



ANDREAS NEOCLEOUS & CO

Advocates & Legal Consultants



INTELLECTUAL PROPERTY



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Our Intellectual Property department

The importance of Cyprus as an international commercial centre has greatly increased following the accession of the island to the European Union on 1 May 2004. There is a corresponding increase in the need to protect intellectual property rights in Cyprus.

Andreas Neocleous & Co., established in 1965 and now one of the largest law firms in southern Europe and the Middle East, is the first law firm in Cyprus to provide a full service in the specific field of intellectual property, from trade mark registration to international litigation.

Our philosophy is to recognize each client, individual or corporate, local or international, as unique, with particular business concerns. We offer a broad range of services individually tailored to the requirements of each client and we exercise a personal commitment to all of them. Our aims are to understand their objectives quickly, to protect their interests and to deliver effective solutions by means of clear and practical legal advice and action, based on expertise and experience.

The firm's Intellectual Property department is based at our Nicosia office in the same building as the Registrar of Companies, Trade Marks & Patents, allowing us to deliver a rapid and efficient service. The department has been working on trade marks, patents, trade names, copyright and designs successfully for many years, and has established long-term relationships with many international law firms and specialists.

The department has particular expertise in the following areas:

- Registration and renewal of trade marks (including EC Trade Marks), patents (national, European and international), industrial designs (including EC Designs) and copyrights;
- Search and investigation services;
- Trade mark watching and infringement services;
- Technology transfer agreements;
- IP arbitration and mediation;
- Trade mark oppositions, cancellations and counterfeiting actions;
- Litigation of other IP rights;
- Valuation of IP rights in assignments, mergers or acquisitions; and
- Counselling on licensing and franchising.

The department is staffed by highly qualified professionals who undertake on-going research to ensure that they remain informed about the latest developments in the protection of intellectual property rights. Allow us to introduce ourselves:

Elias Neocleous, born 1968, Limassol, Cyprus. He graduated from Oxford University in 1992 and is a Barrister of the Inner Temple. He was admitted to the Cyprus Bar in 1993. He is a Founder Member of the Franchise Association of Greece, a member of the International Bar Association, International Tax Planning Association and an Honorary Member of the Association of Fellows and Legal Scholars of the Centre for International Legal Studies. Mr Neocleous is a partner of the firm and Head of its Corporate Department, and his main areas of practice are Intellectual Property Law, Tax and Corporate Law, Trusts and Estate Planning, International Trade, Finance Law and Securities. He is a co-author of *Introduction to Cyprus Law* by Andreas Neocleous & Co. (2000)

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Nicholas Ktenas, born 1974, Nicosia, Cyprus. He graduated from Sheffield University in 1997 and obtained his LL.M in European Law from Nottingham University in 1998. He was admitted to the Cyprus Bar in 1999. His main areas of practice are Intellectual Property Law, Company Law, Contract Law and Employment Law. He is the co-author of the Cyprus chapter in *Trademark Practice & Forms* published by Oceana Publications Inc., April 2003.

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Elena Papachristoforou, born 1978, Limassol, Cyprus. She graduated from Sheffield University in 1999 and obtained her LL.M in Commercial and European Law in 2001. She was admitted to the Cyprus Bar in 2001. Her main areas of practice are Intellectual Property Law, European Union Law and Company Law. She is the co-author of the Cyprus chapter in *Trademark Practice & Forms* published by Oceana Publications Inc., April 2003.

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The litigation in intellectual property rights is conducted by:

Christos Melides, born 1954, Nicosia, Cyprus. He graduated from Athens University in 1980 and was admitted to the Cyprus Bar in 1981. He is a member of the International Academy of Matrimonial Lawyers.

Mr Melides is a partner of the firm and Head of Team Four in its Litigation Department, which deals with intellectual property matters, land law, rent control and compulsory acquisition, construction disputes, torts and breaches of contracts, administrative law and criminal law. His main areas of practice are General Commercial and Civil Litigation, Administrative Law and Matrimonial Law and Intellectual Property Law. He is a co-author of *Introduction to Cyprus Law* by Andreas Neocleous & Co. (2000)

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Trade Marks

The registration and protection of marks in relation to goods and services is governed by the Trade Marks Law, Cap 268, as amended by Laws 63/62, 69/71, 206/90 and 176(1)/2000, and by the Regulations of 1951-1992 as amended. The international classification of goods applies whereby goods and services are categorized into 34 classes and 8 classes respectively.

Application for registration

To register a mark, an applicant or a lawyer licensed to practise law in Cyprus must file with the Trade Marks Registrar a full application containing all relevant details, including the name, address and occupation of the applicant, the name and/or picture of the mark and a form signed by the applicant authorizing the lawyer to file the application.

