

## Infringement And Defenses – Famous Marks

**MARTINI, MARTINI+ DEVICE, MARTINI ROSSI, MARTINI MARTINI, MARTINI ROSSI+DEVICE/ MARTINI DRY Trademarks**

- 1- MARTINI ROSSI S.P.A**
- 2- BACARDI COMPANY LIMITED**
- 3- TRADALL S.A.**

**vs.**

- 1- ESENTEKS TEKSTİL VE KONFEKSİYON SAN. TIC. LTD. STI.**
- 2- ERHAN BULUT**

- (\*) 1<sup>st</sup> Commercial Court of Beyoglu (Istanbul)**  
**Decision No. 1999/43-2000/45 (February 15, 2000)**  
**(\*\*) 11<sup>th</sup> Civil Chamber of the Supreme Court**  
**Decision No. 2000/4076 – 2000/5153 (June 5, 2000)**

An action (\*) for trademark infringement and unfair competition was filed for the cancellation the defendant's trademark registrations for "MARTINI DRY" on grounds of similarity with the plaintiffs' well-known trademark registrations No. 78.492, 80.025, 94.551, 95.180, 113.803, 116.573 "MARTINI" under protection since 1961, mainly for alcoholic drinks and various goods including clothing, sport wears, spectacles, bags, pencils and tourism traveling services. The plaintiffs have further claimed that the registration and use by the defendants of the mark "MARTINI DRY" also infringes the trade name "MARTINI ROSSI S.p.A." of the registrant as the word "MARTINI" is an essential element thereof and such infringement of the trade name constitutes also an act of unfair competition. The plaintiffs also claimed compensation for material and moral damages.

The defendant objected that his client being the proprietor of the registered trademarks "MARTINI DRY" has been manufacturing shirts under said trademarks for the domestic and foreign markets. The defendant has further asserted that the plaintiff is engaged in manufacturing and marketing of alcoholic drinks and that the term "MARTINI" in everyone's mind has become a generic name for "vermouth" drink and that there is no ground for compensation since the main condition of unfair competition has not materialized.

On the basis of a favorable experts' report, the court, in its decision (\*) considered favorably all the claims asserted by the plaintiff and ordered to cancel the defendant's trademark registrations, to stop the use thereof and to seize and destroy all counterfeit goods and means of production thereof as the

court held that the defendant's trademarks infringe the plaintiff's well-known trademarks, and that the registration and use of the plaintiff's trademark by the defendant constitutes an act of unfair competition. The court further ordered for the decision to be published in two of the newspapers as requested by the plaintiff and awarded material damages caused by the use of the trademark, and moral damages on grounds that defendants' acts caused an infringement to the plaintiffs' personal rights.

In its decision (\*\*), the Supreme Court unfavorably receiving the appeal filed by the defendants upheld the decision of the court of first instance.