

Registrability – Likelihood Of Confusion (Similarity Of Trademarks)

“BULL, POWER BULL / RED BULL, RED BULL &device” Trademarks

Red Bull GmbH vs. Orbichem Gıda Kimya San. Ve Tic. Ltd. Şti.

Red Bull GmbH vs. Orbital Kimya ve Gıda San. Ve Tic. A.Ş.

Red Bull GmbH vs. A.T.I. Dış Ticaret Turim Yatırım ve Pazarlama A.Ş.

(*) 5th Commercial Court of Istanbul

Decision No.1997/712 – 1999/1274 (November 24, 1999)

Counter Action of ORBITAL KIMYA VE GIDA SAN. VE TIC. A.S. vs RED BULL GMBH

() 4th Commercial Court of Istanbul**

Decision No. 1997/1134 – 1997/346 (November 6, 1996)

An action (*) was instituted for stopping the trademark infringement and unfair competition and for the cancellation of the defendant’s “BULL” and “POWER BULL” trademark registrations/applications in Turkey.

The plaintiff claimed the stopping of trademark infringement, of the sale and exportation of the products carrying these marks, the seizure of the counterfeit goods and the production/promotion means thereof and the maintaining of precautionary injunction until the end of the court proceedings. To this effect, the plaintiff has asserted that their “RED BULL” and “RED BULL & device” trademarks have first been established in 1987 in Thailand, are world-wide known and registered in 79 countries and in Turkey under No.161.269 since 28.02.1995 since 01.09.1994 and 14.02.1995 respectively. The plaintiff claimed that the defendant’s act of producing and selling the same product by imitating their trademark, trade name and packaging in order to procure unfair advantages from the plaintiff’s market share and their attempting to register these trademarks despite the refusal of their PAWUR trademark application by the T.P.I. upon citation of the plaintiff’s trademark constitutes trademark infringement and unfair competition.

The defendant ORBICHEM objected by asserting that the trademark right in respect of the trademark “POWER BULL” has been purchased on 29.07.1996 from ORBITAL, the plaintiff of the counter action, that said trademark has gained a certain reputation and is registered as a trademark since 16.10.1995. ORBICHEM further objected to the plaintiff’s claim regarding the previous administrative rejection is not justified, on grounds that the plaintiff’s beverage carrying RED BULL trademark does not exist in the local market, that the plaintiff did not file any opposition against the defendant’s application and finally that the period within which the plaintiff is to institute a cancellation action has expired and requested on such grounds the cancellation of the precautionary injunction and the refusal of the main action.

Upon the plaintiff’s request for a precautionary injunction and in accordance with the favorable expert’s report on the matter, the court had ordered the injunction by refusing the defendant’s objection in this regard. Meanwhile, one of the parties in the main action filed a counter action (***) for unfair competition which has been joined with the earlier filed main action and the court decided to cancel the precautionary injunction against the plaintiff of the counter action further to the submission of a guarantee as requested by the court.

The experts nominated by the court found in their Experts’ Report dated 10.11.1998 that the plaintiff benefits from prior trademark registrations and use in respect of his trademarks and that the defendant has not been able to bring evidence of prior use and reputation and that the plaintiff consequently enjoys prior trademark rights. Moreover, the experts have retained that the essential element of both trademarks consists of the word BULL and that the words RED and POWER are not sufficient to distinguish the trademarks in their entirety and are of nature to deceive the public, that on the other hand the packages produced by the defendant before 1996 are confusingly similar as to their colors, design, characters, representation, weight, whereby those produced after 1996 in addition carry in big and visually in first plan the essential word BULL in red color and are also of nature to deceive the public and to cause unfair competition.

The plaintiff of the Counter action objected the experts’ report and requested a second experts’ opinion within the scope of the joined action but the second experts’ report dated 28.06.1999 came to the same conclusions than the first one and fully adopting the conclusions of the two experts’ reports, the court (*) accepted the claims of the plaintiff and ordered the cancellation of the defendant’s trademark registrations.