

[HALLINAN, C.J. and ZEKIA, J.]
(June 21, 1955)

THE CYPRUS WINE AND SPIRITS COMPANY
LIMITED, of Limassol,

Appellants,

v.

THE OFFICIAL RECEIVER & REGISTRAR, of Nicosia,
Respondent.

(*Trade Marks Appeal No. 1/55*)

Trade Marks Law 1951—Section 11 (1) (d)—Word “Alpha” not registrable.

The Registrar of Trade Marks refused an application to register the word “Alpha” in respect of a brandy of the appellants’ manufacture.

Held upon appeal: The word could not be registered under the Trade Marks Law, 1951 (No. 2/51) sec. 11 (1) (d) as in Cyprus the word “alpha” is used in reference to the character or quality of goods.

Although it has been held in England that the phonetic representation of a letter of the alphabet in England is not a word, *quaere* whether these decisions apply to names of letters in the Greek alphabet.

Appeal dismissed.

G. *Cacoyannis* for the appellant.

M. S. *Agrotis* for the respondent.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLIMAN, C.J.: The appellants, the Cyprus Wine and Spirits Company Ltd., applied to the Registrar of Trade Marks for the registration in part “A” of the Register of the word “Alpha” in respect of a brandy of their manufacture. The Registrar refused to accept the application and from his refusal the company have appealed.

The appellants rely chiefly on the provisions of section 11 (1) (d) of the Trade Marks Law, 1951, (No. 2 of 1951) which is as follows:

(d) A word or words having no direct reference to the character or quality of goods and not being according to its ordinary signification a geographical name or surname.”

Section 11 (1) of our Law reproduces the provisions of the Trade Marks Law in England since the English Act of 1905. Under both our Law and English Law the word “mark” includes a “device, brand, heading, label, ticket, name, signature, word, letter, numeral, or any combination thereof”. The general intention in section 11 is that if the trade mark contains one of the essential particulars set

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out in paragraphs (a) (b) (c) or (d) it is *prima facie* evidence of that particular being sufficiently distinctive to be registered as a trade mark. All other marks before they can be registered must be shown to be distinctive. Words, however, in order to be *prima facie* distinctive must have no direct reference to the character or quality of the goods.

The principal ground on which the Registrar relied in disallowing the application is that the word "alpha" has in Cyprus a direct reference to the character or quality of goods. He relies both on the definition of this word in Webster's International Dictionary of the English Language, 2nd Edition, and on the general understanding of ordinary people in Cyprus, including the appellants themselves. The definition of "alpha" in the dictionary here cited is as follows: "The first letter (large "A" small "a"), of the Greek alphabet, hence the first or beginning... as a numeral, one, used variously, often in the form of "a" or "A", for classifying." The Registrar produced in Court two bottles of the appellants' products, one of which had on a small label above the principal label, the letter "A", and the other had on the label the word "Extra". It was admitted by the appellants that the letter "A" was used to indicate quality. Bottles from other firms in Cyprus bearing the letter "A" or "AA" were also admitted, showing that this letter was in common use on labels, although nothing was admitted as to whether the letters on these bottles were marks of quality.

In his grounds of appeal the appellant has made the following submission: "In fact the word "Alpha" is only a phonetical representation of the Greek letter "A" and has, in the general understanding of ordinary people, no direct reference to the character or quality of the goods in question". Since "alpha" is only a phonetical representation of the Greek letter "A", in our view, in the ordinary understanding of ordinary people, including the appellants, the word "alpha" will be understood as having the same meaning as the letter "A" which they put on their bottles; in other words it will be understood as having reference to the character or quality of the goods.

We consider, therefore, both because of the dictionary meaning of the word "alpha" which has also this meaning among ordinary people, and because of the actual use of the letter "A" in Cyprus, that the word "alpha" has a direct reference to the character or quality of the goods in respect of which it is sought to be registered as a trade mark.

It is not very clear from the statement of the grounds for his decision that the Registrar also relied on his opinion that a word which stands for a letter is not a word within the meaning of section 11 (1) (d). However, he has argued this point at some length here on this appeal. He has

relied on such cases as *Hoemuller's Trade Mark (1911) 28 R.P.C. 249*; *The Registrar of Trade Marks v. W. & H. Du Cros Co. Ltd. (1913) A.C. 5624*; *Garrett's application to register a trade mark, (1916) 1 Ch. D. 436*; and *Eisman Co. Ltd. application (1920), 37 R.C.P. 134*. The English cases cited by the Registrar turn largely on the fact that there are no dictionary words for English letters of the alphabet. English Courts have held that a phonetical representation of one or more of these letters in not an invented word under section 9 (1) (c) of the Act of 1938 (s. 11 (1) (c) of our Law), is not a dictionary word, and must be treated as one or more letters. Since 1905 a letter or letters can be registered as a trade mark, but only if such are shown to be distinctive under section 9 (1) (e) of the Act of 1938. In practice the decisions of the English Courts incline to the view that either such letters are not distinctive or are likely to deceive or cause confusion or otherwise, and therefore under the English provision which corresponds to our section 13 they must be excluded. But many of the letters of the Greek alphabet are referred to by dictionary words and we are not prepared to say that these do not fall to be considered under section 11 (1) (d). However, they can only be registrable if they have no direct reference to the character or quality of the goods and that they are not likely to deceive or cause confusion or otherwise under section 13.

The appellants, therefore, must fail in their application to have the word "alpha" registered under paragraph (d). As stated by the Registrar in his grounds for his decision, the appellants have not seriously argued that the word "alpha" is registrable under paragraph (e) because they would have to show that this word is a distinctive mark. A word which is in current use by the trading community in describing their goods could not possibly be considered as distinctive.

For these reasons this appeal must be dismissed with costs.

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