

1986 November 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ARCADIAN CORPORATION INC., OF  
NEW YORK STATE (No. 2),

*Applicants,*

v.

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

*Respondent.*

*(Case No. 1043/85).*

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*Trade Marks —Registrability —Distinctiveness, lack of—Descriptiveness—Tendency to cause confusion.*

5 The applicant's application for the registration of NFE  
—the last two letters laced together in different colour  
from the first—as a trade mark for chemical properties of  
the fertilizers of the applicants was turned down for the  
same reasons as their application for NZN\*. The only  
feature that distinguishes this case from the said case is  
10 that in this case the mark in question has not as yet been  
registered in U.S.A. Letter "N" stands for nitrogen, where-  
as letters "FE" stand for iron.

15 *Held, dismissing the recourse, that this recourse has to  
be dismissed for the same reasons as those expounded in  
Arcadian Corporation Inc. (No. 1) v. The Republic (1986)  
3 C.L.R. 2160.*

*Recourse dismissed.  
No order as to costs.*

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\* See Arcadian Corporation Inc. (No. 1) v. The Republic (1986)  
3 C.L.R. 2160

**Cases referred to:**

*Arcadian Corporation Inc. (No. 1) v. The Republic* (1986)  
3 C.L.R. 2160.

**Recourse.**

Recourse against the refusal of the respondent to register NFE as a trade mark in either Register "A" or Register "B". 5

*Chr. Chrysanthou*, for the applicants.

*St. Ioannides (Mrs.)*, for the respondent.

*Cur. adv. vult.* 10

PIKIS J. read the following judgment. The feature that distinguishes this case from *Arcadian Corporation Inc. v. The Republic*, decided earlier to-day, the first case, is that unlike that case the proposed trade mark NFE was not registered in the U.S.A. or any other country and arguments founded in the first case upon that consideration and the Convention for the Protection of Industrial Property have no bearing in the instant case. Nevertheless, applicants drew attention to the fact that application is pending in the U.S.A. for the registration of the trade mark and that the official side raised no objection to the registration of the mark on grounds of descriptiveness of the character or quality of the fertilizers sold under that name. 15 20

The same reasons that led to the dismissal of the first recourse seal the fate of this case as well. As in the first case the proposed mark is made up of three capital letters "NFE", the last two laced together by a different colouring purporting to signify chemical properties of the fertilizers of the applicants, letter "N" standing for nitrogen and "FE" for iron. For the reasons indicated in the judgment in the first case, copy of which is attached hereto, the mark lacked distinctiveness, whereas to the extent that it qualified at all as a device, it tended to be descriptive of the character and quality of the goods. Also it is apt to cause confusion in the sense of s. 13, Cap. 268, because it does not refer to all the properties of the fertilizers. 25 30 35

Brief reference to the criteria that made it reasonably open to the Registrar to reject registration, in no way suggests that the portrayal of the three letters in the way indicated on the application makes them a device distinguishable from the letters of the alphabet that it reproduced. It does not. The prominent feature of the mark is the reproduction of the three capital letters of the alphabet and their division into two categories in an effort to indicate chemical elements of the fertilizers.

10 The recourse is dismissed. The decision of the Registrar is affirmed pursuant to the provisions of Article 146.4(a) of the Constitution. Let there be no order as to costs.

*Recourse dismissed.*  
*No order as to costs.*