

CYPRUS

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LUXURY LAW
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1. TRADEMARK

1.1 Sources of law

The principal sources of law and regulation governing the registration and protection of trademarks in Cyprus are the Cyprus Trademarks Law, Cap. 268 and the Trademarks Regulations, as amended.

On June 2020, the Cyprus Parliament passed the new trademarks law incorporating the EU Trademarks Directive (Directive (EU) 2015/2436) into national law, which, as a result, simplifies the procedures pertaining to the registration, administration and handling of a trademark.

The following additional laws are also relevant to trademarks legislation:

- The Control of Movement of Goods Infringing Intellectual Property Rights Law No. 61(I)/2018. The authority responsible for this is the Customs Department. This legislation confers exclusive competence in the handling of goods infringing intellectual property rights, especially when there is a *prima facie* suspicion that the goods infringe trademarks and/or any other intellectual property right.
- The Trademark Law Treaty Ratifying Law No. 12(III)/1996 is the main treaty which aims to standardize the procedure for registering a trademark in multiple jurisdictions.
- The Madrid Agreement as well as the Madrid Protocol - their aim is to provide a cost-effective system for obtaining and maintaining trademark registrations across 122 countries.
- The Nice Agreement. Under this treaty each of the countries party to this Agreement has classified the goods or services for which the trademarks are registered.

Following the new amendments to the Trademarks Law, use as a source of trademark rights is recognized. Cyprus has harmonized its law with article 6(2) of the Trademark Directive about earlier rights. Earlier rights may be established even if a trademark is not registered but an application for it has at least been filed.

The main difference between the non-registered and registered trademarks is that the owners of the non-registered trademarks have no right to file an infringement action.

However, owners of unregistered marks are free to bring a passing-off action against any party which passes off its goods as those of the rights holder and to claim damages in respect thereof.

1.2 Substantive law

Cypriot law does not distinguish between famous trademarks, well-known trademarks and trademarks with a reputation. All trademarks are treated the same and there is not a broader range for protection for a specific “luxury industry” in Cyprus.

1.3 Enforcement

A trademark can be enforced against a domain name.

Trade names are protected under different legislation, namely the Partnerships and Business Names Law.

To date, the IP Department in Cyprus has not examined a case against the unauthorized use in social media. However, if a trademark is being used by a third party on social media without consent, the question for the brand owner is whether it actually presents a real problem to the owner.

The owner should think twice as to whether to proceed with any actions against those who use the trademark in social media since it will be very difficult to identify who is behind the infringing material as social media accounts can be set up anonymously.

An unauthorized use of a mark in comparative advertising would be liable for trademark infringement. However, the law recognizes the benefit of competition in several laws and regulations within EU member-states. Those provide an exemption for use of a third party's trademark in lawful comparative advertising. A comparative advertisement should:

- not be misleading;
- compare goods or services meeting the same needs or intended for the same purpose;
- objectively compare one or more material, relevant, verifiable and representative features of those goods and services, which may include price;
- not discredit or denigrate the competitor or its trademarks;
- for products with designation of origin, relate in each case to products with the same designation;
- not take unfair advantage of the reputation of the competitor's trademark;
- not present goods or services as imitations or replicas; and
- not create confusion among traders, between the advertiser and a competitor, or between the advertiser's trademarks, trade names, other distinguishing marks, goods or services and those of a competitor.

2. COPYRIGHT

2.1 Sources of law

In Cyprus, copyrights are governed by the Intellectual Property Rights Law No. 59/76 as amended, the Berne Convention, Geneva Convention, Paris Convention, Rome Convention, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

Apart for the provisions of EU Law, national laws and international treaties governing Intellectual Property rights, precedents from case law are of equal importance. Cases and the decisions by the competent court in the Republic of Cyprus and in the European Union in general provide the guidance for lawyers in intellectual property practice to navigate throughout the relevant concepts and legal doctrines of the copyright laws. Case law shows how right holders are enforcing their intellectual property in the EU. This information is crucial for practitioners, judges and law-makers and provide clear interpretations adopted by the competent courts of Member States and of the Republic of Cyprus in particular and how these legal principles should apply in real life business,

commercial, industrial, artistic and educational aspects of society. Furthermore, these judgments relate to the application of enforcement-related measures or procedures in IP rights infringement cases, and are considered to be key when they provide a new trend or development in jurisprudence.

