

Infringement & Defenses- Likelihood Of Confusion

“LOFT” Trademark

**ANKARA BAROSU FIKRI MULKİYET VE REKABET HUKUKU DERGİSİ
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(*) 5th Commercial Court of Ankara

Decision no. 1995/298 - 1996/1589 (November 28, 1996)

() 11th Civil Chamber of the Supreme Court**

Decision no. 1997/168 – 2101 (March 25, 1997)

(*) General Assembly of the Civil Chambers of the Supreme Court**

Decision No. 1997/1-836 - 1997/1075 (December 17, 1997)

An action (*) was instituted for the determination and prohibition of the infringement of trademarks rights and unfair competition and compensation for moral and material damages.

The plaintiff has claimed that he produces goods bearing the registered “loft” trademark, that these products are only sold by contractual/authorized sales outlets and that the selling of low quality goods bearing the “loft” trademark by the defendant which is not an contractual sale outlet constitutes infringement of his trademark rights. The plaintiff has requested that such unfair competition be determined and stopped and that compensation for moral and material damages be granted.

The defendant objected by asserting that these products have been purchased from a third company and that he was not aware that the products were counterfeit so that no unfair competition and no compensation can be claimed against him.

The Supreme Court has decided (**) that the defendant is marketing counterfeit goods in such way to create confusion with the plaintiff's trademark and that such behavior consist of an act of trademark infringement and unfair competition but that the request for compensation was not justified since the defendant is in good faith and has not committed any fault.

Upon the plaintiffs appeal, the Supreme Court (***) examining the action on the basis of Article 58 of the Turkish Code of Commerce has overturned the initial decision in the matter of compensation and confirmed that the defendant who is a trader/merchant should act as a prudent merchant and as a result should not purchase and offer for sale in his premise the counterfeit goods, originals of which are introduced to the market in Turkey by the plaintiff's authorized vendors/outlets. Accordingly the Court held that "the rejection of the claims for damages on ground that the defendant is in good faith and has not committed any fault is" in appropriate since "the existence of the infringement and unfair competition in the sense of Article 58 of the Turkish Code of Commerce have already been accepted by the Court".

The court persisted in its initial decision despite the above decision of the Supreme Court but the plaintiff has filed an appeal before the General Assembly of the Supreme Court of Appeals, which has taken the final decision that the upholding of the initial decision is against the procedure and the law and that the decision of persistence should be overturned.

N.B.:

This case has been cited in the Journal of Intellectual Property and Competition Law of Ankara Bar Association (Issue No. 2001/2) where the names of the parties concerned are not cited.