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v.

REPUBLIC  
AND ANOTHER

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

E. MERCK,

*Applicant,*

*and*

1. THE REPUBLIC OF CYPRUS,
2. THE OFFICIAL RECEIVER AND REGISTRAR,

*Respondents.*

(Case No. 37/72).

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*Trade Marks—Trade Marks Law, Cap. 268—Provisions of sections 11 and 13 thereof not in conflict with Article 6 quinquies paragraph B of the Convention for the Protection of Industrial Property (ratified by the Convention for the Protection of Industrial Property (Ratification) Law, 1965 (Law No. 63 of 1965).*

*Convention for the Protection of Industrial Property—See supra.*

*Trade Marks Rules 1951, rule 32—Not contrary to Article 30.1 of the Constitution or to the rules of natural justice.*

*Constitutional law—Article 30.1 of the Constitution safeguarding the right of access to the Court and prohibiting the establishment of judicial committees and exceptional Courts—Rule 32 of the Trade Marks Rules, 1951 not repugnant to the said Article.*

*Trade Mark—Registration—Necessary prerequisites—Trade mark in question properly found by the Registrar of Trade Marks not to be an invented word—But a combination of two ordinary dictionary words whose meaning clearly indicated that they have direct reference to the character and quality of the goods comprised in the said trade mark—Moreover, said goods found not to contain the ingredients indicated by the dictionary meaning of such trade mark—Which trade mark is, thus, confusing and deceptive—Therefore registration*

rightly refused as being contrary to sections 11 and 13 of the Trade Marks Law, Cap. 268.

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*Registration of Trade Mark—"Invented word"—Only an "invented word" can be registered—"Foreign word"—The mere fact that the word exists in a foreign language, whether modern or classical, is not sufficient to exclude it if it really is invented—Yet, the fact that the word is a foreign word, does not in itself make it an invented word—It should be taken within the meaning that it reasonably conveys—Word "Gastrinol" in the instant case held to be not an invented word.*

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*Trade Mark—Word mark—"Distinctive Character". in Article 6 quinquies B of the Convention for the Protection of Industrial Property (supra)—It can refer to words.*

*Trade Mark—Registered in the country of origin—Registration in Cyprus—"Gastrinol"—See supra.*

*Discretionary powers vested in the Administration—Principles upon which the Administrative Court may interfere—The Court will not interfere with such discretion if due weight has been given to all material facts; if it has not been based on a misconception of law or fact; and it was not exercised in excess or abuse of powers—The Court will never substitute its own discretion for that of the administration—In the instant case, the Registrar acted properly and it was reasonably open to him to arrive at the conclusion that he did on the material before him—And to refuse the application for the registration of the trade mark "Gastrinol" in Part A of the relevant Register.*

The subject matter of this recourse is the refusal of the Registrar of Trade Marks of the application of the present applicant for the registration of the Trade Mark "Gastrinol" in Part A of the Register Class 5.

This recourse under Article 146 of the Constitution is based on four main grounds of law, as follows:

*First ground:* Rule 32 of the Trade Marks Rules 1951 is unconstitutional, as being contrary to Article 30.1 of the Constitution and contrary to the rules of natural justice, because the Registrar of Trade Marks becomes thereunder a litigant and a judge in his own cause and because he con-

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stitutes in a way a judicial committee or exceptional Court. Rule 32 reads as follows :

“If the Registrar objects to the application (for registration) he shall inform the applicant of the objections in writing and unless within two months the applicant applies for a hearing or makes a considered reply in writing to those objections he shall be deemed to have withdrawn his application.”

Article 30.1 of the Constitution provides :

“No person shall be denied access to the Court assigned to him by or under this Constitution. The establishment of judicial committees or exceptional Courts under any name whatsoever is prohibited.”

*Second ground* : The Trade Marks Law, Cap. 268 sections 11 and 13 to the extent that they have been invoked by the Registrar in arriving at the *sub judice* decision are in conflict with Article 6 quinquies paragraph B of the Convention for the Protection of Industrial Property, ratified by the Convention for the Protection of Industrial Property (Ratification) Law, 1965 (Law No. 63 of 1965), which Article 6 thus prevails in view of Article 169.3 of our Constitution.

