Questions

The Groups are invited to answer the following questions under their national laws.

I. Analysis of current law and case law

1) How is the relevant public for purposes of determining the degree of recognition of famous, well-known and reputed marks defined in your jurisdiction? Is it the general public at large or a relevant sector of the public that is considered to be the relevant public in determining the knowledge, recognition or fame of a mark?

The "relevant public", as treated in present Question, is not defined by statutory provisions in Greece. Its semantic intension emerges from the concept of "trade transactions" or "market" as the complex structure on the ground of which a mark earns its distinctive character. In the businesses interaction is also founded the general awareness that a mark can achieve in order to be hold as well-known or famous. From this point of view, the "public" is constituted by all persons who make part of a market, either as consumers or as producers and traders of goods and services.

The notion and the definition of the public in general or of a specific public of a specializing economic sector has been developed by Case Law and Legal science.
The reference to the notions of "well-known marks" and "famous" or "reputed" marks in the Paris Convention, in the Trade Marks Directive 89/104/EEC, in the Regulations 40/1994 and 2868/1995 as well as in the TRIPS Agreement has lead, first to the transposition of same legal notions to the national Legislation, second to the productive interpretation of these concepts by the EC] and the national Courts, and third to a clarification of their content by legal scholars.

In sum, the degree of knowledge of the relevant public that is required is held to be reached when a mark is known by a significant part of the public concerned by the products or services covered by the trademark in question. Therefore, famous marks, well-known marks and marks with reputation must be known to a significant part of the relevant sectors of the public. Accordingly, the reputation of a trademark must be assessed in relation to the awareness of the relevant section of the public in respect of the goods or services for which the mark has been registered.

2) Please clarify whether your jurisdiction uses several of the terms discussed in sections 22-26. If so, is the "relevant public" construed differently when determining the recognition of famous marks, well-known marks and marks with reputation respectively (and, if applicable, marks subject to another term)? Is the assessment made based on the same criteria?

Greek Trademark Law has been recently amended by Law 4072/2012. Art. 124 refers to the Relative Grounds for Refusal of a TM, by using in §1 c the notion of "earlier trademark that has reached reputation":

"The trade mark applied for shall not be registered where it is identical with or similar to the earlier trade mark that has reached reputation and where the use of the later trade mark would take without due cause unfair advantage from the distinctive character or the repute of the earlier trade mark, or would be detrimental to its distinctive character or its repute, independently of the fact that the later trade mark is intended to distinguish goods or services that are similar to goods or services of the earlier trade mark."

Further, in Art. 124 §2 follow definitions of the meaning of the notion of "earlier mark", where under point c is stated in accordance with Article 4(4)(a) and Article 5(2) of the Directive:

"trade marks which, on the date of application for registration or, where appropriate of the priority claimed in respect of the application for registration, are well known in the sense of Art. 6 bis of the Paris Convention."

As a result we can state that Greek Law refers primarily to the notions of a TM's repute, or to "famous TMs", using the notion of "well-known marks" of the Paris Convention, first, for reasons of legal definition of what constitutes inter alia an earlier trade mark, second, for reasons of protection of trade marks of high universal awareness that have not been yet registered as International trade marks in Greece. As stated in the mentioned Chevy Decision, “the protection of well-known marks under the Paris Convention and TRIPs is accordingly an exceptional type of protection afforded even to
unregistered marks. It would not be surprising therefore if the requirement of being well-known imposed a relatively high standard for a mark to benefit from such exceptional protection. There is no such consideration in the case of marks with a reputation. Indeed, there is no need to impose such a high standard to satisfy the requirement of marks with a reputation”.

As already mentioned, there is no legal definition of the notion of "relevant public" in Greek Law. Case Law recognizes as relevant public also a limited sector of the public, when assessing the notion of "trade transactions" in the course of which emerges the value of the uniqueness of the trade mark. For the development of the notion of relevant public in Case Law refer to question 3.