Examination of the application by the Registrar

On receipt of the application the Registrar appoints a filing date, allocates a number to the mark and conducts a search to establish the registrability of the mark. Where the mark is not registrable, the Registrar may either object to such registration or impose conditions.

If the conditions imposed by the Registrar are not satisfied, the application may be rejected. If the Registrar refuses the registration, the applicant may apply for judicial review of the decision under Article 146 of the Constitution, to the Supreme Court of Cyprus in its revisional jurisdiction.

Registration

When the Registrar has accepted the application, whether absolutely or conditionally, the mark will be registered and its registration will be advertised in the Official Gazette issued by the Republic of Cyprus.

Any person may, within two months from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration. After the filing of the opposition, the Registrar sends a copy of the notice to the applicant who on receipt must file, in the prescribed manner, a counter-statement of the grounds on which he relies for his application. If the applicant files such a counter-statement, the Registrar must deliver a copy to the person giving notice of opposition and after hearing the parties and considering the evidence, must decide whether and subject to what conditions, if any, registration is to be granted.

Protection against infringement

If a person infringes the registered mark of another person and refuses and/or fails to stop after the infringement has been drawn to his attention, an action can be brought to restrain that infringement. The relief available takes the form of an injunction restraining the further use of the mark by the unauthorized party and/or an inquiry as to damages.

Duration of registration and protection

Trade marks are registered for an initial period of 7 years, and may be renewed on application for 14 years periodically.

Community Trade Mark

Following its accession to the European Union on 1 May 2004, it is expected that Cyprus will become a full member of the Office of Harmonization of the Internal Market (Trade Marks and Industrial Designs). The office was set up in 1994 and is the competent European Union agency for the registration of trade marks and industrial designs. Since 1 May 2004, applications for the registration of Community Trade Marks (CTMs) may be filed directly with the Registrar of Trade Marks in Cyprus, while all CTMs registered or applied for before the date of accession will automatically be extended to Cyprus. (Council Regulation 40/94 on the Community Trade Mark).

The registration of a Community trade mark by Andreas Neocleous & Co has many advantages, including:

- Fast application process
- Low fees
- Unparalleled experience
- Established relationships with many international law firms and IP professionals
- Comprehensive personalized service

Trade Mark Protection

The filing of trade marks is necessary to obtain protection.

We file :

- Cypriot trade mark applications; and
- International applications (Madrid system)
- Community Trade Marks

In other countries, we prepare and file trade mark applications via a network of associates, always under our direct supervision.

Patents

In Cyprus, the registration and protection of patents is regulated by the Patents Law 16(I)98, as amended by Laws 21(I)/99, 153(I)/2000 and 163(I)/2000 and by the relevant patent regulations of 1999 and 2000 (the Regulations).

Application for registration

To register a patent, an applicant or a lawyer licensed to practise law in Cyprus must file a full application with the Patent Registrar on behalf of the applicant. This application is written in Greek, using the prescribed form P9 containing all the relevant details including:

- a request for a patent to be granted;
- the name, address and nationality of the applicant, the inventor and the representative;
- the title of the invention in a summary form which must be accurate and precise and must state the item or use to which the invention is related ;
- something which prima facie appears to be a description of the invention for which the patent has been applied ;
- something which prima facie appears to be a claim or claims, which must be presented in the manner prescribed by law and must state in detail, free from any inaccuracies or ambiguities, the extent of the protection to be conferred by the application for a patent or the patent itself;
- any drawings referred to in the description or claims; and
- an abstract of the invention, i.e. a comprehensive and succinct summary, in no more than 150 words, of the matters included in the description of the invention.

Examination of the application by the Registrar

Once the application has been filed with the Registrar and the relevant fees paid, the application will be forwarded to an examiner to determine whether it complies with all the requirements contained in the Law and the Regulations. The examiner will then submit his findings to the Registrar. The application is published in the Official Gazette, eighteen months from the date of filing or from the priority date of the application.

Where the application filed is not in compliance with the provisions of the Law, the applicant will be given an opportunity to make observations on the report of the examiner and to make any necessary amendments before the Registrar decides the

fate of the application. If no problems or complications arise, the applicant must then file within the prescribed period a search report prepared by a prescribed authority which must mention those state-of-the-art matters which must be taken into consideration to ascertain whether the subject matter of the application refers to an invention capable of patent protection, according to the provisions contained in the Law.

Registration

When an application is accepted, the Registrar will grant a patent on the basis of the application, upon payment of a fee. The Registrar will then issue a patent certificate, which will be advertised, with the search report, in the Official Gazette.

If the Registrar does not give his consent to the grant of a patent, the applicant may apply for judicial review of the decision, under Article 146 of the Constitution, to the Supreme Court of Cyprus in its revisional jurisdiction.

