

Infringement And Defenses – Famous Marks

“LECCE PEN COMPANY- LECCE PEN” Trademarks

LECCE PEN COMPANY S.p.A. vs. TAY DIS TIC. LTD. STI.

(*) **2nd Commercial Court of Istanbul (Beyoğlu)**
Decision No.1999/14-1999/554 (December 10, 1999)

(**) **11th Civil Chamber of the Supreme Court**
Decision No.2000/1296-2000/4605 (May 25, 2000)

An action (*) for trademark infringement and unfair competition was instituted claiming the cancellation of the trademark “LECCE PEN” abusively registered in the name of the defendant in Turkey as well as compensation for material and moral damages. The plaintiff further claimed that the defendant’s abusive registration infringes his the trade name and constitutes an act of unfair competition in this regard.

The plaintiff asserted that LECCE PEN COMPANY is world wide known for writing instruments which are marketed under their well-known trademarks “LECCE PEN COMPANY” and “LECCE PEN”, that these goods are also marketed in Turkey, that the defendant intends, in bad faith, to take the unfair advantage of the reputation of plaintiff’s trademark and trade name by having registered in his name the trademark “LECCE PEN” for goods in the same trade.

The defendant objected in its belatedly filed petition by asserting that the action has been forfeited, that his trademark is under protection and that since it has not used the trademark he is not in bad faith and claimed the rejection of the action.

Considering the submitted evidences and the favorable experts’ report, the Court (*) acknowledged that the Plaintiff’s trademarks are registered in many counties of the world and are well-known trademarks, and are under protection as such pursuant to the Article 7 parag. 1 (i) of Decree-Law No.556 and to the provisions of the Paris Convention. In its decision (*) the court accepted the claims of the plaintiff and ordered the cancellation of the defendant’s registration, which it considered constitutes an act of trademark infringement and of unfair competition. In its decision the Court

awarded the material and moral damages and ordered that the decision be published in two newspapers.

Upon defendant's appeal the Supreme Court (**) has upheld the decision of the first instance court on ground that the subject decision is justified according to the information and evidences submitted to the file.