

Registrability – Likelihood Of Confusion (Similarity Of Trademarks)

“ARCOPAL, ARCOROC, LUMINARC, CRISTAL D’ARQUES+ARC / GLASSCO-ARC”

VERRERIE CRISTALLERIE D’ARQUES J.G. DURAND CIE

vs.

**GLASSCO INSAAT SANAYI VE TICARET LTD. STI. and
SOLMAZ EV GERECLERI SANAYI VE TICARET KOLL. STI.**

(*) 9th Commercial Court of Istanbul

Decision No. 1997/475- 2000/382 (May 1, 2000)

An action (*) was filed for trademark infringement unfair competition and for the cancellation the defendant’s trademark registration for “GLASSCO-ARC” on ground of similarity with the plaintiff’s well-known trademarks for “ARCOPAL, ARCOROC, LUMINARC and CRISTAL D’ARQUES+ARC device” and for the removal of the word “GLASSCO” from the defendant’s trade name. The plaintiff claimed that his trademarks are well-known in the sense of the provisions of the Paris Convention and of the Decree-Law No. 551 on Trademarks and that the trademarks are under protection in Turkey and in the world. The plaintiff has further claimed that the defendant’s trademark being confusingly similar with the plaintiff’s trademarks, the registration and use of same infringes the plaintiff’s trademark and trade name and constitutes an act of unfair competition.

The defendant objected that there is no ground for requesting the cancellation of his trademark registrations since the defendant has its own registrations No. 163.548 “GLASSCO-ARC”, 163.567 “GLASSCO-PAL” and 163.568 “GLASSCO” and that there is no similarity between the trademarks.

The first panel of experts appointed by the court found that there is no similarity between the trademarks and that no infringement and no act of unfair competition has materialized. Upon objection of the plaintiff the court appointed a second panel of experts who retained that the defendant’s trademark “GLASSCO-ARC” is similar to plaintiff’s trademarks in respect of the last three letters and

that the trademark “GLASSCO-PAL” is similar to “ARCOPAL” in respect of the last four letters whereby such similarity gives rise to a confusion among the average consumers as to the origin of the goods.

The court in its decision (*) considered favorably the claims asserted by the plaintiff and adopting the conclusions of the experts’ reports ordered the removal of the word “GLASSCO” from the defendant’s trade name, and the cancellation of the defendant’s trademark registration No. 163.548 “GLASSCO-ARC”. The court has further decided that the plaintiff’s trademark has priority of registration and use over the defendant’s trademark and that the use by the defendant of the trademark “GLASSCO-ARC” constitutes infringement thereof and an act of unfair competition.

In its decision (*) the Court further awarded material and moral damages and ordered the seizure and the destruction of the packagings, labels and the equipment/material used in their production and ordered that the decision be published in one of the newspapers having nation-wide distribution.

The defendant appealed before the Supreme Court, which has not yet rendered its decision.