Protection against infringement

Once a patent has been registered and a certificate of registration granted and published, any persons other than the patentee are expressly prohibited from manufacturing, selling, importing or otherwise commercially exploiting either the patented product or the product obtained by the patented process. In the event of infringement the patentee may bring an action in court seeking an injunction and/or damages.

The most important grounds upon which any action for infringement of a patent may be defended are that:

- the patent is not for an invention within the meaning of the Law;
- the invention was not novel;
- the invention was obvious;
- the invention is not capable of industrial application;
- the invention belongs to a category of excluded subject-matter such as methods of treating humans and animals;
- the claims of the complete specification are ambiguous;
- the complete specification is insufficiently explicit; or
- the application for the patent was not in order;

Duration of registration and protection

A patent granted in accordance with the Law lasts for a period of 20 years from the date of the filing of the application. The maintenance of a patent is subject to annual renewal and to the payment of renewal fees.

Exhaustion of rights

The Law is in line with European Union case law, setting limits on the rights granted to patent owners. For example, once a product has been put on the market by the patent owner or with his express consent, he cannot restrict the use or the resale of the product, nor can he prevent private acts that do not substantially affect the financial benefit of the right holder, i.e. acts done for non-commercial purposes.

Priority rights

The Law contains provisions for priority rights in accordance with the Paris Convention for the Protection of Industrial Property for patent applications already filed with other signatory states. When filing a patent application claiming priority in one or more previous states, for regional or international applications filed by the applicant in any state which is a signatory to the Convention, the applicant must submit, within the prescribed time limit, a copy of the initial application, certified by the relevant authority with which the initial application was filed, or in the case of an international application filed according to the Patent Co-operation Convention, by the International Bureau of the World Intellectual Property Organization.

Patent protection

The filing of patents is necessary to obtain protection.

We file :

- European patents with the European patent Office
- International patents under the Patent Cooperation Treaty (PCT)

Trade Names

Trade names may be registered in Cyprus under the provisions of the Partnerships and Business Names Law, Cap.116.

Application for registration

Registration of a trade name is effected by sending to the Registrar of Companies, within one month of the date on which the business in Cyprus is commenced, an application containing the following particulars:

- the business name,
- the general nature of the business,
- the principal place of business in Cyprus,
- the date of commencement of the business, and
- the name, residence and nationality of the applicant.

Examination of the application by the Registrar

The Registrar may refuse to register a business name, which is comparatively similar to an existing one or is considered to be misleading or confusing.

Registration

After the name has been entered in the Register, it is published in the Official Gazette.

Protection against infringement

In the event of infringement of the business name by a third party, the only remedy is an action for passing off under s.35 of the Civil Wrongs Law, Cap 148, claiming damages and/or an injunction.

Duration of registration and protection

Once registered, a trade name remains on the Register until an application for removal is filed by the trader. Section 57 of the Partnerships and Business Names Law provides that where a firm, individual or corporation has registered a trade name and ceases to carry on business, the Registrar must be informed within one month after the business has ceased. The Registrar will then remove the trade name from the Register.

Copyright

Copyrights in Cyprus are regulated by the Right of Intellectual Property Law, 59/76, as amended by Laws 63/77, 18/93, 54(I)/99, 12(I)/2001, 128(I)/2002 and 128(I)/2004. Rights are recognized under the Law for every protected object whose beneficiary or if there is more than one beneficiary, any one of them is at the time of the creation of the right, or if it is a broadcast, the time of the transmission of the broadcast, a qualifying person, namely-

- a person who is a citizen of the Republic of Cyprus or who habitually resides in the Republic
- a legal person, established in accordance with the laws of the Republic, or
- a citizen of another Member State of the European Union.

Protection against infringement

The Right of Intellectual Property Law provides remedies for copyright infringement. For the criminal offences listed in the Law, penalties include a fine or imprisonment for up to three years. In addition, the court may order copies of the work in the possession of the alleged offender to be destroyed or delivered to the owner of the copyright. Civil remedies include damages, destruction or delivery of infringing copies and the equipment by which copies are produced, an account of profits and an injunction.

Duration of registration and protection

Copyright exists in

- scientific works, literary works including computer software, musical works, artistic works including photographs and an original database for a period of 70 years, commencing from the death of the author
- films, for a period of 70 years, commencing from the death of the last survivor of the following, irrespective of whether they have been appointed conventionally, or are considered by law, as co-creators:
 - producer
 - primary director
 - script writer
 - screen play writer
 - music composer who composes music specially for the film

Designs

The Protection of Industrial Designs and Samples Law, 4(I)/2002, was enacted to harmonize the protection of designs with the standards of the European Union. It accordingly applies to designs and samples registered with the Registrar of Companies or under International Conventions ratified by Cyprus.

Application for registration

To register a design or sample, a lawyer licensed to practise in Cyprus must file with the Registrar on behalf of the applicant:

- a fully completed application containing, all relevant details, e.g. full name, nationality and address of the applicant;
- the specification of the article to which the design or sample is to be attached; and
- a written or photographic representation of the design or sample that can be produced.

