

1987 December 2

[A LOIZOU MALACHTOS SAVIDES STYLIANIDES  
AND KOURRIS JJ]

THE REPUBLIC OF CYPRUS THROUGH  
THE REGISTRAR OF TRADE MARKS

*Appellants - Respondents*

v

1 ANTONIS PASCHALIDES  
2 ASTERIAS CO LTD .

*Respondents - Applicants*

*(Revisional Jurisdiction Appeal No 668)*

5 *Trade Marks — Appointment of an agent for registration of — Form of authorization — Section 60 of the Trade Marks Law, Cap 268 and rule 14 of the Trade Marks Rules 1951-1971 — Impliedly repealed in so far as they refer to such appointment and the authorization with a view to applying for the registration of trade marks or patents by section 2(1)(iii) (inserted by Law 40/75, as amended by Law 98/84) of the Advocates Law, Cap 2 — Stamping of authorization in accordance with the Advocates Law — Sufficient*

Respondent 2 appointed by an authorization in writing Respondent 1, as its advocate to proceed with a registration of a trade mark

10 Applicant 1, acting in his capacity as an advocate under the aforesaid authorization of applicant 2, did complete the prescribed under the Trade Marks Law application and submitted same together with the written authorization of respondent 2 which was duly stamped in accordance with the Advocates Law

15 The Registrar of Trade Marks refused to accept the application on the following grounds, i.e (a) The authorization must be in form T M No 1 provided by the Trade Marks Rules, (b) Form T M No 1 must be duly stamped in accordance with the Stamp Law, (c) The stamp duty must be paid in stamps and not in advocates stamps

20 As a result the applicants filed recourse No 585/85 challenging the aforesaid refusal of the Registrar to register the trade mark in question

The trial Judge annulled the sub judge decision Hence this appeal

Held, *dismissing the appeal* (1) Section 60 of the Trade Marks Law, Cap 268 and Rule 14 of the Trade Marks Rules in so far as they refer to the appointment of an agent and his authorization with a view to applying for the registration of trade marks or patents and his appearance before any administrative authority for this purpose were impliedly repealed by section 2(1)(iii) of the Advocates Law, Cap 2

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(2) It follows that compliance by the authorised advocate (respondent 1) in respect of stamping the authorization with the Advocates Law was sufficient in this case

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*Appeal dismissed No order as to costs*

*Cases referred to*

*SABA and Another v The Republic* (1980) 3 C L R 149

**Appeal.**

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Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Lons, J.) given on the 9th September, 1986 (Revisional Jurisdiction Case No. 585/85)\* whereby the decision of the respondent to refuse to accept for registration a trade mark set out in applicant's application dated 13.5.1985 was annulled.

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

*A Dikigoropoulos*, for the respondents

*Cur. adv. vult.*

A. LOIZOU J.: The judgment of the Court will be delivered by Mr. Justice Savvides.

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SAVVIDES J.: - This is an appeal by the Republic of Cyprus through the Registrar of Trade Marks, respondent in recourse No. 585/85, against the decision of a Judge of this Court sitting in the first instance in the exercise of the original jurisdiction of this Court, whereby he annulled the decision of the Registrar of Trade Marks by which he refused to accept for registration a trade mark set out in the applicant's application dated 13th May, 1985.

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Respondent 1 in this appeal is a practising advocate. Respondent 2 is a company of limited liability incorporated in

\* Reported in (1986) 3 C L.R. 1868

Cyprus under the relevant provisions of the Companies Law, Cap 113, as amended Both respondents were applicants in recourse No 585/85, respondent 1 as applicant 1 and respondent 2 as applicant 2