*Third ground* : The Registrar wrongly exercised his discretion in rejecting the registration of the Trade Mark in question and its inclusion in Part A of the Register.

*Fourth ground* : The word being foreign, it should not have been examined in relation to its foreign meaning, but only whether in Greek it is an invented word or not.

*Note* : It is common ground that the trade mark in question was duly registered in the country of origin *viz.* Federal Republic of Germany.

Held, I. *As to the first ground relied upon by the applicant (supra)* :

- (1) Registration of trade marks is a matter falling within the domain of public law. So the functions of the Registrar of Trade Marks under Rule 32 (*supra*) are administrative and not judicial ones and the exercise of the powers and duties of the Registrar under section 19 of the Trade Marks Law, Cap. 268 amounts to an act or decision falling within the ambit of Article 146 of the

Constitution giving this Court competence to deal with it in its administrative jurisdiction (*I.W.S. Nominee Co. Ltd. v. The Republic* (1967) 3 C.L.R. 582, *followed*).

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- (2) The adjudication, therefore, on any matter under section 19 of the Law, does not amount to an exercise of judicial authority, nor can it be said that the Registrar of Trade Marks, acting in that capacity, is a "judicial committee or exceptional Court" in the sense of Article 30.1 of the Constitution (*supra*).
- (3) In the circumstances, therefore, I find that there is nothing unconstitutional in Regulation 32 (*supra*) which provides only procedural fairness in the exercise of an administrative function, nor can it be said that the rule of natural justice that no one shall be a judge in his own cause is in any way violated. The Registrar is not performing judicial but administrative functions and when in the exercise of his administrative discretion such a person, or organ or authority, forms a *prima facie* opinion and invites the interested parties to be heard, it cannot be said to be acting as a judge in his own cause.
- (4)(a) On the other hand, it cannot be said that by the existence of this elaborate provision in Rule 32, *supra*, for the re-examination of the case and affording an applicant the opportunity to supplement his original application with further affidavits and facts for the sake of the Registrar reconsidering the case, before he finally decides upon the matter, amounts to depriving the applicant of his right of access to the Court.
- (b) In my judgment this is not so; the applicant is in no way deprived of access to the Court. Originally section 19 of the statute had provision for an appeal to the Court by anyone dissatisfied from the decision of the Registrar. But since the *Nominee* case (*supra*) those provisions are deemed to be no longer in force to the extent to which they are inconsistent with a

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recourse under Article 146 of the Constitution. And now such person is at liberty to make a recourse to this Court—as the applicant did in this case—under Article 146 of the Constitution.

Held, II: *As to the second ground of law, relied upon by the applicant (supra):*

*After quoting sections 11 and 13 of our Trade Marks Law, Cap. 268 and Article 6 quinquies of the aforesaid Convention for the Protection of Industrial Property (see post in the judgment) and after referring to Article 10 bis of the said Convention, the learned Judge went on:*

- (1) In the present case, the grounds upon which the Registrar refused registration of the trade mark in question coincide with the provisions of Article 6 quinquies of the Convention and the reservations laid down in paragraph B thereof.
- (2) There being no conflict between the Law (Cap. 268) and the Convention in this respect, there was no contravention of Article 169.1 of the Constitution (giving to treaties, conventions duly ratified superior force to any Municipal Law) and this second ground of law must also fail.

