

1986 November 13

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

, ARCADIAN CORPORATION INC,  
OF NEW YORK STATE. U.S.A. (No 4),

*Applicants.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE REGISTRAR OF TRADE MARKS.

*Respondents.*

(Case No 1045/85)

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*Trade Marks—The Trade Marks Law, Cap. 268—Section 11 (1)(d) and 17(3)—Geographic name—Registration prohibited, but not if it connotes area in a local or specialised sense—Chemical element—Registration of word signifying such element prohibited only if that is the sense in which the word is commonly used or accepted—Registration in foreign countries—Neither conclusive nor important consideration—Word “ARCADIAN” for fertilizers—Rejection by respondent Registrar annulled.*

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Applicants' application for the registration of "ARCADIAN". their registered trade mark in U.S.A. and other countries. as a trade mark in Cyprus in respect of fertilizers was turned down by the respondent Registrar on the following grounds, namely that it is directly referable to the character or quality of the goods, that it is a geographic name and that it lacked distinctiveness.

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Hence the present recourse. As regards the first of the aforesaid grounds respondent contended that the products in question contained nitrogen and, therefore, they are not unconnected with "ARCADIAN". which in con-

junction with nitrate—arcadian nitrate—signifies products made from synthetic ammonia and soda, used as fertilizers.

*Held, annulling the sub judice decision:* (1) The word “ARCADIAN” does not of itself refer to any chemical element and as such it does not refer to the character or quality of the fertilizers (S. 11 (1) (d) of Cap. 268). Section 17(3) prohibits the use of a word signifying a chemical element or single chemical compound only if that is the sense in which the word is commonly used and accepted.

(2) What the law forbids is the adoption of a name that connotes a geographical name in its ordinary sense. It does not prohibit the use of a name that connotes a geographic area in a local or specialised sense (Section 11(1) (d)). The respondent Registrar based his decision upon a specialized meaning of the word.

(3) The word “ARCADIAN” appears to be sufficiently distinctive.

(4) Registration in other countries is not a conclusive factor or a consideration of great importance.

*Sub judice decision annulled.  
No order as to costs.*

ses referred to:

*Peletico Ltd. v. Registrar of Trade Marks* (1986) 3 C.L.R. 490; 25

*Magnolia Metal Co's T.M.* [1897] 2 Ch. 371.

course.

Recourse against the refusal of the registration in Class of Part A of the Register of “Arcadian” as a trade mark fertilizers. 30

*Chr. Chrysanthou*, for the applicants.

*St. Ioannides (Mrs.)*, for the respondents.

*Cur. adv. vult.*

PIKIS J. read the following judgment. The applicants an American company, are manufacturers of fertilizer marketed under the name "ARCADIAN", their registered trade mark in the U.S.A. and other countries. The trade mark is tagged on containers in which the fertilizers are packed for sale. In 1984 they began trading in Cyprus; too, and, seemingly, they gained the foot-hold in the market for fertilizers. They applied for registration of "ARCADIAN" in class 1 of Part A register. In case their application was refused, they intimated they would be content with registration in Part B register.

The application was refused for the reasons indicated to the applicants in a letter dated 7.1.85. Pursuant to the provisions of reg. 32 of the Trade Marks Rules<sup>1</sup> applicants applied for a hearing before the Registrar seeking a review of his decision. The Registrar remained unpersuaded and for the same reasons affirmed his original decision (see letter of 17.10.85). The present proceedings aim at the judicial review of the decision of the Registrar. Applicants question the validity of the reasons for which the application was refused and seek the annulment of the decision. Before examining the rival submissions, it is appropriate to recount the reasons for which the application was refused

The registration of "ARCADIAN" was refused because it was -

- (a) directly referable to the character or quality of the goods;
- (b) a geographic name and, because
- (c) it lacked distinctiveness.