In the event where a conflict between the relevant sources of laws arises, the European Law will preside over the national law of the Republic of Cyprus since the latter is a member state of the European Union.

2.2 Substantive law

Copyright protects the following types of works:

- **Scientific works.** They are works of scientific nature irrespective of their value or standard as scientific works.
- **Literary works.** Irrespective of its literary value or standard, literary works include fiction, novels, poems, plays, stage directions, scenarios for cinematography films, broadcasts, treatises, historical works, biographies, essays, articles, encyclopedias, dictionaries, correspondence, memoranda, lectures, speeches, computer software.
- **Musical works.** Copyright protects a musical work irrespective of its musical value or standard.
- **Artistic works.** Irrespective of their artistic value or standard, artistic works are paintings, drawings, works of metallography, lithographs, wood engravings, engravings, printing works, geographical maps, sketches, graphs, sculptural works, photographs, works of architecture.
- **Cinematography.** Films, audiovisual productions, motion pictures, with or without sound.
- **Databases.** Organized collections of works, data or independent elements.
- **Sound recordings.**
- **Radio and television broadcasts.**
- **Publishing of previously unpublished works.**

When copyright expires the individual who legally published a previously unpublished work becomes holder of the copyright and is thus entitled to all the intellectual property rights and benefits of the creator.

There are two approaches when it comes to copyrights: the open list and closed list. The Republic of Cyprus, in terms of copyrights, offers a closed list approach. By closed list, jurisdictions like United Kingdom, Australia, India and Cyprus attempt to elaborately outline the contours of different categories of subject-matter protectable under its copyright regime (for example literary works, artistic works, musical works, and so on), by legislation that exhaustively lists categories of works which cumulatively designates what can be afforded copyright protection.

For an object of industrial, fashion or accessory design to be eligible for protection, it generally needs to be both “new” and to have an “individual character”. Law 4(I)/2002 specifies the following requirements:

- **Novelty.** Section 4(2) provides that a design is considered to be new if, up to the filing or priority date, no identical design or sample has been disclosed to the public. “Identical” designs or samples are those whose characteristics differ only in minor details.

- **Individual character.** Section 4(3) provides that a design or sample has individual character if the overall impression it makes on the informed user differs from that made by a design or sample which is disclosed to the public before the filing or priority date. In order to appraise the individual character of a design or sample, consideration is given to the degree of free will of its creator at the time of its creation.
- **Disclosure to the public.** Section 4(4) provides the definition of disclosure to the public. A design or sample is considered to have been disclosed if it has been:
 - published, through its filing or by any other means; or
 - exposed; or
 - used in commerce; or
 - disclosed in any other way, however, disclosure will prevent a design from receiving protection only when it is used during normal business practice in the area concerned by professionals who operate either within Cyprus or the European Union, before the filing date of the application or the priority date.

Additionally, a design or sample is not disclosed to the public when it is disclosed to someone under an explicit or implicit term. When the design has been disclosed by its creator, beneficiary or a third party acting on their behalf, within the twelve-month period before the filing or priority date, this does not invalidate novelty, according to section 4(5)(a). This also applies when the disclosure has taken place as a result of abusive misconduct against the creator or the beneficiary.

Copyright protects two types of rights:

- Economic rights allow right owners to derive financial reward from the use of their works by others.
- Moral rights allow authors and creators to take certain actions to preserve and protect their link with their work.

The Berne Convention, in Article 6, requires its members to grant authors the following rights:

- the right to claim authorship of a work (sometimes called the right of paternity or the right of attribution); and
- the right to object to any distortion or modification of a work, or other derogatory action in relation to a work, which would be prejudicial to the author's honor or reputation (sometimes called the right of integrity). Unlike economic rights, the moral rights stay with the author and cannot be waived or assigned.

Copyright can be transferred by assignment as movable property. An assignment can be limited to some of the acts the copyright owner has the exclusive right to control, to part of the period for which the copyright is to subsist, or to a specified country or other geographical area. An assignment can be effectively made in relation to a future work, or an existing work in which copyright does not yet subsist. Copyright can only be assigned by waiver or by will. Waiving of copyright under a private agreement cannot be valid. An assignment of copyright can only be valid if it is in written format (Article 12(6)).