Held, III: *As to the third ground of law relied upon by the applicant (supra):*

- (1) In order that a trade mark be registered, it is not enough that it has been registered in the country of origin, it must not come within the exemptions of Article 6 quinquies B of the Convention (*supra*), which as I have already stated, coincide with the reservations appearing in sections 11 and 13 of our Law (Cap. 268, *supra*).
- (2) In the present case, the Registrar has found that the trade mark in question does not contain or consist of at least one of the essential particulars required by section 11 of the Law. He found, after proper inquiry, that the aforesaid trade mark was not an invented word, but it was a combination of two ordinary dictionary words and their

meaning clearly indicated that they have direct reference to the character and quality of the goods which is contrary to section 11(1)(d) of the aforesaid Law, Cap. 268. The Registrar further found that in so far as the goods comprised within the trade mark do not contain—and in fact they do not contain—the ingredients “Gastrin” and “ol”, the trade mark is confusing and deceptive as giving an indication that they contain those ingredients whereas in fact they do not. This is contrary to section 13 of the Law, a section relied upon by the Registrar, who was right in looking at foreign dictionaries in accordance with an accepted practice (See Ovulen T.M. (1965) R.P.C. 89).

Held, IV: *As to the fourth ground of law relied upon by the applicant (supra):*

- (1) Whether or not a word is an invented word, is of special importance, as only an invented word can be registered.
- (2) It is clear from the “Solio” and “Diabolo” cases (*infra*) that the mere fact that the word exists in a foreign language, whether modern or classical, is not sufficient to exclude it if it really is invented. Yet, the fact that the word is foreign word, does not make it an invented word. It should be taken with the meaning that it reasonably conveys, and in the present case, it cannot be considered as an invented word.
- (3) In exercising his discretion the Registrar is not limited to any particular type of consideration. He must exercise it judicially on reasonable grounds which are capable of being clearly stated. He has to examine the possible confusions or difficulties which might arise in consequence of the registration of the trade mark or the possible impairment of the rights of other traders to do that which, apart from the registration, might be their ordinary mode of carrying on their business.
- (4) And this Court, in accordance with well settled

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principles, will not interfere with such discretion if due weight has been given to all material facts, it has not been based on a misconception of law or fact and it was not exercised in abuse or excess of powers. In the present case I hold that it was reasonably open to the Registrar to arrive at the conclusion that he did on the material before him. This Court will not substitute its discretion for that of the Registrar, since he exercised same judicially and neither in abuse or excess of power, nor contrary to law. This ground also fails.

*Recourse dismissed.*  
*No order as to costs.*

Cases referred to :

*I.W.S. Nominee Co. Ltd. v. The Republic* (1967) 3 C.L.R. 582;

*Ovulen T.M.* [1965] R.P.C. 89;

*Eastman Photographic Materials Co. Ltd. v. The Comptroller-General of Patents, known as the "Solio" case*, [1898] A.C. 571, at p. 583;

"*Diabolo*" case 42 *Philippart v. Whiteley Ltd.* [1908] 25 R.P.C. 565;

*Jacovides v. The Republic* (1966) 3 C.L.R. 212;

*Impalex Agencies Ltd. v. The Republic* (1970) 3 C.L.R. 361;

*Psaras v. The Ministry of Commerce and Industry* (1971) 3 C.L.R. 151.

**Recourse.**

Recourse against the refusal of respondent 2 to register the Trade Mark "GASTRINOL" in Part A of the Register, Class 5.

A. *Emilianides*, for the applicant.

A. *Evangelou*, for the respondents.

*Cur. adv. vult.*

The following judgment was delivered by:-

A. LOIZOU, J.: The subject matter of this recourse is

the refusal of the Registrar of Trade Marks—Respondent 2—of the application of the applicant for the registration of the Trade Mark “GASTRINOL” in Part A of the Register, Class 5.

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The Registrar objected to the application and in compliance with Rule 32 of the Trade Marks Rules, 1951, informed on the 30th November, 1971, the applicant of his objections in writing (*Exhibit “B”*), and by paragraph 4 thereof the attention of the applicant was drawn to the provisions of the said Rule whereby, unless within two months thereafter the applicant applied for a hearing or made a considered reply in writing to those objections, he would be deemed to have withdrawn his application. The grounds upon which the refusal was based were —

- (a) that it had direct reference to the character or quality of the goods,
- (b) that it was devoid of any distinctive mark, and
- (c) that it would be contrary to section 13 of the Law, by reason of its being likely to deceive or cause confusion, as giving an indication that it contains ingredients, whereas in fact, it does not.