5 Applicant 2 being desirous of having a trade mark registered in clause 16 Part 'A' of the Register of Trade Marks, did, on the 13th May, 1985, appoint applicant 1 by authorization in writing, as its advocate to proceed with the aforesaid registration Applicant 1, acting in his capacity as an advocate under the aforesaid  
 10 authorization of applicant 2, did complete the prescribed under the Trade Marks Law application and submitted same together with the written authorization of respondent 2 which was duly stamped in accordance with the Advocates Law. The respondent Registrar refused to accept the application and returned same to  
 15 applicant 1 under cover of a letter dated 27th May, 1985, repeating therein his grounds for such refusal which were originally included in his letter dated 20th May, 1985, previously addressed to applicant 1 The grounds advanced by the respondent in his aforesaid letters read as follows -

20 «(a) The authorization must be in form T M No 1 provided by the Trade Marks Rules (Form T M No 1 is enclosed)

(b) Form T M No 1 must be duly stamped in accordance with the Stamp Law (Vide items 6 and 23 of the relevant Law 19/1963 as amended by Law 29/1980)

25 (c) The stamp duty must be paid in stamps and not in advocates stamps »

As a result the applicants filed recourse No 585/85 challenging the aforesaid refusal of the Registrar to register the trade mark in question

30 The question of the authority of an advocate to act on behalf of a client in relation to the registration of a trade mark or patent was, very rightly, not disputed by the Registrar in view of the provisions of section 2(1)(iii) of the Advocates Law, Cap. 2 (introduced by section 2 of Law 40/75 and amended by section 2 of Law 98/84)  
 35 and the Advocates Rules 1985 (Notification No 82/85 in Supplement No III of the Cyprus Gazette of 13 1985) and also the dicta in the case of *SABA and Another v The Republic* (1980) 3 C L R 149 at p. 158

The Trade Marks Law, Cap. 268 on which the Registrar relied in support of his refusal and in particular section 60, provides as follows:-

«Where by this Law any act has to be done by or to any person in connection with a trade mark or proposed trade mark or any procedure relating thereto, the act may under and in accordance with the rules or in particular cases by special leave of the Court, be done by or to an agent of that person duly authorized in the prescribed manner.»

The «prescribed manner» provided above is prescribed by Rule 14 of the Trade Marks Rules 1951 - 1984 as follows:-

«14. Except as otherwise required by these rules, any application, request or notice which is required or permitted by the Law or these rules to be made or given to the Registrar, and all other communications between an applicant or a person making such a request or giving such a notice and the Registrar, and between the registered proprietor or a registered user of a trade mark and the Registrar or any other person, may be signed, made or given by or through an agent.

Any such applicant, person making request or giving notice, proprietor, or registered user may appoint an agent to act for him in any proceeding or matter before or affecting the Registrar under the Law and these rules by signing and sending to the Registrar an authority to that effect in the Form T.M. -No. 1, or in such other written form as the Registrar may deem sufficient. In case of such appointment, service upon the agent of any document relating to the proceeding or matter shall be deemed to be service upon the person so appointing him, all communications directed to be made to such person in respect of the proceeding or matter may be addressed to such agent, and all attendances upon the Registrar relating thereto may be made by or through such agent. In any particular case the Registrar may require the personal signature or presence of an applicant, opponent, proprietor, registered user or other person.

The Registrar shall not be bound to recognize as such agent any person who has been proved to him, or, on appeal, to the Court, to have been guilty of conduct discreditable to a trade mark agent or who has been convicted criminally or whose

name has been struck off the Roll of Advocates and not since restored or (during the term of his suspension) any person who has been suspended from acting as an advocate.»

5 It has been the submission of counsel for the appellant before the trial Court and at the hearing of this appeal that the appropriate form of authorization of a person to act on behalf of another for the registration of a trade mark should be in the form T.M. No. 1 prescribed by Rule 14 hereinabove and bearing in mind the fact that such authorization is in the nature of a power of attorney, it  
10 should be duly stamped according to sections 6 and 23 and the definition of «power of attorney» under the provisions of the Stamp Law, 1963 (Law No. 19/63).

