

## **Infringement & Defenses- Likelihood Of Confusion**

**RED BULL GMBH vs. ORBITAL KİMYA VE GIDA SANAYİ TİCARET A.Ş.**

**(\*) Istanbul Court of Intellectual and Industrial Rights**

**Case no. 2001/970-Decision no. 2004-79 (26.02.2004)**

**(\*\*) 11<sup>th</sup> Civil Chamber of the Supreme Court**

**Decision No. 2004/7314 – 2005/5455 (May 24, 2005)**

The defendant appealed against the decision (\*) rendered by the first instance court reported in the International Annual Review of 2005 (pages unknown to us).

The Supreme Court rendered its decision (\*\*) by ruling that, the registrant has the right to use its trademark on its products, advertisement instruments, invoices and other printed documents unless its trademark registration is cancelled, that the Court action has been instituted on January 3, 2001, whereas the defendant has registered its trademark on December 21, 1998 and that until the finalization of the Court's cancellation decision defendant's use of its registered and valid trademark does not constitute unfair competition.

Upon such consideration the Supreme Court partially over turned the decision (\*) as it is unjustified to rule with regard to determination and prevention of the unfair competition, payment of the moral compensation and other rights of ancillary character, which shall be subject to the unfair competition action and rejected defendants other appeals.