The relevant provisions of the Law relied upon by respondent 2 for this decision, were sections 11(1)(d) & (e) as well as section 13 of the Trade Marks Law, Cap. 268. The applicant was further informed by paragraph 2 thereof, that the said trade mark could not be registered, unless he was in a position to file evidence (in the form of affidavit or affidavits) that the use of this trade mark or other circumstances, would give to it distinctiveness by virtue of which it could be brought under the provisions of section 11(1)(e) of the Law in relation to the goods referred to in the application. By paragraph 3 of the said letter the attention of the applicant was also drawn to the provisions of sections 12 and 19(3) of the Law, by virtue of which the said trade mark could be registered in Part B of the Register.

The applicant’s counsel requested clarification of the objections contained in *exhibit “B”* by his letter dated 12.12.1971 (*exhibit “C”*) and the Registrar replied by his letter dated 21.12.1971 (*exhibit “D”*) as follows :-



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“...the objection to the registration of the above trade mark is based on the meaning of the word ‘Gastrin’ and the suffix ‘ol’, as follows :

*Gastrin* = a hormone that is produced chiefly in the antrum of the stomach, induces secretion of gastric juice and may be identified with histamine. (Webster’s New International Dictionary).

*Gastrin* = a hormone obtained from the pyloric mucosa which on injection increase the flow of gastric juice. (Dorland’s Medical Dictionary).

The suffix ‘ol’ indicates the presence of phenol in the chemical product.”

Pursuant to Rule 32, a hearing was held on the 24th January, 1972, at which the applicant’s counsel was heard. After the hearing, the Registrar informed applicant’s counsel by his letter of the 8th February, 1972 that their application could not be accepted (*exhibit “E”*) that the objections were still existing and that if they wished, they could appeal to the appropriate Court from that decision.

The applicant bases his present recourse on four grounds of law.

The first one is that Rule 32 of the Trade Marks Rules of 1951 is unconstitutional, as being contrary to Article 30 of the Constitution and contrary to the Rules of natural justice, because the Registrar of Trade Marks becomes thereunder a litigant and a judge in his own cause and because he constitutes in a way a judicial committee or exceptional Court. Rule 32 reads as follows :-

“If the Registrar objects to the application, he shall inform the applicant of the objections in writing, and unless within two months the applicant applies for a hearing or makes a considered reply in writing to those objections he shall be deemed to have withdrawn his application.”

Article 30.1 of the Constitution, reads as follows :-

“No person shall be denied access to the Court

assigned to him by or under this Constitution. The establishment of judicial committees or exceptional courts under any name whatsoever, is prohibited.”

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The argument of learned counsel for the applicant is that the Registrar in the exercise of his powers under Rule 32 is adjudicating upon the rights of the parties. This, he urged, is apparent from the provision of the other Rules that appear in the same part. It should be noted, that this part is under the heading “Procedure on Receipt of Application for Registration of a Trade Mark” and the marginal notes to these Rules indicative of their contents, are—Search, Acceptance, absolute or conditional; objection, Registrar’s objections: Hearing, (which in fact is the marginal note to Rule 32), Registrar’s conditions, etc. Hearing, Decision of Registrar, Disclaimer, in all, six Rules which set out the procedure for the presentation of a case and the hearing of it by the Registrar.

The examination of this issue, renders inevitable the determination of whether the registration of a trade mark falls within the domain of public or private law. This matter has been dealt by Triantafyllides, J. in the case of *I.W.S. Nominee Co. Ltd. v. The Republic* (1967) 3 C.L.R. 582. It was held that “the primary and predominant purpose of the registration of a trade mark is its public one and that a decision as the *sub judice* one is, therefore, one in the domain of public law and not of private law”. Support for that proposition was also drawn, *inter alia*, from the decisions of the Greek Council of State and the approach of the matter under Greek Jurisprudence.

