealt with by prior judicial precedent of our national courts.

The marks involved were as follows:

	
<p>Slogan: "With recipe and care of Panayiotis Nikas"</p>	<p>NIKAS SA well known mark</p>

The first instance Court of Athens reasoned there is ground for limitation of earlier trademark rights, in case of a natural person using his personal name in foodstuffs produced under his personal supervision and according to a recipe provided by him. The earlier rights consisted of a legal entity's earlier trademarks and company name, which comprised of the personal name of the above mentioned natural person. The natural person was the founder of the legal entity and has been its manager for a long time, but he had sold his participation and carried on his own business through another legal entity controlled by him.

Facts and reasoning of the court:

In 1971, Mr. P.G. Nikas founded the legal entity "P.G. Nikas SA", a sausages and cold cuts manufacturer. He has been its controlling shareholder and general manager until about the end of 2003, when he sold his shares and left the company. By that time, "P.G. Nikas SA" had become a leader in the local market and the word mark "Nikas" had developed substantial reputation and fame. The legal entity had registered under its name a number of national and Community trademarks consisting of the personal name "P.G. Nikas" and "Nikas". The shares sale and purchase agreement provided that Mr. Nikas would be able to continue carrying on a sausages and cold cuts business through another legal entity he controlled (Brelle SA), provided he would not cause any deception to consumers. As a matter of fact, Brelle SA, under the management and control of Mr. Nikas carried on such business until about the end of 2012. At that time, Brelle was renamed to "Lakoniki SA". By the end of 2012, Mr. Nikas entered into a license agreement with "Lakoniki SA" and granted it a license to use his personal name in sausages and cold cuts produced under his personal supervision and with his own recipe. "Lakoniki SA" introduced a new series of such sausages and cold cuts. The labels of the new products born the marks "Lakoniki", "L" the initial letter of Lakoniki, as well a number of geographical terms, such as SPARTI, MISTRAS, TAIGETOS, PARORI, etc. The labels also born certain drawings and other pictorial elements, as well as colors quite different than the red and white colors, which were heavily used by "P.G. Nikas SA". At the bottom of the label, the slogan "With recipe and care of Panagiotis Nikas" appeared in special calligraphic lettering in italics and with fonts substantially smaller than the fonts of other word elements, like "Lakoniki", and the above mentioned geographical terms.

"P.G. Nikas SA" objected to the use of the slogan "With recipe and care of Panagiotis Nikas" and alleged infringement of its earlier trademarks and company name on the grounds of likelihood of confusion and unfair advantage from its fame and reputation and sought a cease and desist order, as well as damages. Mr. Nikas intervened in the proceedings in favor of "Lakoniki SA" and counter-argued that he enjoyed a legal right to personality, which entitled him to use his personal name and that such right should prevail over earlier trademarks and company names. He also argued that this was

a case where it was appropriate to apply the limitation of trademark right, provided under Art. 6(1) of Dir. 2008/95 EC on the harmonization of the laws on trademarks and Art. 12(1) CTMR 207/2009. According to this argumentation, the use of the slogan "With recipe and care of Panagiotis Nikas" was essential to inform consumers about the person who was responsible for the quality and the production of the goods, an aspect which is of great interest to consumers in case of goods for human consumption. Moreover, he argued that such use was in accordance with good morals in the respective customs of trade, because in designing the labels of "Lakoniki SA" all reasonable precautions to avoid likelihood of confusion were taken, that is, "Lakoniki" and the terms SPARTI, MISTRAS, TAIGETOS, PARORI, etc. were dominant, rather than the challenged slogan and the colors used in the labels were quite different than those used by "P.G. Nikas SA". On its part, "Lakoniki SA" argued that likelihood of confusion was absent, because the dominant elements on its labels (i.e., its company name Lakoniki, its initial letter "L", geographical terms like SPARTI, MISTRAS, etc., and other drawings and pictorial elements) were different than the earlier rights invoked by "P.G. Nikas SA".

The Court found in favor of the defendant and accepted that there was ground for limitation of the earlier rights arising from the registered trademark and company name of "P.G. Nikas SA".

Xenia Chardalia successfully represented Panayiotis Nikas and Lakoniki SA in the proceedings and the judgment has not been appealed.