

Procedural Matters - Appellate Procedure - Jurisdiction/Authority

“BEYTI” Trademark

BEYTI A.Ş. vs. TURKISH PATENT INSTITUTE

(*) Court of Ankara on Intellectual and Industrial Rights

Case No. 2004/21 - Decision No. 2004/355 - (15.12.2004)

An action(*) was instituted against the Turkish Patent Institute for the determination/ acknowledgment of the notoriety of the trademark BEYTI and for the withdrawal of the administrative decision partially refusing the registration of the trademark BEYTI for the goods “Meat, fish; poultry and game meat...” in class 29 and “Bread, pide (Turkish style calzone), pizza, lahmacun (Turkish style meat pizza)” in class 30 on grounds that the word BEYTI (a kind of kebab -grilled/broiled pieces of meat- named after the plaintiff) is descriptive and deceptive for said goods according to Articles 7/1-c and f of the Decree-Law no.556 on Trademarks.

The plaintiff claimed that he has acquired rights on the indication BEYTI owing to its prior registrations no.122465 and 137514, that the word BEYTI is being used as trademark for more than 60 years for rejected goods, that therefore it has acquired distinctiveness. The plaintiff further claimed that the trademark BEYTI has become a well-known trademark and that therefore the reputation of its trademarks should be determined/ascertained by the Court as well.

The defendant objected by asserting that the decision of the Turkish Patent Institute is justified.

The Court following the favorable conclusions of the expert’s report decided that as defined in different sources BEYTI is a special kind of kebab, which has been prepared by the founder of the plaintiff firm Mr. BEYTI GULER and named after him and that therefore it cannot be considered as descriptive for the rejected goods. The Court declared that the trademark BEYTI has been registered since 1970 for same goods in the name of the plaintiff, that the plaintiff has run “meat restaurant” since 1945, that the trademark BEYTI has been subject to several articles in magazines and newspapers and has acquired distinctiveness, that the trademark BEYTI cannot be deceptive for the rejected goods in the sense of Article 7/1f of the Decree-Law no.556.

The Court ruled that the kind of kebab known as “BEYTI KEBAB” has been created and made well known and famous by the plaintiff and that although it has become the name of a special kebab and is being widely used throughout Turkey under this name, the plaintiff has still registrations for the trademark BEYTI, that the word BEYTI has acquired distinctiveness through longstanding and qualified use of the plaintiff and that therefore it is unjustified to reject the trademark according to the Article 7/c (descriptiveness) of the Decree-Law disregarding the last paragraph of same article reading “The registration of a trademark shall not be refused according to sub-paragraphs (a), (c), (d) where the trademark has acquired distinctive character in respect of the good(s) or service(s) for which it is to be registered as of the use made thereof prior to the date of registration.”

As to the rejection on ground of deceptiveness, the Court decided that it is obvious that the indication BEYTI is not to be considered as deceptive for the goods in class 29 and 30, since subject indication is being used for the special kind of kebab created by the plaintiff and named after the founder of the plaintiff and since said indication has become well-known and famous owing to the acts of the plaintiff.

The Court has rejected the plaintiff’s claim with regard to the determination/ascertainment of its trademark BEYTI on grounds that no application was filed with the T.P.I. for the acknowledgement of the notoriety of the trademark and without following the procedure defined in the Decree-Law no.556 for the registration of the trademarks, it is not possible to directly institute a Court action for determination/acknowledgement of the reputation of the trademark.