In contrast to the economic rights under copyright, moral rights cannot be sold or assigned to another person (moral rights are the right to be identified as the author of the work or to object to derogatory treatment or to a distortion or mutilation of the work, to protect the personality and reputation of authors).

The duration of protection is determined by reference to the nature of the author as well as the type of work under protection. For example, copyright protection over a literary work created by a natural person subsists for 70 years from the end of the calendar year of the author's death (see www.thelawreviews.co.uk/title/the-intellectual-property-review/cyprus#footnote-019). If the author of the work is a legal person, protection subsists for 70 years from the end of the calendar year of the time the work was first published. Broadcasts are protected for 50 years from the date of the broadcast.

2.3 Enforcement

Registration of copyrights is not required to enforce a copyright, although it is highly recommended. Having the copyrights registered enables the owner to bring an action for copyright infringement. If the copyright is not registered and it is infringed, the owner must first register the copyright to be able to bring a Court action, since its registration satisfies the requested level of proof that the work is validly protected. Registration also provides notice to the public that the work is protected by copyright, and if they wish to 'borrow' the work, they must first receive permission from the owner, creating a 'license to use'.

Industrial designs are protected by Law 4(I)/2002, the Paris Convention and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). For an industrial design to be eligible for protection, the design must be new and present individuality in such a way that the informed user will not consider the design as similar to a design that is already known to the public.

Protection may be renewed for a period of 25 years upon payment of the relevant fee.

EU copyright law does not (expressly) provide a defence for copyright infringement. Advertisers that use competitors' logos are therefore at risk of infringing the rights in those logos.

Following recent developments in copyright law, which have arguably extended the scope of copyright protection to works that previously would not have benefitted from copyright protection, including images of products, could also carry risk.

Since copyright law prohibits the substantial use of a copyrighted work without permission of the copyright owner, and because such permission is highly unlikely when the use is to create a parody, it may be necessary for the parodist to rely on the fair-use defense to forestall any liability for copyright infringement. However, the fair-use defense, if successful, will only be successful when the newly created work that purports itself to be parody is a valid parody.

Fair Use is a limitation in copyright protection. Fair use allows people to use a protected work without the owner's permission, for purposes of criticism, news, teaching, research and more.

In the fashion and luxury space, the cut or shape of garments, accessories and furniture (all of which are categorised as useful articles) are not protected by copyright and as a result the floodgates for imitations and faux products bearing identical useful articles can open and easily flood the market of luxury branding. However, certain useful articles may contain features that may qualify for copyright (and even patent) protection.

3. DESIGN

3.1 Sources of law

The Law on the Legal Protection of Industrial Designs 2002, which was implemented for the purposes of harmonizing with the European Community Act entitled "Directive 98/71 / EC of the European Parliament and of the Council of 13 October 1998 on the legal protection of designs" (OJ L 289, 28.10.1998, p. 28).

Chrysostomou v. Chalkousi & Sons (1978) 1 CLR 10 (assignment of rights can be defended by law).

3.2 Substantive law

A registered design protects the overall visual appearance of a product or a part of a product.

The protection is given to the way the product looks and the design may be two or three dimensional. The appearance of the product may result from a combination of elements such as shapes, colours and materials.

Design protection guarantees you the exclusive **right** (the holder or holders of the IP can exclude anyone else from using the IP in question) to use a design, which includes making, offering, putting on the market, importing, exporting or using the product in which your design is incorporated or to which it is applied.

For an industrial design to be eligible for protection, the design must be new and present individuality in such a way that the informed user will not consider the design as similar to a design that is already known to the public.

A design is protected by a right on a design, in accordance with the provisions of this Law, provided that:

- it is new;
- shows individuality; and
- has been registered in accordance with the provisions of this Law.

Natural or legal persons are entitled to registration of a design. A claim for registration of a design and rights from a registered design, in accordance with this Law, are provided:

- to natural persons who are nationals of the Republic of Cyprus or a Member State of the European Union or have their habitual residence in Cyprus or in the territory of a Member State of the European Union; and
- to companies and other legal entities having an actual industrial or commercial establishment in Cyprus or in the territory of a Member State of the European Union.