3) If the relevant public can be a limited sector of the public please respond (if applicable with reference to statutory provisions and/or case law) to the following questions.

a) Please briefly describe the criteria for determining the relevant public. Is consideration taken e.g. to age, gender, geography, culture, groups with special interests, sophistication/skill of the consumer? Is consideration taken to the way the goods or services with the trademark in question are marketed?

Greek Courts follow in general the criteria set by the CHEVY case of the EC, judgement 14 September 1999, C-375/97. So, the relevant public is set on a case-by-case basis with reference to the particular sector of concerned public. The practice of using fixed percentages of the general population is avoided as being inadequate if taken alone.

The courts use a variety of criteria which include, for example, the degree of knowledge or recognition of the mark in the relevant sectors of the public; the duration, extent and geographical area of use of the mark; and the scale and scope of investment in promoting the mark.

b) Would the relevant public be populated by actual/potential consumers/buyers of the products/services in question only or a larger public? Please explain how the delimitation is made.

The specificity of the product or service under examination sets also the criteria for the assessment of the relevant public. Anyway the relevant public is never equal to "purchasers" or "users", since very often awareness of a mark also expands to market observers as potential consumers and not only to consumers who actively engage in sales of goods or offers of services.

c) Could the relevant public be composed of business/professional and consumers?

d) Could the relevant public be composed of people in the trade of the goods or services in question, such as distributors, licensees and retailers?
c) Could the relevant public be "mixed" in a sense that it is composed of persons involved in trade, professional/business end customers and private end customers?

**Answer to c), d), e)**

The relevant public includes all participants of a certain economic circle. Consumers always belong to this circle, but most usually professionals either as suppliers of goods or services or as competitors in same market equally constitute the relevant public.

f) How limited in terms of quantification can the relevant sector of the public be to constitute the relevant public? Is there a clear established "lowest level"?

*There is no lowest level of quantification, since case law does not follow statistical measures. The more specific the goods or the services are, the less would be the part of general consumers in assessing the relevant market, as ground of interactive commerce based communication.*

g) Is it possible to see any differences for different products/industry sectors in respect of the delimitation of the relevant public?

*As stated above under f) the more general and common is the use of a product/service the more open and broad is the relevant public for the assessment of the trade mark's reputation. The more specific it is, the more the relevant public consists of specialists.*

4) Are there any differences between the "relevant public" concept when assessing the recognition of trademarks in respect of e.g. dilution, free riding, or when determining likelihood of confusion in infringement proceedings?

Yes. The relevant public's awareness about the distinctive force of a trade mark is used in order to come to a conclusion on a given claim regarding the worthiness of protection of a trade mark on the base of its fame, reputation, popularity and grade of its cognition among the public. Likelihood of confusion or dilution do not refer exclusively to famous trade marks but also and much more to common trade marks with more or less distinctive character. The figure of "average consumer" is then used in infringement proceedings in order to decide if there is likelihood of confusion. Since dilution and free riding regard usually famous marks, the possibility of implementing the "relevant public" argument is still open. Finally in case that all three issues make part of infringement proceedings on the legal base of Unfair Competition, the criterion set by case law refers again to the "average inexperienced consumer" and not to the "relevant public".

5) When does the assessment of the relevant public come into play e.g. in registration matters, proceedings in respect of wrongful use such as free riding, dilution, infringement proceedings, and opposition proceedings?

*In all above procedures comes the notion of "relevant public" into play. The assessment of the*
relevant public is always necessary when the adjudication refers to the notion of "marks that have achieved fame" or to "well-known marks". Every time any legal procedure comes to implement the two concepts in order to conclude on the contested reputation of a mark the assessment is mandatory and fully due.

6) Is the relevant public determined by a test, a specific procedure or in some similar manner, or rather on a case-by-case basis? Please give a brief description of how the test or analysis is made.

