

Registrability – Likelihood Of Confusion (Similarity Of Trademarks)

“MERAY/MERYL” Trademarks

NYLSTAR SA vs. AYYILDIZ TEKSTİL VE KONFEKSİYON SANAYİ VE TİCARET

(*) **1st Commercial Court of Beyoğlu**
Decision No 1999/473-2000/619 (December 7, 2000)

(**) **11th Civil Chamber of the Supreme Court**
2001/1877-2001/4049 (May 7, 2001)

(***) **11th Civil Chamber of the Supreme Court**
2001/6924-2001/7592 (October 9, 2001)

An action (*) was instituted against the defendant for the cancellation of the trademark registration no.96/19175 MERAY on grounds of similarity to the well known trademark registration no. 146287 MERYL, upon refusal of the opposition lodged by the plaintiff to the registration of defendant's trademark application for MERAY.

The plaintiff claimed that the trademark registration no. 96/19175 is confusingly similar to his well known trademark, that said trademark constitutes an infringement to his trademark and causes to unfair competition.

The panel of experts appointed by the court concluded that the defendant's trademark is confusingly similar with the plaintiffs trademark in visual and phonetic aspects and thus the ground for cancellation of the defendant's trademark was materialized.

Disregarding the experts' report, the court nevertheless rejected the plaintiff's claims and ruled that the trademarks concerned are only similar in respect of MER- syllable but different in their phonetic and visual aspects as of their entirety, that the defendants intention in choosing the trademark is due to using of the first syllables of the name and surname of shareholder of the defendant company MERAL AYYILDIZ.

The plaintiff's appeal (**) was not favorably received and the Supreme Court upheld the decision of the first instance court.

The plaintiff's further appeal (***) to the Supreme Court for the reconsideration of its decision (**) was also refused and the decision was finalized.