

Similarity Of Marks

“VIGOR+Device/ PARLIAMENT+Device”

Philip Morris Products SA vs. Turkish Patent Institute and vs. Nameer Narsi

**Ankara Court of Intellectual and Industrial Rights,
Case No.2004/619, Decision No.2004/312 (November 24, 2004)**

Philip Morris Products SA instituted an action against Nameer Narsi and Turkish Patent Institute for the withdrawal of Turkish Patent Institute’s decision rejecting the plaintiff’s opposition on ground of untimely filing and for the cancellation of the defendant’s trademark VIGOR DEVICE1 on ground that the defendant’s trademark would lead to confusion with the plaintiff’s trademark PARLIAMENT + DEVICE2.

The plaintiff claimed that although their opposition was rejected for untimely filing after the expiration of deadline, the actual issue date of the Bulletin wherein the defendant’s VIGOR DEVICE was published, was 08.09.2003, that they were notified the publication of the Bulletin on 22.09.2003, that accordingly they filed the opposition within 3 months of legal deadline and that the defendant’s trademark lead to confusion with their trademark.

As a defendant, the Turkish Patent Institute claimed the rejection of the case maintaining that their decision to reject the plaintiff’s opposition is well founded and lawfull. The Nameer Narsi as the other defendant claimed the rejection of case on grounds that the court action was not timely instituted in that their trademark application did not yet mature into registration and that there was no similarity between trademarks so as to lead the consumers to confusion..

The Court held that the defendant’s trademark application having not matured into registration, the cancellation action was deemed to have been untimely instituted and that according to the Article 33 of the Decree Law no.556 and Article 16 of the Regulation the purpose of publication in the Trademark Bulletin being to notify trademark applications to public for third party views and oppositions, as the actual issue date was the effective notification date, the opposition of the plaintiff was deemed to have been timely filed.