

Infringement And Defenses – Famous Marks

„GLASURIT/ GLASSERIT“ Trademarks

BASF LACKE+ FARBEN AG VS. BETSAN CAM SERAMİK SANAYİ VE TİCARET A. Ş

(*) 1st Commercial Court of Beyoğlu, Decision no. 1999/15- 2000/80 (February 29, 2000)

11th Civil Chamber of the Supreme Court, Decision no. 2000/5331- 2000/6265 (July 3, 2000)

11th Civil Chamber of the Supreme Court, Decision no. 2000/7509-2000/7938 (October 17, 2000)

1st Commercial Court of Beyoğlu, Decision no. 2000/686-2000/655 (December 21, 2000)
(2001- 1. Dönem Inta Kararları)

§ 9.02 LIKELIHOOD OF CONFUSION

An action (*) was filed for trademark infringement, unfair competition and for the cancellation of the defendant's trademark registration for "GLASSERIT" on ground of confusing similarity with the plaintiff's well-known trademark "GLASURIT."

The defendant objected that there is no ground for requesting the cancellation of his trademark registration since there is no confusing similarity between the trademarks and since the plaintiff's trademark is not a well-known trademark and since the trademarks are registered and used in respect of different goods in different classes.

The panel of experts appointed by the court concluded that the defendant's trademark does not infringe the plaintiff's trademark in view of the fact that the trademarks are registered for goods in different classes and that the use of the defendant's trademark does not provide an unfair advantage for the defendant and does not damage the reputation and the distinguishing character of the plaintiff's trademark in the sense of Article 8 paragraph 4 of the Decree-Law No. 556 on Trademarks.

The court in its decision (*) considered favorably the claims put forward by the defendant and adopting in their entirety. The conclusions of the experts' report ruled that the conditions for the cancellation of the defendant's trademark are not fulfilled in respect of the absolute grounds for refusal

according to Article 7 paragraph 1 (b) and (i) as the trademarks are registered and used for goods in different classes and in respect of the relative grounds for refusal according to Article 8 paragraph 4 as the defendant's trademark does not damage the reputation and the distinguishing character of the plaintiff's trademark.

The plaintiff appealed the decision before Supreme Court which has not rendered as yet its decision.