The creator of the design has the right to protect it, subject to the provisions of Articles 8 to 11. Whoever submits, in accordance with articles 10 and 14 the

application for registration of a design, is considered its creator, subject to the provisions of article 22 of this Law.

Transfer can take place through written agreement submitted in the Register.

When designs are created in the context of the author's employment relationship, the design rights are granted to the creator's employer, who for the purposes of this Law is considered the creator, unless the relevant contract or working conditions provide the opposite.

When the designs are created under a contract other than a contract or employment relationship, the design rights shall be granted to the contracting party that ordered the design, unless the relevant contract provides otherwise.

Cyprus law has no express provision of requirements which must be satisfied in order to assign rights of a contract, however, equity law and case law have provided guidance on the matter providing requirements and considerations. The assignee has a legal right in action whereby the assignee can autonomously claim an action in law for defending their rights, if the following apply:

- the assignment must be absolute;
- the assignment is not considered as an agent relationship; and
- consideration is not a requirement.

The right to register a design and the rights from the registered design enjoyed by the persons referred to in Articles 7, 8, and 9 may be transferred by written agreement or inherited.

Upon registration, a design which meets the requirements of Article 4 shall be protected for a period of one or more periods of five years from the date of filing of the application for registration with the Registrar. The beneficiary may, if he pays the relevant fees in accordance with the terms of Article 26, renew the term of protection for one or more periods of five years, up to a maximum of twenty-five years from the date of filing of the application.

Unregistered Design has no protection.

3.3 Enforcement

The test to assess design infringement is still a simple visual comparison between the appearances of the two designs, whether the design is so similar that it will cause confusion to the extent that one product is mistaken for the other.

The protection of an industrial design or sample grants to its proprietor the exclusive right to use the design or sample, and prohibits others from using it without his consent. The law itself defines the term "use" as including manufacture, offer, marketing, import and export and use or possession for these purposes of a product incorporating or applying the said design or sample. The above rights are not infringed by:

- private acts done for non-commercial purposes;
- acts done for experimental purposes; and
- acts done to reproduce the design or sample for educational reasons.

The above claims are barred after five years after the holder of the certificate became aware of either the infringement or the damage and the person liable to be compensated, and certainly after twenty years from the infringement.

Many sophisticated fakes are being produced with serious design infringement. It is often difficult to find the source of manufacture therefore it is

difficult to take action against the source of production. Action is taken against sellers who knowingly sell products which infringe design rights however this is not enough to offer significant protection.

4. RIGHT OF PRIVACY, PUBLICITY AND PERSONAL ENDORSEMENT

4.1 Sources of law

The law in Cyprus does recognize the right of an individual to control the commercial use of his or her name, image, likeness, or other unequivocal aspects of one's identity.

The principal sources of law relating to the right of publicity are:

- Cyprus Constitution Article 15.
- ECHR Law – European Convention on Human Rights Article 8.
- General Data Protection Regulation (GDPR) law.
- Case law of ECHR Court – *Von Hannover v. Germany* 59320/00 ECHR 2004-VI.

4.2 Substantive law

Other than being a living human no other conditions exist for an individual to own a right of publicity.

In legal terms, the General Data Protection Regulation (GDPR) and the Data Protection Act no longer apply to identifiable data that relate to a person once they have died. However any duty of confidence established prior to death does extend beyond death.

The non-commercial elements are not transmissible *mortis causa*. However, the deceased remains protected against infringements of their human dignity and serious infringements of their honour or distortion of their image. The relatives of the deceased (and not the heirs) are entitled to claim for injunctive relief and revocation. Claims for damage compensation are excluded.

4.3 Enforcement

According to article 15 of the constitution of Cyprus everyone has the right to private life therefore commercial use doesn't have to be proved. Only that consent was not given to make use of the said publicity.

As per the case against studio ENA in Nicosia, Cyprus, it was held that the claimants were entitled to an injunction in case the infringer hasn't ceased use of the content and damages.

Celebrities can sign exclusive agreements with a certain luxury brand barring them from being associated to another brand. Thus having to be very cautious when publicizing any kind of content so as to not breach the agreement.