15 Counsel expounded his argument and sought to rely on the above provisions in support of his grounds of appeal which were the following:-

20 «The trial Judge erroneously held that s. 60 of the Trade Marks Law, Cap. 268 and Rule 14 of the Trade Marks Rules 1951 - 1971 have been impliedly repealed by s. 2(1)(iii) of the Advocates Law, Cap. 2 (inserted by s. 2 of Law No. 40 of 1975 and amended by s. 2 of Law 98 of 1984) and the Advocates Rules 1985 in so far as the Trade Marks Law and the Trade Marks Rules refer to the appointment of an agent and his authorization 'in the prescribed manner' with a view to applying for the registration of trade marks or patents and the appearance before any administrative authority for the  
25 aforesaid purpose.

30 2. The trial Judge erroneously held that s. 60 of the Trade Marks Law, Cap. 268 and Rule 14 of the Trade Marks Rules 1951-1971, in so far as they refer to the appointment of an agent and his authorization with a view to applying for the registration of trade marks or patents and his appearance before any administrative authority for this purpose, are so inconsistent and repugnant to the provisions of 'practising as an advocate' set out in s. 2 of Law No. 40 of 1975, as amended by Law No. 94 of 1984 that the two enactments are  
35 incapable of standing together.

40 3. The trial Judge erroneously held that once a person or a firm cannot appoint an agent with a view to acting on his behalf in relation to the registration of the person's or firm's trade mark or patent, but he has to appoint an advocate, it is

only reasonable to expect that such authorization should not be in the form envisaged by Rule 14 of the Trade Marks Rules for an agent, but in the form envisaged by the Advocates Rules for the authorization of an advocate, such form being regulated by rule 18 of the Advocates Rules, 1985.

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4. The trial Judge failed to make a finding as to whether the relevant provisions of the Stamp Law of 1963 as amended have also been impliedly repealed. Alternatively assuming that the trial Judge did make such a finding by necessary implication such finding is wrong.»

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Counsel for the respondents on the other hand submitted that the provisions referring to authorization of an agent to apply for registration of a trade mark or a patent and the requirement for stamping such authorization is repugnant to the Advocates Law and cannot apply in the present case. Any provisions requiring such authorization, counsel submitted, have been repealed by implication as very rightly found by the trial Judge whose decision should be affirmed.

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The construction of the relevant sections in the Trade Marks Law and the Advocates Law, hereinabove referred to, came up for consideration before this Court for the first time in the case of *SABA and Another* (supra) in which L. Loizou, J. concluded that section 60 of the Trade Marks Law, Cap. 268 and Rule 14 of the Trade Marks Rules, 1951 - 1971, have been impliedly repealed by the Advocates (Amendment) Law, 1975. We read the following in the aforesaid judgment at pp. 158-159:-

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«Under paragraph (iii) of s. 2 of the Advocates (Amendment) Law, 1975, the registration of trade marks or patents on behalf of a client and the appearance before any administrative authority for the aforesaid purposes comes within the meaning of the definition 'practising as an advocate'; and under s. 11 of the Law it is prohibited for any person to practice as an advocate unless he is enrolled as such, he has taken out an annual licence and he has paid in the Advocates' Pension Fund all sums due by him; and any person who practices as an advocate without being registered or who is not in possession of an annual licence in force is guilty of an offence. It is clear from the above that under the provisions of the Advocates Law no person other than an

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5 advocate can act on behalf of a client in relation to the registration of a trade mark or patent. The dictionary and ordinary meaning of the word 'client' is one who gets help or advice from a lawyer or any professional man. In deciding, therefore, whether this restriction regarding the registration of a trade mark or patent is applicable in any given case it is necessary to decide what the relationship of the proprietor of the trade mark and the person who acts on his behalf is. As stated earlier on the Trade Marks Law and the rules made thereunder allow registration of a trade mark by a duly authorized agent acting on behalf of the proprietor; can it then be reasonably argued that an agent so acting practices as an advocate? I think that, where the true relationship is that of principal and agent, the answer must be in the negative.