In the light of this decision the registration of trade marks is a matter falling within the domain of public law—and I respectfully agree with this view. So the functions of the Registrar of Trade Marks under Rule 32 are administrative and not judicial ones and the exercise of the powers and duties of the Registrar under section 19 of the Trade Marks Law, Cap. 268 amounts to an act or a decision falling within the ambit of Article 146 of the Constitution giving to this Court competence to deal with it in its administrative jurisdiction.

The adjudication, therefore, on any matter under section 19 of the law, does not amount to an exercise

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of judicial authority, nor can it be said that the Registrar of Trade Marks acting in that capacity is "a judicial committee or exceptional Court".

The procedure envisaged by Rule 32, as well as by subsequent Rules, are as such a factor safeguarding the exercise of a fundamental principle of administrative law, namely, the rule of *audi alteram partem*, that is to say, of affording a person whose rights may be affected adversely by the decision of an administrative organ, to be heard before a decision is reached.

On the other hand, it cannot be said that by the existence of this elaborate provision for the re-examination of the case and affording an applicant the opportunity to supplement his original application with further affidavits and facts for the sake of the registrar reconsidering the case, before he finally decides upon the matter, amounts to depriving the applicant of his right of access to the Court.

In my judgment, this is not so, the applicant is in no way deprived of access to the Court. Originally section 19 had provision for an appeal to the Court by anyone dissatisfied from the decision of the Registrar. Since the *Nominee* case (*supra*) those provisions are deemed to be no longer in force to the extent to which they are inconsistent with a recourse under Article 146 of the Constitution.

As a matter of fact the applicant has filed the present recourse in lieu of proceedings under section 19(5) to the Court.

In the circumstances, therefore, I find that there is nothing unconstitutional in Regulation 32 which provides only procedural fairness in the exercise of an administrative function, nor can it be said that the Rule of natural justice that no one shall be a judge in his own cause is in any way violated. The Registrar is not performing judicial but administrative functions and when in the exercise of his administrative discretion such a person, organ or authority forms a *prima facie* opinion and invites the interested parties to be heard before he finally exercises his discretion, it cannot be said to be acting as a judge in his own cause.

The second ground of law is whether the Trade Marks Law, Cap. 268, has been replaced by the Convention for the Protection of Industrial Property, ratified by the Convention for the Protection of Industrial Property (Ratification) Law of 1965, No. 63/65.

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It is clearly provided by our Constitution, Article 169.3 that Treaties, Conventions and Agreements concluded in accordance with the provisions of paragraphs 1 and 2 of the said Article, have, as from their publication in the official Gazette of the Republic, superior force to any Municipal Law, on condition that such Treaties, Conventions and Agreements are applied by the other party thereto.

The question of reciprocity in this case is not in issue. One has to proceed on the assumption that the Federal Republic of Germany is a party to and applies the Convention. A comparison, therefore, of section 11 and Article 6 quinquies of the Convention, has to be made. Relevant to this issue, is, of course, the fact that the trade mark sought to be registered in Cyprus is one that has already been registered with the appropriate German Patent Office. Photo-copy of the certificate of Registration has been produced (*exhibit 1*).

Article 6 quinquies, reads as follows :-

“A. — (1) Every trade mark duly registered in the country of origin shall be accepted for filing and protected in its original form in the other countries of the Union, subject to the reservation indicated below in the present Article. These countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin, issued by the competent authority. No authentication shall be required for this certificate.

(2) The country of the Union where the applicant has a real and effective industrial or commercial establishment, or, if he has not such an establishment within the Union, the Union country where he has his domicile or, if he has no domicile in the Union, the country of his nationality if he is a

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national of a Union country, shall be considered his country of origin.

B. Trade marks under the present Article may not be denied registration or cancelled except in the following cases :

1. When they are of such a nature as to infringe rights acquired by third parties in the country where protection is claimed.

2. When they have no distinctive character, or consist exclusively of signs or indications which may serve in trade to designate the kind, quality, quantity, intended purpose, value, place of origin of the goods or time of production, or which have become customary in the current language or in the bona fide and established practices of the trade in the country where a protection is sought.

