

## Criminal Actions

### “CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO” Trademark

**Chanel, Chanel S.A., Fendi Paolo, Etienne Aigner AG, Moon Shadow vs. Mehmet Yılmaz Hacıahmetoğlu**

**3<sup>rd</sup> Penal Court of Istanbul, Decision No. 1998/1637 – 2000/484 (April 21, 2000)**

In the action (\*) -reported in IAR (Edition) of 1999- against shop keepers and retailers dealing with and selling infringing goods carrying the trademarks “**CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO**” as of the complaints filed by the plaintiffs to the Public Prosecutor, the police raids affected upon his order resulted in the seizure of infringing goods in their premises upon which the Public Prosecutor instituted the criminal actions against each of them separately and the plaintiffs have joined such actions.

In its identically worded and motivated decisions the Criminal Court has ruled to:

- Confirm, on the basis of an experts’ opinion that the goods seized in the business premises of the infringers do infringe the registered trademarks of the plaintiffs.
- The definite seizure of the confiscated infringing goods found in the business premises of the infringers,
- Acquit, unexpectedly, the infringers on the grounds that because of the wanting quality of the material used and of the craftsmanship of the infringing goods, the buyers can easily and undoubtedly distinguish the originally branded bags over the infringing goods which for this very reason are not capable confusing the buyers in their choice.

In its decision, the court has acquitted the defendants and applied no penalties on them pursuant to the Trademarks Act No. 551.

Upon the plaintiff's appeal, in its decision (\*\*) the 7<sup>th</sup> Criminal Chamber of the Supreme Court overturned the initial (\*) decision and ruled that the defendant is to be condemned on grounds of selling knowingly infringing goods according to the Trademarks Act No. 551 which was in force at the time when the offense was committed. The Supreme court further decided to the confiscation of the goods according to the Turkish Criminal Act no. 36 instead of Trademarks Act No. 551. The 3<sup>rd</sup> Penal Court of Istanbul upheld the decision of the Supreme Court and ruled to ban the defendant from exercising any trading activity together with the closure of the shop/store for a period of one year and to condemn him to 8 months of imprisonment which was then turned into pecuniary penalty.

(\*) **1. CHANEL**

**2. CHANEL S.A.**

**vs. Mr. OSMAN MAZHAR KAHRAMAN**

**3<sup>rd</sup> Penal Court of Beyoğlu/Istanbul**

**Decision No. 1996/52 – 1997/1342 (December 9, 1997)**

(\*\*) **7th Criminal Chamber of Supreme Court**

**Decision No. 1999/6551 – 1999/8413 (July 13, 1999) (notified on October 22, 1999)**

(\*\*\*) **3rd Penal Court of Beyoğlu/Istanbul**

**Decision No. 1999/1662 – 2000/90 (January 31, 2000) (notified on February 17, 2000)**

In the action (\*) against shop keepers and retailers dealing with and selling infringing goods carrying the trademarks “**CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO**” as of the complaints filed by the plaintiffs to the Public Prosecutor, the police raids affected upon his order resulted in the seizure of infringing goods in their premises upon which the Public Prosecutor instituted the criminal actions against each of them separately and the plaintiffs have joined such actions.

In its identically motivated decisions(\*) the Criminal Court has ruled to:

- Confirm, on the basis of an experts' opinion that the goods seized in the business premises of the infringers do infringe the registered trademarks of the plaintiffs.
- Ban the exercise of professional activity together with closure of the professional activity for 1 year.

- The punishment of the defendants to 8 month of imprisonment, which was then turned into pecuniary fine.
- The definite seizure of the confiscated infringing goods found in the business premises of the infringers,

Upon the defendant's appeal, in its decision (\*\*) the 7<sup>th</sup> Criminal Chamber of the Supreme Court overturned the initial decision (\*) on grounds of the jointly instituted action which should be instituted against each defendant independently and further on grounds of receipt by the court clerk of unsigned experts' affidavit. The 3<sup>rd</sup> Penal Court of Istanbul (\*\*\*) decided to uphold the decision of the Supreme Court and ruled the same judgment and penalties of its initial decision (\*) separately against each defendant.

The Court has suspended and remitted to the future the serving of the penalties as on the basis of the behavior during the proceedings of the defendant it has been convinced that the defendant is not likely to commit a similar offence in the future.