15 The word 'agent' in its wider signification and in a general sense may apply to anyone who by authority performs, in a representative capacity, an act for another. But in the legal sense an agent is primarily a person employed to bring about business relations between the principal and third persons. A sort of conduit pipe connecting the two other parties.

20 Under the Trade Marks Law there is nothing to prevent the proprietor of a trade mark to appear in person like any litigant in civil proceedings and do any act in relation to his trade mark and I do not think that it may reasonably be argued that he cannot authorize an agent to act for him in this respect. But this always on the assumption that the relationship between the two is that of principal and agent.

25 Having come to this conclusion and in the light of the legal provisions on the point to which I have referred I do not feel constrained to hold that the relevant sections of the Trade Marks Law and the Trade Marks Rules have been impliedly repealed by the provisions of the Advocates (Amendment) Law, 1975»

30 The learned trial Judge in the present case after he had dealt with the relevant provisions found as follows:-

35 «..... I feel that I should go further and say that section 60 of the Trade Marks Law, Cap. 268 and Rule 14 of the Trade Marks Rules 1951-1971 have been impliedly repealed by section 2(1)(iii) of the Advocates Law, Cap.

2 (inserted by section 2 of Law 40/75 and amended by s 2 of Law 98/84) and the Advocates Rules 1985 (vide Κ.Δ.Π 821/85 of 13/85), in so far as the Trade Marks Law and the Trade Mark Rules refer to the appointment of an agent and his authorization 'in the prescribed manner' with a view to applying for the registration of Trade Marks or patents and the appearance before any administrative authority for the aforesaid purpose

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As a general rule the Courts do not favour repeal of an enactment by implication unless the original enactment is so inconsistent or repugnant to the latter, so that the two enactments are incapable of standing together (vide Halsburys Law of England 4th ed Vol 44, para 966 - *Herodotou v The Republic* (1985) 3 C L R 1768 at p 1778) and concluded as follows -

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In the case under consideration I hold the view that s 60 of the Trade Marks Law, Cap 268 and Rule 14 of the Trade Marks Rules 1951 - 1971, in so far as they refer to the appointment of an agent and his authorization with a view to applying for the registration of trade marks or patents and his appearance before any administrative authority for this purpose, are so inconsistent and repugant to the provisions of 'practising as an advocate set out in s 2 of Law 40/75 as amended by Law 98/84 that the two enactments are incapable of standing together, therefore in this respect the maxim 'Leges posteriores contrarias abrogant' applies and in consequence under the provisions of the Advocates Law - Law 40/75 as amended - no person other than an advocate can act on behalf of a client in relation to the registration of a trade mark or patent (vide SABA case - supra)

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Now, once a person or a firm cannot appoint an agent with a view to acting on his behalf in relation to the registration of that person's or firm's trade mark or patent, but he has to appoint an advocate, it is only reasonable to expect that such authorization should not be in the form envisaged by Rule 14 of the Trade Marks Rules for an agent, but in the form envisaged by the Advocates Rules for the authorization of an advocate and such form is regulated by Rule 18 of the Advocates Rules 1985 (Κ.Δ.Π. 82/85 of 1.3.85) Furthermore Rule 19 of the Advocates Rules provides for the stamping of

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such an authorization to an advocate in 'advocates stamps' and not in ordinary stamps.»

We share the view expressed both in *SABA* case (*supra*) and the learned trial Judge in the present case, that section 60 of the Trade  
5 Marks Law, Cap. 268 and Rule 14 of the Trade Marks Rules in so far as they refer to the appointment of an agent and his authorization with a view to applying for the registration of Trade  
Marks or patents and his appearance before any administrative authority for this purpose were impliedly repealed by section  
10 2(1)(iii) of the Advocates Law, Cap. 2, and that compliance by the advocate concerning stamping of the authorization in accordance with the Advocates Law was sufficient in this case.

In the result this appeal fails and is hereby dismissed with no costs.

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