3. When they are contrary to morality or public order and, in particular, of such a nature as to deceive the public. It is understood that a mark may not be considered contrary to public order for the sole reason that it does not conform to a provision of the law relating to trade marks, except where such provision itself relates to public order."

The aforesaid, is, however, subject to Article 10 bis of the Convention which stipulates that the Convention countries are bound to assure the persons entitled to the benefits of the Convention an effective protection against unfair competition.

Section 11 of the Trade Marks Law, Cap. 268, reads —

"11.(1) In order for a trade mark to be registrable in Part A of the register, it must contain or consist of at least one of the following essential particulars :-

- (a) The name of a company, individual, or firm, represented in a special or particular manner;
- (b) the signature of the applicant for registration or some predecessor in his business;
- (c) an invented word or invented words;
- (d) a word or words having no direct reference

to the character or quality of the goods, and not being according to its ordinary signification a geographical name or a surname;

- (e) any other distinctive mark, but a name, signature, or word or words, other than such as fall within the descriptions in the foregoing paragraphs (a), (b), (c) and (d), shall not be registrable under the provisions of this paragraph except upon evidence of its distinctiveness."

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Section 13 of the Law reads :-

"It shall not be lawful to register as a trade mark any matter the use of which would, by reason of its being likely to deceive or cause confusion or otherwise, be disentitled to protection in a court of justice, or would be contrary to law or morality, or any scandalous design".

It appears from a comparison of the aforesaid texts that the requirements under sections 11 and 13 of the Trade Marks Law to the extent that they have been invoked by the Registrar in arriving at the *sub judice* decision and which are similar to the corresponding provisions of the Trade Marks Law obtaining in England, are not in conflict with the reservations in Article 6 quinquies paragraph B. of the Convention.

As pointed out in Kerly's Law of Trade Marks and Trade Names, 9th Edition, paragraph 964, p. 510 —

"Article 6 quinquies states that every trade mark duly registered in its country of origin shall be admitted for deposit and protected in its original form in the other countries of the Union, subject to certain reservations. These reservations refer to marks which infringe the rights of third parties, marks which have no distinctive character and marks which are contrary to morality or public order".

And then it says :-

"... the requisites for registration provided under sections 9, 10, 11 and 12 of the Trade Marks Act, 1938, will in nearly all cases coincide with the provisions of article 6 of the Convention".

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The conditions for filing a registration of trade marks are left to the domestic law by Article 6.1 of the Convention, and such a law is valid to the extent that it does not offend the provisions of the Convention.

In the present case, the grounds upon which the Registrar of Trade Marks refused registration of the trade mark in question, coincide with the provisions of Article 6 quinquies of the Convention and the reservations laid down in paragraph B. thereof. There being no conflict between the law and the Convention in this respect, this ground of law must fail.

The third ground of law was whether the Registrar rightly rejected the registration of this trade mark and its inclusion in Part A of the Register.

In order that a trade mark may be registered, it is not enough that it has been registered in the country of origin, it must not come within the exemptions of Article 6 quinquies B of the Convention, which, as I have already indicated, coincide with the reservations appearing in sections 11 and 13 of the Law.

The Registrar of Trade Marks in the present case has found that the trade mark in question does not contain or consist of at least one of the essential particulars required by section 11 of the Law. He found, after proper inquiry, that the trade mark was not an invented word, but it was a combination of two ordinary dictionary words and their meaning clearly indicated that they have direct reference to the character and quality of the goods which is contrary to section 11(1)(d) of the aforesaid Law. They are ordinary dictionary words and for that reason the Registrar of Trade Marks further found that in so far as the goods comprised within the trade mark, do not contain the ingredients mentioned in *exhibit "D"*, that is to say, "Gastrin" and "ol", the trade mark is confusing and deceptive as giving an indication that it contains those ingredients whereas in fact it does not. This is contrary to section 13 of the Law, a section relied upon by the Registrar in his reasoned decision.

The applicant complained that the Registrar should not have looked to a foreign dictionary. Looking, how-

ever, at dictionaries is an accepted practice in this field of the law. (See case of *Ovulen T.M.* [1965] R.P.C. 89 referred to in Kerly's *supra*, paragraph 250).