(\*)

<b>CHANEL</b>	<b>vs.</b>	<b>DENHO AK</b>
<b>CHANEL S.A.</b>		<b>NUH HAPPANI</b>
<b>FENDİ PAOLO S. LLE. S.A.S.</b>		<b>POZANT SEFER</b>
<b>ETIENNE AIGNER AG</b>		<b>FERİT KUTLUK.</b>
<b>MOON SHADOW S.p.A</b>		<b>MEHMET NECDET TONGUÇ</b>
		<b>ARTİN KİLECI</b>
		<b>YILMAZ HACIAHMENTOĞLU</b>
		<b>TEMEL YAŞAR ÖZBEN</b>
		<b>ERGUN VURAL</b>

**3<sup>rd</sup> Penal Court of Istanbul**

**Decision No. 1995/1515 – 1997/105**

**(\*\*) 7th Criminal Chamber of Supreme Court**

**Decision No. 1998/3943 – 1998/4697**

<b>(***) CHANEL</b>	<b>vs.</b>	<b>DENHO AK</b>
<b>CHANEL S.A.</b>		
<b>FENDİ PAOLO S. LLE. S.A.S.</b>		

**ETIENNE AIGNER AG.**  
**MOON SHADOW S.p.A**

**3<sup>rd</sup> Court of Istanbul**

**Decision No. 1998/1632 – 1999/1279 (October 25, 1999)**

In the action (\*) against shop keepers and retailers dealing with and selling infringing goods carrying the trademarks “**CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO**” as of the complaints filed by the plaintiffs to the Public Prosecutor, the police raids effected upon his order resulted in the seizure of infringing goods in their premises upon which the Public Prosecutor instituted the criminal actions against each of them separately and the plaintiffs have joined such actions.

In its identically motivated decisions (\*) the Criminal Court has ruled to:

- Confirm, on the basis of an experts’ opinion that the goods seized in the business premises of the infringers do infringe the registered trademarks of the plaintiffs.
- Ban the exercise of professional activity together with closure of the professional activity for 1 year.
- The punishment of the defendants to 8 month of imprisonment which was then turned to pecuniary fine.
- The definite seizure of the confiscated infringing goods found in the business premises of the infringers,

Upon the defendant’s appeal, in its decision (\*\*) the 7<sup>th</sup> Criminal Chamber of the Supreme Court overturned the initial decision (\*) on grounds of the jointly instituted action which should be instituted against each defendant independently and further on grounds of receipt by the court clerk of unsigned experts’ affidavit. The 3<sup>rd</sup> Penal Court of Istanbul (\*\*\*) decided to uphold the decision of the Supreme Court and ruled the same judgment and penalties of its initial decision (\*) separately against each defendant.

The Court has suspended and remitted to the future the serving of the penalties as on the basis of the behavior during the proceedings of the defendant it has been convinced that the defendant is not likely to commit a similar offence in the future.

(\*) **CHANEL** vs. **DENHO AK**  
**CHANEL S.A.** **NUH HAPPAŇ**  
**FENDİ PAOLO S. LLE. S.A.S.** **POZANT SEFER**  
**ETIENNE AIGNER AG** **FERİT KUTLUK.**  
**MOON SHADOW S.p.A** **MEHMET NECDET TONGUÇ**  
**ARTİN KİLECI**  
**YILMAZ HACIAHMENTOĞLU**  
**TEMEL YAŞAR ÖZBEN**  
**ERGUN VURAL**

**3<sup>rd</sup> Penal Court of Istanbul**  
**Decision No. 1995/1515 – 1997/105**

(\*\*) **7th Criminal Chamber of Supreme Court**  
**Decision No. 1998/3943 – 1998/4697**

(\*\*\*) **CHANEL** vs. **ERGÜN VURAL**  
**CHANEL S.A.**  
**FENDİ PAOLO S. LLE. S.A.S.**  
**ETIENNE AIGNER AG.**  
**MOON SHADOW S.p.A**

**3<sup>rd</sup> Court of İstanbul**  
**Decision No. 1998/1635 – 1999/852 (June 30, 1999)**

In the action (\*) against shop keepers and retailers dealing with and selling infringing goods carrying the trademarks “**CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO**” as of the complaints filed by the plaintiffs to the Public Prosecutor, the police raids affected upon his order resulted in the seizure of infringing goods in their premises upon which the Public Prosecutor instituted the criminal actions against each of them separately and the plaintiffs have joined such actions.

In its identically motivated decisions (\*) the Criminal Court has ruled to:

- Confirm, on the basis of an experts’ opinion that the goods seized in the business premises of the infringes do infringe the registered trademarks of the plaintiffs.

