

**H&M's COS mark not confusingly similar to Greek island of Kos  
Switzerland - Meisser & Partners AG**

**Examination/opposition  
National procedures**

March 26 2015

The Swiss Federal Administrative Court has overturned a decision of the [Federal Institute of Intellectual Property](#) (IGE) in which the latter had refused to register the trademark COS in the name of [H&M Hennes & Mauritz AB](#) in Classes 14, 18, 25 and 35 of the [Nice Classification](#) on the ground that the sign belonged to the public domain (as it described the Greek island of Kos) and would be deceptive if the goods did not originate from Greece ([Case B-3149/2014](#), March 2 2015).

H&M is the owner of the international trademark COS (No 1015628) in Classes 14, 18, 25 and 35:



H&M sought to extend the trademark to Switzerland. On March 25 2013 the IGE refused protection, stating that the trademark corresponded to the name of the Greek island of Kos and, in addition, would be deceptive if the goods did not originate from Greece. On June 6 2014 H&M filed an appeal against the refusal to allow the registration of the trademark for the territory of Switzerland. It stated that COS would not be known as an island but, rather, would be understood as a coined sign. In this respect, H&M filed further evidence of use of the trademark.

The Administrative Court first examined whether the trademark COS would be understood as referring to the Greek island of Kos. It qualified Kos as a very popular holiday destination, but stated that basically no industrial production takes place there. As the island is very popular with Swiss tourists, the island *per se* would be known to the relevant public. Therefore, it would be likely that COS would be understood as referring to the holiday island. Since, in theory, it was at least possible to produce the claimed goods there, the island could be perceived as a place of manufacture for the goods.

However, the Administrative Court then stated that COS could be understood not only as referring to the Greek island of Kos, but also as the abbreviation for the mathematic formula 'cosine', or as the abbreviation of the English word 'because'. Further, it appeared that COS could also refer to the expression 'Collection of Styles' (as used by H&M). Further abbreviations (26 in total) were cited by the court. Since the evidence filed by H&M showed a very intensive use (of the design mark) and sales amounting to millions, the court came to the conclusion that it was likely that the abbreviation of 'Collection of Styles' would prevail; therefore, no link to the Greek island of Kos would be made. The court thus allowed the registration of the trademark for the territory of Switzerland.

This is an interesting decision, as the courts usually examine trademarks as registered, and evidence of use is generally considered only to prove secondary meaning. With this decision, the strict approach of the IGE has once more been overturned. The decision is not yet final and may be further appealed to the Swiss Supreme Court.

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