

Registrability – Likelihood Of Confusion (Similarity Of Trademarks)

“KOMILI VIVA, VIVA, VIVA CAPIO / WELLA CS.VIVA ” Trademarks

WELLA AKTIENGESELLSCHAFT v.s. TURKISH PATENT INSTITUTE

**(*) 8th Commercial Court of Ankara
Decision no.2001/121-2002/107 (13.03.2002)**

An action (*) was instituted against the Turkish Patent Institute for the withdrawal of the administrative decision refusing the registration of the plaintiff’s trademark WELLA CZ. VIVA on grounds that plaintiff’s trademark is confusingly similar to the priorly registered trademarks KOMILI VIVA, VIVA, VIVA CAPIO according to Articles 7 parag. 1 (b) that reads “trademarks identical or (almost) identical to the point of being indistinguishably similar to a prior trademark registration or application in respect of good(s) or service(s) whether identical or of identical nature/type shall not be registered”.

The plaintiff claimed that its trademark is not to be considered as confusingly similar to the cited trademarks since the similarity between the concerned trademarks is to be assessed as of their entirety and that in this context the device component should also be taken into consideration besides the word components, and that consequently its trademark consisting of the word WELLA enjoying world wide notoriety also as a trade name and HEAD LOGO together with the word VIVA, written in phantasy characters easily distinguishes visually and phonetically from the cited trademarks. The plaintiff further asserted that the word “VIVA” is not the distinguishing element by itself of the cited trademarks KOMILI VIVA and VIVA CAPIO COLOR, since the trademark KOMILI which is very a well known trademark in Turkey, renders distinctive the trademark KOMILI VIVA and since the trademark VIVA CAPIO COLOR distinguishes itself over other trademark due to its longstanding use and presence in the market.

Following the conclusions of the favourable experts’ report, in which the trademark WELLA CZ. VIVA has not been considered as confusingly similar to the priorly registered trademarks KOMILI VIVA, VIVA, VIVA CAPIO, despite the similarity between their specifications of goods, the court has decided and ordered that the administrative decision refusing the registration of the plaintiff’s

trademark WELLA CZ. VIVA is to be withdrawn clearing the way to the registration of the mark as applied for.