- Ban the exercise of professional activity together with closure of the professional activity for 1 year.
- The punishment of the defendants to 8 month of imprisonment, which was then turned into pecuniary fine.
- The definite seizure of the confiscated infringing goods found in the business premises of the infringers,

Upon the defendant's appeal, in its decision (\*\*) the 7<sup>th</sup> Criminal Chamber of the Supreme Court overturned the initial decision (\*) on grounds of the jointly instituted action which should be instituted against each defendant independently and further on grounds of receipt by the Court Clerk of unsigned experts' affidavit. The 3<sup>rd</sup> Penal Court of Istanbul (\*\*\*) decided to uphold the decision of the Supreme Court and ruled the same judgment and penalties of its initial decision (\*) separately against each defendant.

The Court has suspended and remitted to the future the serving of the penalties as on the basis of the behavior during the proceedings of the defendant it has been convinced that the defendant is not likely to commit a similar offence in the future.

(*)	<b>CHANEL</b>	<b>vs.</b>	<b>DENHO AK</b>
	<b>CHANEL S.A.</b>		<b>NUH HAPPANİ</b>
	<b>FENDİ PAOLO S. LLE. S.A.S.</b>		<b>POZANT SEFER</b>
	<b>ETIENNE AIGNER AG</b>		<b>FERİT KUTLUK.</b>
	<b>MOON SHADOW S.p.A</b>		<b>MEHMET NECDET TONGUÇ</b>
			<b>ARTİN KİLEÇİ</b>
			<b>YILMAZ HACIAHMENTOĞLU</b>
			<b>TEMEL YAŞAR ÖZBEN</b>
			<b>ERGUN VURAL</b>

**3<sup>rd</sup> Penal Court of Istanbul**  
**Decision No. 1995/1515 – 1997/105**

**(\*\*) 7th Criminal Chamber of Supreme Court**  
**Decision No. 1998/3943 – 1998/4697**

(\*\*\*) **CHANEL** vs. **FERİT KUTLUK**  
**CHANEL S.A.**  
**FENDİ PAOLO S. LLE. S.A.S.**  
**ETIENNE AIGNER AG.**  
**MOON SHADOW S.p.A**

**3<sup>rd</sup> Court of Istanbul**

**Decision No. 1998/1634 – 1999/1280 (October 25, 1999)**

In the action (\*) against shop keepers and retailers dealing with and selling infringing goods carrying the trademarks “**CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO**” as of the complaints filed by the plaintiffs to the Public Prosecutor, the police raids affected upon his order resulted in the seizure of infringing goods in their premises upon which the Public Prosecutor instituted the criminal actions against each of them separately and the plaintiffs have joined such actions.

In its identically motivated decisions (\*) the Criminal Court has ruled to:

Confirm, on the basis of an experts’ opinion that the goods seized in the business premises of the infringers do infringe the registered trademarks of the plaintiffs.

Ban the exercise of professional activity together with closure of the professional activity for 1 year.

The punishment of the defendants to 8 month of imprisonment, which was then turned into pecuniary fine.

The definite seizure of the confiscated infringing goods found in the business premises of the infringers,

Upon the defendant’s appeal, in its decision (\*\*) the 7<sup>th</sup> Criminal Chamber of the Supreme Court overturned the initial decision on grounds of the jointly instituted action which should be instituted against each defendant independently and further on grounds of receipt by the Court Clerk of unsigned experts’ affidavit. The 3<sup>rd</sup> Penal Court of Istanbul (\*\*\*) decided to uphold the decision of the Supreme Court and ruled the same judgment and penalties of its initial decision separately against each defendant.

The Court has suspended and remitted to the future the serving of the penalties as on the basis of the behavior during the proceedings of the defendant it has been convinced that the defendant is not likely to commit a similar offence in the future.

**(\*)** CHANEL vs. DENHO AK  
CHANEL S.A. NUH HAPPAŇI  
FENDİ PAOLO S. LLE. S.A.S. POZANT SEFER  
ETIENNE AIGNER AG. FERİT KUTLUK.  
MOON SHADOW S.p.A MEHMET NECDET TONGUÇ  
ARTİN KİLECI  
YILMAZ HACIAHMENTOĞLU  
TEMEL YAŞAR ÖZBEN  
ERGUN VURAL

