

1986 May 17

[TRIANTAFYLIDIS P]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION
BEIERSDORF A G ,

Applicants,

v

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

Respondent

(Case No 361/84)

Reasoning of an administrative act — Must be clear and adequate to enable Court to exercise control over the act — Lack of reasoning is a ground of annulment — Arguments of counsel cannot supplement the reasoning

The Registrar of Trade Marks objected to the registration of applicants' trade mark «LABELLO» in respect of lip care products on the ground, *inter alia*, that it had direct reference to the character or quality of the goods. This finding was based on the meaning of the words «La» and «Bello» in Italian

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The applicants replied that the word is derived from the Latin words «Labial» and «Bellus» and that it is an invented word

There followed a hearing before the Registrar, who, however, insisted on his aforesaid view. Hence this recourse

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Held, annulling the sub judice decision (1) The Court could not trace the exact reasons for the Registrar's refusal and for his rejection of applicants' arguments before him

(2) The reasoning of an administrative act must be clear and adequate in order to enable the Court to exercise judicial control over it. Lack of due reasoning is a ground of annulment. Arguments of counsel cannot supplement the reasoning

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*Sub judice decision annulled
No order as to costs*

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Cases referred to

Themistocleous v The Republic (1985) 3 C L R 1070,

Michael v The Republic (1984) 3 C L R 1364,

Kosmas v. The Electricity Authority of Cyprus (1984) 3 C.L.R. 117;

Foumia Ltd. v. The Republic (1983) 3 C.L.R. 262.

Recourse.

5 Recourse against the refusal of the respondent to register applicants' trade mark «LABELLO» in class 3 of Part A of the Register of Trade Marks.

A. Dikigoropoulos, for the applicants.

St. Ioannidou (Mrs), for the respondents.

Cur. adv. vult.

10 TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicants challenge the refusal of the respondent Registrar of Trade Marks (hereinafter to be referred to as «the Registrar») to register their trade mark «LABELLO». Such refusal was communicated to them on the 7th May 1984.

15 The applicants are a limited liability company incorporated in the Federal Republic of Germany and they are the registered owners of the trade mark in question in respect of lip care products in West Germany and other countries; and on the 12th November 20 1982 they applied for the registration in Cyprus of their said trade mark, in class 3 Part A of the Register, in respect of lip care products.

The Registrar objected on the 1st December 1982, to the registration of the trade mark on the ground that it had direct reference to the character or quality of the goods and that it was 25 not distinctive, as required by virtue of section 11(1) of the Trade Marks Law, Cap. 268; and he objected, also, under section 14(1) of Cap. 268, because it was considered to be similar to the trade mark «DEOBELLE» which was already registered.

30 The finding of the respondent that the proposed trade mark had direct reference to the character or quality of the goods was, as there appears from his letter of the 1st December 1982, based on the meaning of the words «La» and «Bello» in Italian.

35 The applicants in a letter dated the 17th January 1984 stated that the word «LABELLO» is derived from the Latin words «LABIAL» meaning «belonging to the lips» and «Bellus» signifying «good» and they contended that «LABELLO» is an invented word.

Then there took place a hearing before the Registrar on the 9th April 1984 at which there were put forward several arguments in support of the registration of the trade mark of the applicants; in particular reference was made to the origin of the word «LABELLO», its registration as a trade mark in other countries and its dissimilarity to the trade mark «DEOBELLE».

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The decision of the Registrar appears in the form of a «note» inscribed on the minutes of the hearing of the 9th April 1984 and it is merely to the effect that the objection of the 1st December 1982 under section 11(1) could not be waived, but that the objection under section 14(1) was waived.

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This decision was communicated to counsel for the applicants on the 7th May 1984 and as a result the present recourse was filed.

Neither from the text of the aforementioned «note» which is inscribed on the minutes of the 9th April 1984, nor from the contents of any other document before me, was I able to trace the exact reasons for which the Registrar has reached his sub judice decision and, in doing so, rejected the submissions put forward by counsel for the applicants during the hearing before him on the 9th April 1984.

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It is well settled that the reasoning of an administrative decision must be clear and adequate in order to enable an administrative Court to exercise judicial control over it (see, inter alia, *Themistocleous v. The Republic*, (1985) 3 C.L.R. 1070, 1081, and *Michael v. The Republic*, (1984) 3 C.L.R. 1364, 1376); and, also, that the lack of due reasoning is in itself a sufficient ground for the annulment of an administrative decision (see, in this respect, *Kosmas v. The Electricity Authority of Cyprus*, (1984) 3 C.L.R. 117, 121, and *Fournia Ltd. v. The Republic*, (1983) 3 C.L.R. 262, 275, 276).

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In the present case the complete absence of any reasoning for the sub judice decision prevents this Court from exercising judicial control over it with a view to ascertaining whether or not such decision was reasonably open, in the circumstances of this case, to the Registrar, and, consequently, the sub judice decision has to be annulled for lack of due reasoning.

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Before concluding I should observe that the arguments which were put forward by counsel for the respondent Registrar in addressing the Court cannot, of course, be treated as providing or

supplementing the reasoning for the Registrar's decision and as curing the defect of lack of due reasoning for which such decision was annulled

In the result the present recourse succeeds and the sub judge
5 decision is annulled; but I shall make no order as to the costs of this case

*Sub judge decision annulled
No order as to costs*