Before the Registrar affidavits were produced on behalf of the applicants claiming the word "ARCADIAN" was invented; it derived from the name of the applicants "ARCADIAN CORPORATION INC." and served to stress the association of the products with the Company. In the U.S.A. and other countries, "ARCADIAN" was accepted as possessing the necessary attributes of dis-

<sup>1</sup> 1951 - 1971.

inctiveness to merit registration as a trade mark. However, this is not a conclusive factor or a consideration of any great importance, for the reasons given in *Peletico Ltd. v. The Registrar of Trade Marks*<sup>1</sup>.

In the contention of respondents the association of "AR- 5  
CADIAN" with the character and quality of the goods de-  
rives from the fact that the products of applicants con-  
tain nitrogen ingredients and, therefore, not unconnected  
with the word "ARCADIAN" which, in conjunction with 10  
nitrate—arcadian nitrate—signifies products made from  
synthetic ammonia and soda, used as a fertilizer. *Hackh's*  
*Chemical Dictionary* gives the following definition of ar-  
cadian nitrate: "Sodium nitrate made from synthetic am-  
monia and soda, a fertilizer a. sulfate. Ammonium sulfate 15  
fertilizer".

Two things must be noticed:-

First, the word "ARCADIAN" does not of itself refer  
to any chemical element and as such it does not refer to  
the character or quality of fertilizers (s. 11(1)(d) ).

Secondly, the law, s. 17(3)—Cap. 268, prohibits the 20  
use of a word signifying a chemical element or single che-  
mical compound only if that is the sense in which the  
word is commonly used and accepted. The word "ARCA-  
DIAN" in its ordinary connotation has no relationship  
whatever to a chemical element or chemical compound. In 25  
its ordinary acceptance the meaning of the word is that  
given by the *Concise Oxford Dictionary* (new edition) at  
p. 48: "*Arcadian* —Ideally rustic; hence Arcadianism,  
pastoral simplicity. (f. L. Arcadius F. GK Arcadia mountain  
district in Peloponnese, taken as ideal rustic paradise, +— 30  
AN)". Consequently, the first reason given for refusal is  
invalid; it did not justify refusal of registration.

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<sup>1</sup> (1986) 3 C.L.R. 490.

In its ordinary signification the word "ARCADIAN" (see meaning given in the Concise Oxford Dictionary above) does not signify a geographic name. What the law forbids is the adoption of a name that connotes a geographical name in its ordinary signification. It does not prohibit the use of a name that connotes a geographic area in a local or specialised sense. The qualification embodied in s. 11(1)(d)—Cap. 268 (its ordinary signification) was inserted in the corresponding English legislation, the archetype for our law, following the decision in *Magnolia Metal Co.'s T.M.*<sup>1</sup>, as explained in *Kerly*<sup>2</sup>. In the words of Rigby, L.J.:

".... a word does not become a geographical name simply because some place upon the earth's surface has been called by it."

No doubt the word "ARCADIAN" brings to memory ancient Greek history, particularly the Arcadian dialect. As may be inferred from the dictionaries consulted by the Registrar he did not base his decision on the meaning of the word "ARCADIAN" in its ordinary signification but upon a specialised meaning and, therefore, irrelevant for the purposes of s. 11(1)(d). Consequently, the Registrar misconstrued the law and as a result misapplied it to the facts of the case. For that reason the second justification for refusing registration, namely that the word "ARCADIAN" is a geographical name, is also untenable.

Lack of distinctiveness—the third reason for refusing registration—is not articulated. One is left to infer that it lacks distinctiveness because of the first two reasons. Otherwise, the word "ARCADIAN" appears to be sufficiently distinctive. There was no evidence whatever before the Registrar that the word is used by anyone to describe their products other than the applicants, or that it is apt to confuse the products or trade of any third party with those of the applicants.

<sup>1</sup> [1897] 2 Ch. 371; 14 R.P.C. 621.

<sup>2</sup> *Kerly's Law of Trade Marks and Trade Names*, 10th ed., para. 8-33.

For all the above reasons, I conclude the decision is founded on a misconception of the law and the material facts of the case, and must consequently be annulled. Pursuant to the provisions of Article 146.4 (b) of the Constitution the decision is declared to be wholly void and of no effect whatsoever. Let there be no order as to costs. 5

*Sub judice decision annulled.  
No order as to costs.*