

III.D.1. Civil Actions

Upon arresting of counterfeit VICEROY and HOLLYWOOD cigarettes by the Mersin Customs Office, British American Tobacco (Brands) Inc. and Souza Cruz S.A instituted an action against Merve Ceylan for (1) the cessation of the trademark infringement and the prevention of similar acts, (2) a determination that the goods held by Customs were counterfeit, and (3) the destruction of the goods held by Customs.

The plaintiffs cited that they are world wide famous companies producing and selling cigarette and tobacco based products. British American Tobacco (Brands) Inc. is the owner of the trademark VICEROY¹ and Souza Cruz S.A is the owner of the trademark HOLLYWOOD² registered before the Turkish Patent Institute.

The plaintiffs claimed that Mersin Customs Office arrested 954 box counterfeit VICEROY and 141 big box HOLLYWOOD cigarettes and the experts affirmed that the cigarettes are counterfeit products and that this is infringement of their trademark rights and constitutes unfair competition.

Turkish Patent Institute submitted registration documents of the subject trademarks upon citation of the court attesting that both trademarks are still valid.

Mersin Customs Office submitted documents confirming that 954 box VICEROY and 141 box HOLLYWOOD cigarettes were arrested and an experts report stating that boxes of arrested cigarettes have slight difference in color, weight and sizes when compared to the original products nevertheless, similarity of the counterfeit products is enough to confuse any average consumer.

The court appointed a further expert in order to determine falsity of the arrested products. The expert report asserted that design of the packagings are not identical, but similar furthermore original packages have barrcods, filter length of the cigarettes are different, quality of the tobaccos are different and as a conclusion the arrested cigarettes are counterfeiting products.

The Court decided that the defendant brought the cigarettes (which are obviously counterfeit products in accordance with the experts report from the customs office and experts report appointed by the court) to the country in order to put them on the market and that this is an unfair competition infringing the trademark rights of the plaintiffs

The Court further held the destruction of arrested products and publication of this decision in one of the widely circulated national news parers after finalization of the decision.

As a result, the court accepted the claims of defendants and decided (1) the cessation of the trademark infringement and the prevention of similar acts, (2) a determination that the goods held by Customs were counterfeit, and (3) the destruction of the goods held by Customs³

¹ Registration number 96227 filed on 0.01.1961

² Registration number 139296 filed on 28.08.1992

³ *British American Tobacco (Brands) Inc. and Souza Cruz S.A vs. Merve Ceylan*, Case no. 2006/63, Decision no. 2008/89 3rd Istanbul Court of Intellectual and Industrial Rights, (November 04, 2008).

