1986 February 22

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

SOCIETE ANONYME DES EAUX MINERALES D'EVIAN
OF FRANCE,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF COMMERCE AND INDUSTRY
AND/OR
2. THE REGISTRAR OF TRADE MARKS,

Respondents.

(Case No. 170/84).

The Trade Marks Law, Cap. 268—Refusal to register "Evian" in Class 3 of the Registry—Factual background the same as in recourse 127/84.

Seemingly by means of the sub judice decision the Registrar of Trade Marks disposed of the applicants' two applications, namely the application to register "Evian" in class 32 of the Register* and the application to register "Evian" in class 3 of the Register for the cosmetics traded by the applicants.

The present recourse is directed against the refusal to register "Evian" in class 3 of the Register.

Held, annulling the sub judice decision: (1) To the extent that the sub judice decision is founded on the inadequate inquiry and faulty reasoning that led to the annulment of the relevant decision in Recourse 127/84, it cannot but be faulted in this case as well.

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* See (1986) 3 C.L.R. 350.

(2) It may have been a mistake to examine the two applications in the same breadth for the material facts in relation to the two are not necessarily indentical. Re-examination of the two applications need not necessarily result in a similar decision.

Sub judice decision annulled.
No order as to costs.

Recourse.

Recourse against the decision of the respondent to register the trade mark "Evian" in respect of cosmetics in Class 3 of the Register.

C. Clerides, for the applicants.

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

PIKIS J. read the following judgment. This recourse is closely connected with Recourse 127/84; the parties are the same and in fact it is directed against the same decision (30.1.1984). Seemingly the Registrar disposed by the same decision of both applications for registration of "Evian" as a trade mark under different classes of the register for their respective products, namely, mineral water and cosmetics.

The present proceeding is directed against the decision to the extent it affects registration of "Evian" as a trade mark in Class 3 of the Register for the cosmetics traded by applicants. The factual background to the two applications is, as may be gathered from the relevant files of the Registrar, the same. Apparently both mineral water bottled by the applicants and the cosmetics produced, originate from the same source, namely, the springs of mineral water of Evian-Les-Bains.

Earlier to-day we decided that the sub judice decision, in so far as it affects registration of "Evian" mineral water in Class 32 of the Register, must be annulled. We need not reproduce the reasons for the annulment, they appear in the judgment just given and may be read as an appendix to this judgment. It appears the Registrar did not conduct a separate inquiry into the facts supporting the two applica-

tions of the applicants. As may be inferred from the reasoning of the sub judice decision, it was principally meant to dispose of the application for the registration of "Evian" as a trade mark for the sale of the mineral water of the applicants. To the extent that the sub judice decision is founded on the inadequate inquiry and faulty reasoning that led to the annulment of the relevant decision in Recourse 127/84, it cannot but be faulted in this case as well. However, it may have been a mistake to examine the two applications in the same breadth for the material facts in relation to the two are not necessarily identical. For example, the certificate of the mayor of Evian-Les-Bains is solely directed to eliciting the facts relevant to the exploitation of mineral water. Further, the facts with regard to the association of the word "Evian" with the two products is not, on the material available, the same. The Registrar must be alerted to these facts and shall, on re-examination of the case, view them in this perspective. Therefore, while the sub judice decision will, for similar reasons to those given in my decision in Recourse 127/84,* be annulled, re-examination of the two applications need not necessarily result in a similar decision.

In the result, the decision is annulled. Let there be no order as to costs.

Sub judice decision annulled.
No order as to costs.

* See (1986) 3 C.L.R. 350.