

1987 February 20

(TRIANTAFYLIDES P SAVVIDES LORIS STYLIANIDES
KOYRRIS JJ)

WHITE HORSE DISTILLERS LIMITED,

Appellants (Interested Party)

v

EL GRECO DISTILLERS LTD ,

Respondents (Applicants),

v

1 THE MINISTRY OF COMMERCE AND INDUSTRY,
2 THE REGISTRAR OF TRADE MARKS

Respondents

*(Revisional Jurisdiction
Appeal No 505)*

Trade Marks — Registration of — Judicial control — Principles applicable

5 The Assistant Registrar of Trade Marks found that the words EL CABALLITO were Spanish words meaning horse or hobbyhorse whereas the registered trade mark of the appellants consisted of the words «White Horse» or of a pictorial presentation of a white horse or of both of them together

10 In the light of such finding the Assistant Registrar turned down the applicants' application for the registration of the words EL CABALLITO in respect of wines spirits and liqueurs that is goods of the same kind as appellants' goods, on the following grounds, namely that the applicants failed to discharge the burden of establishing the non-likelihood of confusion and deception among a substantial number of persons (section 14(1) of the Trade Marks Law, Cap 268) and that it had not been shown that the proposed trade mark would not offend against section 13 of the same law

15 The validity of the said decision was challenged by the applicants by a recourse to this Court As a result a Judge of this Court annulled the said decision Hence the present appeal by the interested parties in the recourse, i e the owners of the trade mark «White Horse»

White Horse v. El Greco (1987)

Held, *allowing the appeal* (1) This Court, as an administrative Court, does not interfere with an administrative decision regarding the registrability of a trade mark, if such decision was reasonably open to the Registrar of Trade Marks and does not substitute its own evaluation to that of the Registrar

(2) In this case the decision of the Registrar, acting through the Assistant Registrar, was reasonably open to him and it was not necessary for him to embark on any further inquiry as to other meanings of EL CABALLITO or to give any other reasons in support of his decision **5**

*Appeal allowed No order
as to costs* **10**

Cases referred to

Merck v The Republic (1972) 3 C L R 548,

Seven-up Company v The Republic (1973) 3 C L R 612

Curzon Tobacco Co Ltd v The Republic (1975) 3 C L R 363 and on appeal (1979) 3 C L R 151, **15**

Beecham Group Ltd v The Republic (1982) 3 C L R 622

P M and G Stavrnides Clothing Industnes Ltd v The Republic (1983) 3 C L R 98,

Effems A G v The Republic (1985) 3 C L R 793,

Pepsi Co Inc v The Republic (1985) 3 C L R 1092, **20**

Fisons Ltd v The Registrar of Trade Marks (1985) 3 C L R 2318,

Roc International v The Republic (1984) 3 C L R 219,

Beiersdorf A G v The Republic (To be reported in (1987) 3 C L R

Davidoff Commercio e Industria Limitada v The Republic (1986) 3 C L R 2232 **25**

Appeal.

Appeal by interested party against the judgment of a Judge of the Supreme Court of Cyprus (Pikis, J) given on the 1st June, 1985 (Revisional Junsdiction Case No 7/84)* whereby the decision of the respondents to expunge from class 33 in Register A of Trade Marks the trade mark «El Caballito» was annulled **30**

* Reported in (1985) 3 C L R 1189

G. Nicolaidis, for the appellants - interested parties.

M. Christophides, for the respondents - applicants.

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

Cur. adv. vult.

5 *TRIANTAFYLLIDES P.*, read the following judgment of the Court. The appellants were an interested party in recourse 7/84 which was filed under Article 146 of the Constitution by the respondents-applicants (hereinafter to be referred as «the applicants»).

10 By means of such recourse the applicants had challenged the refusal of the respondent Registrar of Trade Marks - acting through the Assistant Registrar of Trade Marks - to register the trade mark of the applicants «EL CABALLITO» in respect of wines, spirits and liqueurs.

15 The application for the registration of the said trade mark was duly advertised in the Official Gazette of the Republic.