5. PRODUCT PLACEMENT

As a general rule, product placement in Cyprus is prohibited pursuant to Article 30 Z (1) of the Law on Radio and Television Organizations of 1998 (7 (I) / 1998). There are, however, two exceptions:

- where the product placement is used in cinematographic works, films and serials for audiovisual media services, sports programs, and light entertainment programs; and
- where there is no payment but only the free provision of certain products or services, such as production facilities or awards, for the purpose of being included in a program.

In general, programmes containing product placement should meet all the following requirements:

- The content and, in the case of television broadcasts, scheduling, should under no circumstances be affected in such a way to hinder the responsibility and editorial independence of the audio-visual media service provider.
- There should be no direct encouragement to purchase or rent goods or services, particularly by making special promotional references to those goods or services.
- There should be no undue display of these products, including any close-up or prolonged display.
- The audience should be clearly informed of the existence of product placement.

There are certain types of products which are overall prohibited to be included in any broadcasts. Such products include:

- Tobacco or cigarette products.
- Specific medicinal products or therapies available in the Republic only by prescription.
- Children's toys (subject to some exceptions).
- Any other product, commodity or service, the advertising of which is not permitted under the Law.

Available remedies to brand owners in case of a breach of any relevant agreement include:

- Repudiation.
- Damages.
- Specific Performance.

It is common knowledge that luxury fashion brands are not accessible for mass consumption due to their high-price position. Nevertheless, they still develop new strategies to accumulate their profits.

The consumer world can be further analyzed by creating two sections that show the differentiation between the buyers and the need for these luxury brands to broaden their marketing strategies. On the one side, we have the leader group which consists of the '*crème de la crème*', the elite consumers who have the means to afford luxury brands. On the other side, we have the following group which is comprised of most people. Luxury brands use their marketing tactics to effectively cover the gap between the two groups, by using proper advertising without over exceeding their limited advertising budget.

In the current merchandizing world, product placement is the main form of strategy to reach their audience without the use of traditional advertising. Movies, TV, and especially social media are being bombarded with embedded marketing, which is another term for concealed marketing.

It is of extreme importance for luxury brands to track down more interactive activities between their brands and their audience through different social media platforms. Recognizing the preferences of their customers, for instance, which social media platform they use more regularly is of vital importance. However, this should be handled with caution to keep the character and standards of the brand to cater for the different standards and expectations of the two groups.

6. PROTECTION OF CORPORATE IMAGE AND REPUTATION

According to articles 1, 2 and 3 of GDPR, data protection rules only apply to personal data of natural persons; hence, data protection rules do not apply to data of legal persons such as companies or any other legal entities.

Nevertheless, information in relation to one-person companies may be subject to personal data laws where, for example, any information of such companies leads to the identification of a natural person. The rules also apply to all personal data relating to natural persons during a professional activity.

Under the Contract Law and The Law of Unfair Clauses in Consumer Contracts of 1996 (Law 93 (I) / 1996) there is no general prohibition applicable to clauses aimed at protecting the corporate image/reputation of one of the parties. If any such clauses are articulated in a manner not infringing any other laws applicable to the circumstances of a contract, then such clauses would not be in any way prohibited under Cyprus law.

Nonetheless, some EU manufacturers (especially those using SDSs to distribute their products), seek to prevent retailers from selling via online marketplaces either absolutely (marketplace or platform bans) or where those marketplaces do not fulfil certain quality criteria. Although it is arguable that these types of restraint could be used as mechanisms to reduce (rather than prohibit) cross-border trade or to limit price transparency and price competition, manufacturers frequently justify marketplace restrictions on the basis that they are necessary to:

- protect their brand image and reputation;
- combat the sale of counterfeit products;
- ensure the provision of enough pre-sale's services by retailers (including brick and mortar shops) and to prevent free riding on them; or
- protect direct customer relationships.

Brick and mortar requirements, pure online players and quality are criteria for online selling. In some cases, manufacturers wish to ensure that retailers have a brick and mortar store for the provision of pre- and post-sales services and/or to create an appropriate selling environment for their products/brands. Such a requirement will, of course, exclude pure online players from the distribution system, although a brick and mortar retailer may also sell online. A manufacturer may also wish to ensure that its retailers, whether selling off- or online, adhere to requirements, for example, encouraging the provision of dealer services or the projection of an appropriate image for its product. In some cases, therefore, restrictions may be imposed on selling online via channels which do not adhere to specified criteria.

