

1986 November 29

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ARCADIAN CORPORATION INC., OF
NEW YORK STATE (No. 3).

Applicants,

v.

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

Respondent.

(Case No. 1044/85).

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

The applicants' application for the registration of NMG—the last two letters laced together in different colour from the first—as a trade mark for a fertilizer—was turned down by the Registrar of Trade Marks for the same reasons as applicants' application for NZN*. In this case it emerged that registration was, also, refused in U.S.A. on the ground of descriptiveness of the goods. It must be noted that letter "N" signifies nitrogen and letters "MG" magnesium.

Held, dismissing the recourse, that this case is indistinguishable from the other two cases (See *Arcadian Corporation Inc. (No. 1) v. The Republic* (1986) 3 C.L.R. 2160 and *Arcadian Corporation Inc. (No. 2) v. The Republic* (1986) 3 C.L.R. 2165) and, therefore, it has to be dismissed on the grounds that the mark in question lacks

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

3 C.L.R. Arcadian Corporation Inc. (No. 3) v. The Republic

distinctiveness, it is descriptive of the goods in question and is apt to cause confusion.

Recourse dismissed.

No order as to costs.

5 **Cases referred to:**

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

Arcadian Corporation Inc. (No. 2) v. The Republic (1986)
3 C.L.R. 2165.

10 **Recourse.**

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

Chr. Chrysanthou, for the applicants.

St. Ioannides (Mrs), for the respondent.

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Cur. adv. vult.

20 PIKIS J. read the following judgment. This is the last of a series of three cases challenging a corresponding number of decisions of the Registrar of Trade Marks for the registration of three marks made up of a combination of letters of the Latin alphabet. In this case the application was for the registration of "NMG" for a brand of fertilizers of the applicants, an American Corporation. The application was turned down for similar reasons, namely, lack of distinctiveness, tendency to describe components of the fertilizer and thirdly likelihood of confusion.

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30 Contrary to allegations made in affidavits produced before the Registrar to the effect that no objection was raised by the appropriate department of Government to the registration of the mark on grounds of descriptiveness, Red 10 of exh. "A" in Case 1043/85, a document of the Patent and Trade Mark Office of the U.S.A., suggests otherwise. Therein it is stated that registration was refused on the "Principal Register" because the mark was descriptive of the goods, that is, the nitrogen and magnesium components

of applicants liquid fertilizer.

This case is indistinguishable from the other two, that is, *Arcadia Corporation Inc. v. The Republic*(¹) and its outcome can be no different. As in the other two cases the lacing of the last two letters of the mark by painting them in a different colour than the first letter, leaves unchanged the overall effect of the mark as one made up of three capital letters that constitute its salient feature. The similar colouring of the last two letters was meant, as in the other cases, to convey that they should be read together as the symbols of magnesium, whereas "N", as in the other cases, signified nitrogen: thus the mark was objectionable not only for lack of distinctiveness but also on account of the way it tended to describe the goods marketed thereunder. Also it was likely to cause confusion as to the properties of the goods in that nitrogen and magnesium were not seemingly the only components of the fertilizer.

The principles and practice relevant to the registration of a combination of letters of the alphabet as a trade mark are discussed in Case No. 1042/85, copy of which is attached hereto. In my judgment it was reasonably open to the Registrar to arrive at his decision which is hereby affirmed pursuant to the provisions of Article 146.4 (a) of the Constitution.

The recourse is dismissed with no order as to costs.

Recourse dismissed.
No order as to costs.

(1) Case 1042/85 decided earlier to-day. (1986) 3 C.L.R. 2160 (Proposed mark NZN), and *Arcadian Corporation Inc. v. Republic* 1043/85, decided earlier to-day. (1986) 3 C.L.R. 2165 (Proposed mark NFE).