**3<sup>rd</sup> Penal Court of Istanbul**  
**Decision No. 1995/1515 – 1997/105**

**(\*\*)** **7th Criminal Chamber of Supreme Court**  
**Decision No. 1998/3943 – 1998/4697**

**(\*\*\*)** CHANEL vs. TEMEL YAŞAR ÖZBEN  
CHANEL S.A.  
FENDİ PAOLO S. LLE. S.A.S.  
ETIENNE AIGNER AG.  
MOON SHADOW S.p.A

**3<sup>rd</sup> Court of Istanbul**  
**Decision No. 1998/1638 – 1999/1281 (October 25, 1999)**

In the action (\*) against shop keepers and retailers dealing with and selling infringing goods carrying the trademarks “CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO” as of the complaints filed by the plaintiffs to the Public Prosecutor, the police raids affected upon his order resulted in the seizure of infringing goods in their premises upon which the Public Prosecutor instituted the criminal actions against each of them separately and the plaintiffs have joined such actions.

In its identically motivated decisions (\*) the Criminal Court has ruled to:



**(\*\*) 7th Criminal Chamber of Supreme Court**  
**Decision No. 1998/3943 – 1998/4697**

**(\*\*\*) CHANEL vs. PUZANT SEFER**  
**CHANEL S.A.**  
**FENDI PAOLO S. LLE. S.A.S.**  
**ETIENNE AIGNER AG.**  
**MOON SHADOW S.p.A**

**3<sup>rd</sup> Court of Istanbul**  
**Decision No. 1998/1631 – 1999/1278 (October 25, 1999)**

In the action (\*) against shop keeper/retailer dealing with and selling infringing goods carrying the trademarks “**CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO**” as of the complaints filed by the plaintiffs to the Public Prosecutor, the police raids affected upon his order resulted in the seizure of infringing goods in their premises upon which the Public Prosecutor instituted the criminal actions against him.

In its decisions the Criminal Court has confirmed, on the basis of an experts’ opinion that the goods seized in the business premises of the infringers do infringe the registered trademarks of the plaintiffs and ruled to the definite seizure of the confiscated infringing goods found in the business premises of the infringers and has applied the penalties pursuant to the Trademarks Act no.551 and condemned the defendant to:

- \* 2 years of imprisonment
- \* 2.250.000. - Turkish Liras of pecuniary fine
- \* The closure for 1 year of the business premise
- \* Ban the exercise of professional activity for 1 year

The court has suspended and remitted to the future the serving of the penalties as on the basis of the behaviors during the proceedings of the defendant it has been convinced that the defendant is not likely to commit a similar offence in the future.

(\*) **CHANEL**

**CHANEL S.A.**

**FENDI PAOLO S. LLE. S.A.S.**

**ETIENNE AIGNER AG.**

**MOON SHADOW S.p.A**

**vs.**

**MEHMET NECDET TONGUÇ**

**3<sup>rd</sup> Penal Court of Istanbul**

**Decision No. 1998/1515 – 2000/388 (April 7, 2000)**

In the action (\*) against shop keeper/retailer dealing with and selling counterfeit goods carrying the trademarks “**CHANEL, FENDI, ETIENNE, AIGNER, MOSCHINO**”, upon complaint filed by the plaintiffs to the Public Prosecutor, the police raids effected upon his order resulted in the seizure of infringing goods in their premises upon which the Public Prosecutor instituted the criminal actions against him.

In its decision (\*), the Criminal Court, ruled, on the basis of an experts’ opinion that the goods seized in the defendant’s business premises infringe the registered trademarks of the plaintiffs and ordered the definite seizure of the confiscated counterfeit goods found in the defendant’s business premises and applied the penalties pursuant to the Article 61A-(b) of the amended Trademarks Act No. 551 and condemned the defendant to:

- \* 8 months of imprisonment
- \* 2.250.000. - Turkish Liras of pecuniary fine
- \* The closure for 1 year of the business premise
- \* Ban the exercise of professional activity for 1 year
- \* The definite seizure of the confiscated counterfeit goods found in the business premises of the infringers,

The court has suspended and remitted to the future the serving of the penalties as, on the basis of the behavior during the proceedings of the defendant, it has been convinced that the defendant is not likely to commit a similar offence in the future.

**CHANEL**

**CHANEL S.A.**

**FENDİ PAOLO S. LLE. S.A.S.**

**ETIENNE AIGNER AG.**

**MOON SHADOW S.p.A.**

**vs.**

**MEHMET YILMAZ HACIAHMETOĞLU**

**3<sup>rd</sup> Penal Court of Istanbul**

**(\* Decision No. 1998/1637 – 2000/484 (April 21, 2000)**