

# New Trademarks Law in Greece

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## **A. Introduction**

The long awaited new Greek Trademarks Law No. 4072/2012 was published in the Government's Gazette on 11.4.2012 and will be set into force as of 11.10.2012. This 6-months transitional period was deemed necessary given that the new piece of legislation provides for significant changes in trademark law of both legal and administrative nature. After the new law is set into force, the current law on trademarks No. 2239/1994 will cease to be applicable in its entirety. This because the new piece of legislation does not only contain noteworthy novelties, but it also codifies various provisions of Greek law governing CTMs and International Registrations (Madrid Protocol) already scattered in earlier laws.

## **B. Legislative Ratio**

The priority aims of the legislator were in substance the following:

- To speed up the registration procedure. This should be achieved through the substitution of the Administrative Trademarks Committee by the Examiner, who will now be in charge of the examination of applications on absolute and relative grounds for refusal, on the one hand, and through the 3-months opposition term (instead of 4-months) combined with a faster electronic publication facility for accepted applications, on the other hand.
- To fully harmonize Greek law according to the rules of Directive 2004/48/EC for the enforcement of trademark rights against counterfeits.
- To modernize national law by adopting useful legal tools such as the re-establishment of a trademark right (restitutio), the division of an application or registration and the simplification of the recordal procedure for licence agreements.
- To render the Greek national trademark system more attractive not only from the procedural point of view, but also through lower official fees.

## **C. Salient Features**

1. The new institution of the "Examiner" is introduced for deciding on absolute and relative grounds of refusal. The Administrative Trademarks Committee will in future focus on appeals against the Examiner's decisions, on oppositions by third parties against accepted trademark applications and on petitions for revocation or invalidity actions.
2. A trademark license agreement may now be recorded upon petition of either the licensor or the licensee without – as until now - the need for submission of the license deed and its examination by the Administrative Trademarks Committee.
3. Measures are taken for the future completion of the electronic Trademarks Registry which subsequently will enable trademark e-filing and will make the manually kept trademark records redundant.
4. The opposition term is shortened to 3 months as from publication of the accepting decision.

5. Re-establishment of right (restitutio) will now be possible for those extraordinary cases in which a deadline was not met due to *force majeure*. Such handling is not applicable in case of an opposition deadline and of claiming international conventional priority.
6. Directive 2004/48/EC for the enforcement of Intellectual Property rights is fully transposed in Greek Trademarks Law. Thus, in the frame of interlocutory injunction proceedings an interim order may be issued without the defendant being heard, if any delay would cause irreparable harm to the trademark proprietor. Intermediaries may now be sued as well for trademark infringement. These and other measures provided for are to be imposed by the court in accordance with the principle of proportionality.
7. Criminal sanctions against trademark infringement are made stricter to at least six (6) months imprisonment and at least 6.000 euros, while in case of considerably high damage caused by the infringement made in a commercial scale, the sanctions to be imposed are at least two (2) years imprisonment and a fine of between 6.000 and 30.000 euros.
8. More importantly, on average 10% lower official fees are provided for in an attempt to support businesses and foster competitiveness in the country.

#### **D. Other Novelties**

In a total of 64 articles of the new law, there is a number of interesting novel provisions affecting positively trademark prosecution in favor of proprietors. Some of them are:

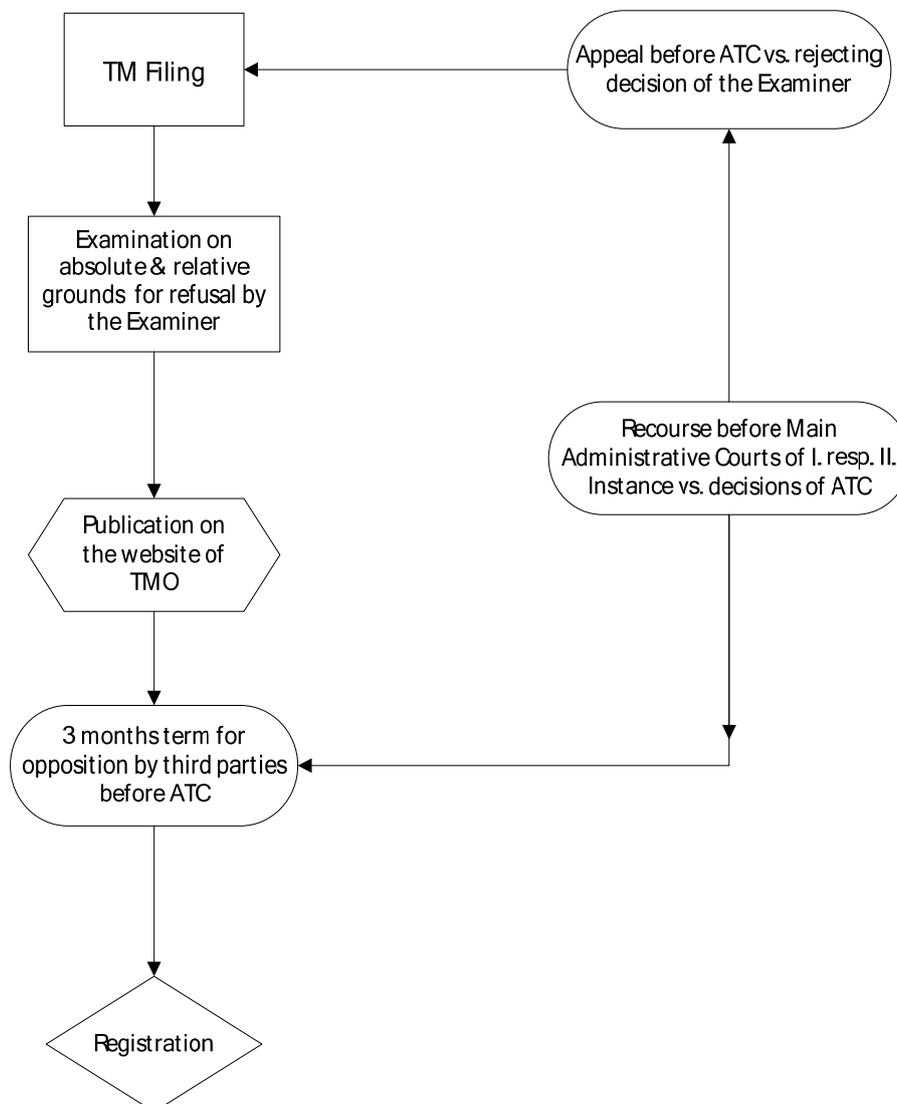
1. Geographical indications for wine, spirits and agricultural products are now explicitly provided for as absolute grounds for refusal.
2. Letters of Consent to overcome official citations may now be submitted even before the Administrative Courts, i.e. after the examination on relative grounds by the Examiner.
3. Acquiescence: the holder of an earlier trademark may not successfully oppose the use of a later trademark if he has acquiesced for a period of five successive years in the use thereof while being aware of such use.
4. Division of a trademark application or registration is now possible thus enabling trademark protection in case of partial rejection or judicial conflicts connected with part of the list of goods or services.
5. Acquiring an earlier trademark that was cited against the registration of the assignee's application leads to overcoming the relative ground for refusal, even if such assignment took place after the examination of the trademark application.
6. In the absence of any absolute or relative grounds for refusal, the Trademarks Office must decide on acceptance of a trademark application within a month as of the accorded filing date.
7. The holder of a challenged trademark application may request the opposing party to produce evidence of genuine use of his prior right(s). Failure to correspond to such a burden leads to the rejection of opposition without substantial examination of its grounds.
8. Instead of uniform rules for trademark cancellation, rules on revocation (due to non-use), respectively invalidity of a trademark (on absolute or relative grounds) corresponding to CTMR 2009/207, are introduced.
9. Provisions for the adjudication and protection of extensions to Greece of international trademarks according to the Madrid Protocol are now codified for the first time after the accession of this country to the Protocol in August 2000.

10. The “Hellenic Trademark” will in future be granted by a newly established Committee to those goods and services of Greek origin that fulfill specific technical requirements and incorporate Greek added value, the major production cost having been made in the Greek territory.

### E. *Perspective*

This new law is saluted as a step forward towards a more user friendly and transparent national trademarks system. It takes into serious consideration EU law and case law and sets a more modern legal frame for IRs with extension to Greece. Its successful implementation, however, will also depend on the rapid update of the Trademarks Office’s infrastructure and the continuous education of its officers, a project already in process with the valuable support by OHIM.

### TM Registration Procedure



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