

# EUIPO rules on Greek vitamin D trademark dispute

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**Maria Kilimiris** November 16 2021



**Maria Kilimiris of Patrinos & Kilimiris considers how the EUIPO and Greek courts decided on a trademark dispute on the content of pharma goods**

A Greek cosmetic and pharmaceutical company filed a European trademark (EUTM) application 'Frezyderm Sunscreen Vitamin D-Like' and device for 'sun tanning and sun care preparations' in class 03.

An application for cancellation due to invalidity based on absolute grounds was filed before EUIPO against the above EUTM, by a Greek company also active in the pharmaceutical and cosmetic field. The adversary claimed that the EUTM should be declared invalid as it has been registered in such a way that it deceives the public as to the nature or quality of the goods covered.

In particular, the adversary claimed that the phrase 'Vitamin D-Like' directly refers to vitamin D, although the products covered by the trademark do not contain such vitamin. Instead, the basic ingredient used for their manufacture is the white peo D, which is not a vitamin. Moreover, the adversary claimed that it is not clear that there is no vitamin D in this product and that the average Greek consumer cannot realise the meaning of the phrase 'Vitamin D-Like'.

In addition to the above invalidity action, the adversary had also filed, before the Greek National Organisation for Medicines (EOF), a complaint on a similar basis against the products at issue, as well as a preliminary injunction action before the Greek courts. The adversary's complaint filed before EOF was rejected and it was decided that the phrase 'Vitamin-D like skin benefits' was not misleading and that the adversary's allegation to the contrary should be rejected.

Regarding the ingredient of white peo D, which is the main substance of the products covered by the contested EUTM, the adversary claimed that this substance does not have the same beneficial effects as vitamin D, whereas the EUTM proprietor claimed the opposite. Both sides submitted scientific articles or expert opinions to support their above arguments.

EUIPO's Cancellation Division dismissed the above argument raised by the adversary, ruling that this was irrelevant within the framework of Article 59(1)(a) EUTMR in conjunction with Article 7(1)(g) EUTMR because the list of goods does not contain a reference to white peo D.

Furthermore, the Cancellation Division ruled that the part of the relevant English-speaking public will understand the expression 'Vitamin D-Like' to mean that the contested products do not contain vitamin D, but rather a substitute. In addition, it was ruled that the list of goods covered by the contested trademark is broad so as to include all types of sun care products containing and non-containing Vitamin D or a substitute.

In such a case it was ruled that, when broad categories of goods are registered and use of the mark could be deceptive for only some of the goods within the categories but not for other goods within the same categories, the mark as such is not considered to be deceptive and it is in general assumed that the mark will be used in a non-deceptive manner.

Patrinos & Kilimiris acted on behalf of the proprietor of the contested EUTM.

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