This brings me to the fourth ground relied upon by the applicant to the effect that the word is foreign, that it should not be examined in relation to its foreign meaning, but only whether in Greek it is an invented word or not.

Whether or not a word is an invented word, is of special importance, as only an invented word can be registered.

A leading case on the subject, is *The Eastman Photographic Materials Co. Ltd. v. The Comptroller-General of Patents, etc.*, better known as the "Solio" case, [1898] A.C. 571. I would like to refer to the passage from the speech of Lord Macnaghten, at page 583 —

"If it is an invented word—if it is 'new and freshly coined' (to adapt an old and familiar quotation)—it seems that it is no objection that it may be traced to a foreign source, or that it may contain a covert and skilful allusion to the character or quality of the goods. I do not think that it is necessary that it should be wholly meaningless".

And Lord Herschell at page 581 said :-

"Again, I do not think that a foreign word is an invented word simply because it has not been current in our language. At the same time, I am not prepared to go so far as to say that a combination of words from foreign languages so little known in this country that it would suggest no meaning except to a few scholars might not be regarded as an invented word".

In the "*Diabolo*" case 42 *Philippart v. Whiteley Ltd.* [1908] 25 R.P.C. 565, Parker, J. stated that—"before a word qualified as an invented word, it must not only be newly coined in the sense of not already being current in the English language, but it must be such as not to convey any obvious meaning to the ordinary Englishman".

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It is clear from the "*Solio*" and "*Diabolo*" cases that the mere fact that the word exists in a foreign language, whether modern or classical, is not sufficient to exclude it if it really is invented. Yet, the fact that the word is a foreign word, does not make it an invented word. It should be taken with the meaning that it reasonably conveys, and in the present case, it cannot be considered as an invented word.

To my mind, the Registrar in exercising his discretion, is not limited to any particular type of consideration. He must exercise it judicially on reasonable grounds which are capable of being clearly stated. He has to examine the possible confusions or difficulties which might arise in consequence of the registration of the trade mark or the possible impairment of the rights of other traders to do that which, apart from the registration, might be their ordinary mode of carrying on their business.

The point, therefore, that arises for consideration, is the extent to which this Court will interfere with the exercise of administrative discretion. This matter has been the subject of judicial pronouncement in a number of cases (See, *inter alia*, *Jacovos Jacovides v. The Republic* (1966) 3 C.L.R. page 212, *Impalex Agencies Ltd. v. The Republic* (1970) 3 C.L.R. 361, and *Pсарas v. The Ministry of Commerce and Industry* (1971) 3 C.L.R. 151). This Court will not interfere with such a discretion if due weight has been given to all material facts, it has not been based on a misconception of law or fact and it was not exercised in excess or abuse of power. In the present case I have come to the conclusion that it was reasonably open to the Registrar to arrive at the conclusion that he did on the material before him. This Court will not substitute its discretion for that of the Registrar, the appropriate authority under the Law in this case, since he exercised same judicially and neither in abuse or excess of power, nor contrary to law. This ground, therefore, fails.

Mr. Emilianides finally argued that what is stated in Article 6 B. regarding the trade marks having no "distinctive character" must come from signs or other indications and not from names or from words. The

answer to this, can be found in Kerly's (*supra*) page 103, where it is stated :-

“Words are highly valued as trade marks since when well chosen have combined necessary quality of distinctiveness with convenience for being remembered and referred to which is only equalled by such simple devices as from their resemblance to common objects or to familiar geometrical figures at once suggest appropriate names... Word marks were common enough before the Registration Acts”.

So, words have always been used as trade marks and the argument that distinctive character required by Article 6 B. must not refer to words, cannot be upheld.

In the circumstances of this case, I see no reason to interfere with the exercise of the Registrar's discretion.

For all the aforesaid reasons, I have reached the conclusion that the present recourse should be and is hereby dismissed with no order as to costs.

*Application dismissed.  
No order as to costs.*

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REPUBLIC  
AND ANOTHER