No. The Courts use the "relevant public" argument among other criteria in order to assess the degree of recognition of a "famous trade-mark" or a "well-known' trade mark. Very characteristic for such an assessment is the Judgment of the Court of Appeal of Athens 2544/2012 (Logo / Cisa Logo line);

"The notion of "famous trade mark", that is not defined by the legislator, can be assessed on the base of qualitative and quantitative criteria, such as

a) The high degree of establishment of the mark in the market, meaning that the competitive force of the sign is manifested on a high level, in a way that it became known even beyond the relative circle of consumers

b) The uniqueness of the mark, meaning that it has not been diluted by being used broadly by third parties on different products

c) The individuality or peculiarity in its appearance and expressive force

d) The existence of particular positive esteem of the consuming public with regard to the products it distinguishes

e) The market share that is covered by the mark and the time period of its use

f) The geographical area in the limits of which the trade mark enjoys reputation"

II. Proposals for harmonisation

Is harmonisation desired? If yes, please respond to the following questions.

1) Is it the general public at large or a particular sector of the public that should be considered as the relevant public in determining the knowledge, recognition or fame of a mark?

For "well-known" marks the opinion of the general public should prevail. For "trade marks that have reached fame" specific criteria should and could also be of use.

2) Please briefly set out the criteria to be used when establishing the relevant public for determining the degree of recognition of famous marks, well-known marks and marks with reputation.
3) Should the relevant public be construed differently for famous marks, well-known marks or marks with a reputation? If so, please define the terms used and describe what criteria is to be used for the different types of marks.

a) "Well-known" marks
- Internationally circulating goods/services
- Known to the general public of numerous countries (where known does not refer to the factual purchasing or to potential purchasing)
- In use for a longer time
- Degree of resistance to become generic
- Degree of Esteem of the general public

b) famous marks and marks with reputation (treated here as synonyms as it is the case in Greek Law)
- Nationally and/or internationally circulating goods/services
- Known either to the general public or to specific market participants (consumers and all professionals), (Consumers are not meant as buyers)
- In use for a longer time and in broad geographical parts of a state
- Degree of resistance to become generic
- Degree of Esteem either of the general public or the relevant economic circle

4) Would it be possible or desired to establish a test or a specific method of establishing the relevant public or should this be done on a case-by-case assessment? How should the test or analysis be made?

The use of the notion of "relevant public" in order to assess the recognition of a trade mark that pretends to be famous belongs to those means of legal argumentation and interpretation that are designed as indeterminate value terms. The meaning of such legal media is adaptable to the situation under adjudication and for this reason it is necessary that the case-by-case examination remains valid and accepted. The relevant public is not a pure fiction, like the "average inexperienced consumer", since there are concrete criteria to be respected in order to come to a generally acceptable conclusion.

National Groups are invited to comment on any additional issues concerning the relevant public for determining the degree of recognition of famous marks, well-known marks and marks with reputation that they deem relevant.
SUMMARY

The degree of knowledge of the relevant public that is required is held to be reached when a mark is known by a significant part of the public concerned by the products or services covered by the trademark in question. Accordingly, the reputation of a trademark must be assessed in relation to the awareness of the relevant section of the public in respect of the goods or services for which the mark has been registered. Promotion of a mark is a separate criterion for determining whether a mark is well-known. Given that well-known marks and marks with reputation denote distinct legal concepts, this distinction makes it difficult to ascertain which is the relevant public for determining the equivalent recognition of each mark. Therefore, we would very much welcome a clearer delineation between the concepts of 'well-known' and 'with reputation'.

RÉSUMÉ

Le degré de connaissance nécessaire du public pertinent est considéré comme atteint lorsque la marque est reconnue par une partie significative du public concerné par les produits ou services couverts par la marque en question. En conséquence, la réputation d'une marque doit être appréciée par rapport à la prise de conscience de la section pertinente du public à l'égard des biens ou des services pour lesquels la marque a été enregistrée. La promotion d'une marque est un critère distinct pour déterminer si une marque est bien connue. Étant donné que les marques notoires et les marques de renommée dénotent des notions juridiques distinctes, à cause de cette distinction, il est difficile de vérifier quel est le public concerné pour déterminer la reconnaissance équivalente de chaque marque. Par conséquent, nous serions très heureux d'avoir une délimitation plus claire entre les notions de «notoire» et «de renommée».

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