Cyprus does not belong to the countries having restrictions on sales below cost in their legal systems. However, it is stated in the Protection of Competition Law of 2008 and 2014, Article 5 (1) that the Council of Ministers can issue Orders which are then published in the Official Gazette of the Republic. A recent example of such orders are the Orders issued during the pandemic fixing the lowest and highest prices of products related to COVID-19, such as antiseptics and masks.

Pursuant to Antitrust/Commission Regulation (EC) No 1475/95, the Regulation opens the market for independent suppliers of spare parts and resellers. The supply of contract goods (Article 10(4)) to resellers may not be prohibited where they belong to the same distribution system (Article 3(10)(a)), or where the purchase of spare parts is for their own use in effecting repairs or maintenance (Article 3(10)(b)).

The manufacturer will automatically lose the benefit of the group exemption, if he directly or indirectly restricts:

- the freedom of spare-part suppliers to supply such products of matching quality to resellers of their choice, including those which are undertakings within the distribution system (Article 6(1) (10)); and/or
- the spare-part manufacturers are hindered from affixing effectively and in an easily visible manner their trademark or logo on the spare parts bought by the manufacturer or supplied to the network (Article 6(1) (11)).

Cypriot law protects an individual's reputation under Defamation law, which is a civil wrong. It is distinct in two types, libel and slander, with the latter requiring the claimant to prove any special damages sustained. Subsequently, the law provides that defamation consist of 'publication by any person any printed matter, writing, painting, effigy, gestures, spoken words or other sounds or any other means, including broadcasting by wireless telegraphy, of any matter' which imputes crime to a person or misconduct in a public office. Additionally, it applies where it naturally injures or prejudices the reputation of a person or is likely to expose any person to general hatred, contempt or ridicule or likely to cause another person to be shunned or avoided upon by other persons. Nevertheless, there must be a harmonization of laws consisting the Freedom of Expression and the protection of honors and rights of third parties, under the Cyprus Constitution. Consequently, in order to succeed a defamation claim, the plaintiff must prove that there was a publication, the publication referred to the plaintiff and that the publication was defamatory in nature. In the case where there is a slander, the plaintiff must prove that he/she sustained special damage.

Luxury brands and secondary market or resale are not usually associated together. Mostly because luxury brands are often seen as unattainable for the majority masses. In addition, every time a non-mainstream brand is being seen on a person that does not have the ability to purchase a luxury brand item at its full price and relies on obtaining it through a secondary market it reduces that brands value and status. To conclude, secondary market, resale and third-party providers are damaging and could be considered detrimental to a brand's value and reputation.

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Maria Hinni

Admitted to the Cyprus Bar in 2011. Joined AGP in 2019 as Senior Associate - Commercial & Corporate Department. Maria worked as a lawyer at the Office of the Attorney General of Cyprus and thereafter worked as corporate and commercial lawyer at a prestigious law firm, where she was involved in litigation and corporate matters. Maria has in-depth knowledge and expertise in corporate and commercial law, liquidation proceedings, intellectual property, data protection matters negotiating and drafting of various corporate and commercial agreements, setting up/management of corporate structures and appearing in court for company petitions and requirements.



George Tashev

Joined AGP in early 2021 as an Associate Lawyer after having worked at his own practice for 5 years. George has the diverse role of not only advising on legal issues but also being involved in the front end of the firm's dealings. This involves communicating proficiently with clients and ensuring smooth completion of all cases. As a practicing lawyer, George established his own business dealing with clients from all around the world in a variety of matters, mostly, but not limited to the Corporate and Banking sector. This invaluable experience gave him the necessary skillset to become an agile legal professional able to handle different types of matters for clients with different backgrounds, effectively.



Ioanna Martidi

Ioanna graduated law from Democretus University of Thrace, in Greece and has obtained her Master's degree on International Commercial Law at the University of Leicester, in the UK. Joined AGP & Co in 2020 as a trainee lawyer and after passing her Bar exams, has become an Associate lawyer - Litigation Department. During her trainee program Ioanna worked in all practice areas in order to gain the necessary experience and knowledge for her bar exams and future career. She has shown excellent commitment and always strives for excellence.