

## Registrability – Likelihood Of Confusion (Similarity Of Trademarks)

**“COKOPRENS, ULKER PRENS, ULKER CHOCO PRENS, ULKER SUPER PRENS, ULKER COKCOK PRENS, ULKER COKO PRENS, ULKER COKOKRAL, ULKER COKOSULTAN \ PRINCE AND CHOCO PRINCE” Trademarks**

**GENEREAL BISCUITS BELGIE vs. ÜLKER GIDA SANAYİ VE TİCARET A.Ş**

**(\* The Court of İstanbul for Intellectual and Industrial Rights Decision no.2001/910-2003/45 dated February 20, 2003**

An action was instituted for the cancellation of the trademarks 85203 “Çokoprens”, 125300 “Ülker Prens” 129456 “Ülker Choco Prens” 150196 “Ülker Süper Prens” 150198 “Ülker çokçok prens”, 144818 “Ülker Çokoprens”, 150197 “Ülker Çokokral” 144819 “Ülker Çokosultan” on grounds of trademark infringement and unfair competition.

The plaintiff, a worldwide famous firm in the food industry especially known for biscuits claimed that his “Prince” and “Choco Prince” trademarks are well-known and worldwide registered since 1955 and registered in Turkey since 1976 and worldwide used since 1926 and that the defendant’s trademark including the denominations “prens” “chocoprens” “sultan” “kral” covering identical goods are of nature to deceive the average consumer and constitute an act of trademark infringement and unfair competition and requested the cancellation of the defendant’s registrations and the payment of TL.1.000.000.000 as compensation for moral and material damages.

The expert’s reports ordered by the Court concluded that the use by the defendants of Turkish translations of the denomination “CHOCO” and “PRINCE” previously registered in the name of the plaintiff is of nature to create confusion among the consumers and constitute an act of unfair competition. The experts have concluded that these denominations should be removed from the defendant’s trademarks.

The Court has acknowledged that the defendant has registered these trademarks in bad faith in order to take unfair advantage of the plaintiff’s well-known trademarks and that the defendant’s trademark “COKOPRENS” and the denominations “prens”, “choco prens”, “çok çok prens” and “çoko” are conflicting with the plaintiff’s trademarks and thus the conditions of article 61 for the invalidation of

these denomination being realized, the Court has concluded and ruled to the cancellation/removal of these denomination from the trademarks and to stopping their use. However, in line with the established jurisprudence of the Supreme Court, the Court has ruled that the use of registered trademarks cannot be considered as an act of unfair competition or trademark infringement and thus rejected the request for the compensation for material and moral damages.