Eventually such application was opposed by the appellants and after a hearing before him the Assistant Registrar of Trade Marks (to be referred to hereinafter as «the Assistant Registrar») found
20 that the applicants had not discharged the onus of establishing the non-likelihood of confusion and deception among a substantial number of persons if the aforesaid trade mark of the applicants was registered in respect of the goods referred to by them since there was already registered the trade mark of the appellants in
25 respect of goods of the same kind.

It was, consequently, found that the opposition under section 14(1) of the Trade Marks Law, Cap. 268, succeeded and, furthermore, that it had not been shown by the applicants that the use of the proposed trade mark would not offend against the
30 provisions of section 13 of Cap. 268. As a result the application of the applicants for the registration of the aforementioned trade mark was not granted.

Against this decision of the Assistant Registrar the applicants filed recourse 7/84 in which judgment was given by the trial Judge
35 annulling the decision of the Assistant Registrar on the ground that he had not conducted an adequate inquiry and that the reasoning given by him was incomplete.

Against such judgment the appellants, as an interested party in the proceedings, since they had opposed the registration of the trade mark, filed the present appeal.

It is the well established approach of our Supreme Court, on the basis of the principles governing the exercise of its jurisdiction as an administrative Court in the first instance and on appeal, that it does not interfere with an administrative decision regarding the registrability of a trade mark if such decision was reasonably open to the Registrar of Trade Marks and does not substitute its own evaluation in the place of that of the Registrar (see, inter alia, in this respect, *Merck v. The Republic*, (1972) 3 C.L.R. 548, 564, *Seven-Up Company v. The Republic*, (1973) 3 C.L.R. 612, 621, *Curzon Tobacco Co. Ltd. v. The Republic*, (1975) 3 C.L.R. 363, 369, and on appeal (1979) 3 C.L.R. 151, 158, *Beecham Group Ltd. v. The Republic*, (1982) 3 C.L.R. 622, 632, *P.M. & G. Stavrinides Clothing Industries Ltd. v. The Republic*, (1983) 3 C.L.R. 98, 107, *Effems A. G. v. The Republic*, (1985) 3 C.L.R. 793, 798, *Pepsi Co. Inc. v. The Republic*, (1985) 3 C.L.R. 1092, 1102 and *Fisons Ltd. v. The Registrar of Trade Marks*, (1985) 3 C.L.R. 2318, 2327).

It is to be noted, too, that in *Roc International S.A. v. The Republic*, (1984) 3 C.L.R. 219, 225, it was held that it was not open to the Registrar of Trade Marks to reach his sub judice in those proceedings decision as he had not carried out a due inquiry as to the meaning and the understanding by the ordinary people of Cyprus of the word which was intended on that occasion to be registered as a trade mark; and see, also, the not reported yet cases of *Beiersdorf A.G. v. The Republic* (case 361/84)* and *Davidoff Commercio e. Industria Limitada v. The Republic* (Case 517/84).**

In the present instance the Assistant Registrar found that the words «EL CABALLITO» were Spanish words and that their ordinary meaning is a small horse or hobbyhorse, whereas the trade mark of the appellants consisted of the words «White Horse» or of a pictorial presentation of a white horse or of both of them together.

It was contended by the applicants before the Registrar that the

* To be reported in (1987) 3 C.L.R.

** Reported in (1986) 3 C.L.R. 2232.

words «EL CABALLITO» meant only a sea-horse but the proposed trade mark of the applicants did not comprise also a pictorial presentation of a sea-horse so as to avoid confusion with the «White-Horse» trade mark of the appellants.

- 5 We are, therefore, of the opinion that it was reasonably open to the respondent Registrar - acting through the Assistant Registrar - to refuse the applied for registration of the trade mark of the applicants and that it was not necessary for him to embark on any further enquiry as to other meanings of the words «EL
10 CABALLITO», or to give any other or further reasons in support of his decision.

This appeal, therefore, succeeds; but, in the circumstances of this case, we shall make no order as to its costs.

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Appeal allowed.
No order as to costs.