Registration

For a design to be registered and protected it must be novel, and it must be filed according to the provisions of the Law.

Priority registration

Priority registration may be claimed if the first application for registration in a Convention country was filed within six months from the date of filing in Cyprus.

Protection against infringement

If a person infringes the registered design or sample of another person and refuses and/or fails to stop after the infringement has been drawn to his attention, a civil action can be brought to prevent the infringement. The relief usually sought is an injunction restraining the further use of the design or sample by the unauthorized party and/or a claim for damages.

Duration of registration and protection

A registered design or sample can be protected for periods of 5 years from the date of registration, for a maximum of 25 years.

Community registered and unregistered designs

As with the Community trade marks, from 1 May 2004 applications for the registration of Community designs may be filed directly with the Registrar of Trade Marks in Cyprus, while all Community designs registered, protected or applied for before the date of accession will be automatically extended to Cyprus (Council Regulation 6/2002 on Community Designs, Commission Regulation 2245/2002 implementing Council Regulation 6/2002 and Commission Regulation 2246/2002 on the fees payable to the Office of Harmonization of the Internal Market (Trade Marks and Industrial Designs) in respect of Community designs).

The present design regulations offer exciting possibilities for protection for designers. The number of items which can be protected is extremely large. Although design legislation is complicated, in some ways it is similar to the Community Trade Mark legislation.

Andreas Neocleous & Co

DESCRIPTION OF SERVICES	Our Fees (CYP£)	Official Fees (CYP£)	Total (CYP£)
PRELIMINARY WORK			
a. Inspecting the Register of Trade Marks and carrying out a search as to registrability of one mark in one class of the Register	55.00	10.00	65.00
b. Inspection and search for each additional mark or for one mark in a different class	55.00	5.00	60.00
APPLICATION AND REGISTRATION			
a. Application for the registration of one mark in one class	175.00	15.00	190.00
b. Each additional application filed at the same time for same mark in other classes, per class	75.00	15.00	90.00
c. Each additional application filed at the same time for different mark by the same applicant	80.00	15.00	95.00
d. Publication in the Official Gazette	60.00	10.00-30.00	70.00-90.00
e. Issuing the Certificate of Registration	60.00	20.00	80.00
SERVICES RENDERED IN THE EVENT OF A DISPUTE OR REFUSAL OF REGISTRATION OF A MARK			
a. Filing an objection to the registration of a mark	50.00	15.00	65.00
b. Appearance before the Registrar of Trade Marks	50.00	20.00	70.00
c. Notice of objection	50.00	15.00	65.00
d. Reply	50.00	10.00	60.00
e. Each affidavit necessary to support the objection or the reply	50.00-150.00*	—	50.00-150.00*
f. Hearing before the Registrar	100.00	20.00	120.00
g. Preparing and filing a written address to the Registrar	150.00-250.00*	10.00	160.00-260.00*
h. Obtaining consent of the owner of a similar mark for registration of the mark	50.00	—	
RENEWAL OF THE REGISTRATION OF A MARK			
Renewal including a search in the Register of Trade Marks	100.00	45.00	45.00
ASSIGNMENT			
Registration of assignment	250.00	30.00	280.00

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DESCRIPTION OF SERVICES	Our Fees (CYP£)	Official Fees (CYP£)	Total (CYP£)
REGISTRATION OF USERS			
a. Application for registration of a registered mark	75.00	35.00	110.00
b. Application for registration of an unregistered mark	100.00	35.00	135.00
c. Each additional application for registration filed at the same time by the same applicant	65.00	35.00	100.00
OTHER			
a. Change of name and address of applicant	50.00	5.00	55.00
b. Amendment of mark registration	50.00	10.00-20.00	60.00-70.00
c. Cancellation of registration	50.00	—	
PATENT FEES			
a. Filing a national patent application	1000.00 plus VAT	100.00	
b. Filing an international patent application (PCT)	1500.00 plus VAT	1200.00	
DESIGN FEES			
a. Filing a national patent application	1000.00 plus VAT	100.00	
b. Filing an international patent application (PCT)	1500.00 plus VAT	1200.00	

* Depending on the complexity of the case

NOTES

- The figures are exclusive of VAT, the rate of which is currently at 15%.
- Stamps, travel and courier expenses, photocopying and international telecommunications etc are all charged in addition to the fees stated above.
- The above fees do not include our fees for the translation of documents or for any additional services rendered, which are calculated on an hourly basis. Legal work is predominantly charged on the basis of hourly rates which range as follows:
 - Junior Advocate US\$ 120.00 - 150.00
 - Senior Advocate US\$ 150.00 - 180.00
 - Partner US\$ 180.00 - 220.00

