

Registrability – Likelihood Of Confusion (Similarity Of Trademarks)

“EFES PILS, EFES PIZEN, EFES PILSEN+DEVICE/EFE” Trademarks

ANADOLU EFES BIRACILIK VE MALT SAN. A.S. vs. TURKİSH PATENT INSTITUTE

vs.

ELDA ENERJI HIZM. SAN. ve TIC. A.S.

(* Court of Ankara on Intellectual and Industrial Rights

Case no. 2004/380 – Decision no.2004/332 (December 2, 2004)

An action (*) was instituted for the withdrawal of the Turkish Patent Institute’s final decision refusing the opposition filed against the trademark application EFE and for the cancellation of the said trademark on grounds of similarity to the plaintiff’s registered trademarks EFES PILS, EFES PILZEN, EFES PILSEN+DEVICE.

The plaintiff claimed that the trademarks EFE and EFES are identical except for the “S” letter; that the trademarks are similar in their entirety; that the first syllables of the trademarks are more emphasized by pronunciation; that the indication EFE stands out in the trademark EFES; that it is not possible to distinguish the trademarks from each other; that such similarity would cause confusion of the trademarks; that it is contrary to Articles 56 and 57 of Turkish Commercial Code (Articles regarding unfair competition). Accordingly, the plaintiff requested the withdrawal of the decision refusing the opposition against the trademark EFE and the cancellation of the registration for said trademark for similar goods due to the fact that this trademark constitutes trademark infringement against its well-known trademark.

The defendant T.P.I. objected by asserting that the trademarks are not confusingly similar such way as deceive the public in their compositions and pronunciations and that the respective listing of goods of the trademarks do not show similarity.

The defendant firm asserted that the indication EFE has been chosen as a trademark since the firm has been established in Aegean part of Anatolia and its partners are from said area as well; that the trademarks and the goods covered thereof are not confusingly similar.

The Court held that according to Articles 7/1(b), 8/1(b) and 8/4, a later application can only be rejected upon citation of an earlier trademark application/registration is possible provided that the trademarks are either identical or similar and that in this case, it obvious that the trademarks are not identical.

As to the similarity of the trademarks, the Court ruled that:

- The trademarks are not similar in their semantic aspects, since the word “EFE” means “brave man, brother” from the Aegean Anatolia whereas “EFES” is the name of an antique city in Selçuk, near İzmir.
- The trademarks are not similar in their visual aspects, since the plaintiff’s trademarks are consisting of two words, whereas the defendant’s trademark is consisting of three letters.
- The trademarks are not similar in their phonetical aspects as well.

As a consequence, the Court decided that there is no risk of confusion between the trademarks neither in their visual, phonetical, semantic aspects nor in their overall expression.

As to the similarity of the goods covered by the subject trademarks, the court ruled that being in different international classes the goods in class 32 and 33 are not identical. Regarding the similarity of the goods, the court decided that as there is no complementary or substitution effect or no competition between goods and as the subject goods fulfill different needs, and therefore the target consumers of the goods are different, the goods cannot be considered as similar. The Court further held that no average consumer could buy the goods bearing the defendant’s trademark instead of plaintiff’s products in view of the economic importance of the goods and the time spent for purchasing such goods.

The Court rejected the claims of the plaintiff by asserting that as the consumers would understand at once that the trademarks EFE and EFES are different, it will be out of question that these trademarks belong to the same owner or that the owners of the trademarks are related administratively or economically; owing to the differences in visual, phonetical, semantic aspects and overall impression between the trademarks are so highly developed, that the risk of confusion even for a very little percentage of the average consumer is disposed.