

Registrability – Merely Descriptive Term

“MULTICANAL”

(unkown) vs. TPE

(*) 9th Commercial Court of Ankara

1999/1004 – 2000/41 (February 10, 2000)

(**) 11th Civil Chamber of the Supreme Court

2000/6135-2000/8767 (November 9, 2000)

The plaintiff is not known as this decision was published without the plaintiff’s name in the Intellectual Property journal of the Ankara Bar dated August 08, 2001.

An action (*) was instituted against the Turkish Patent Institute for the withdrawal of the administrative decision refusing the registration of the plaintiff’s trademark consisting of the word MULTICANAL.

The plaintiff claimed that the trademark MULTICANAL which has been firstly used by them in the field of TV broadcasting meets the requirements for registration and that there is no obstacle for refusing the registration of the applied trademark.

The TPI objected on grounds that the trademark indicates the kind, characteristics, amount, quality and purpose of the services which are covered by the specification of the plaintiff’s application.

The court rejected the plaintiff’s claims ruling that “MULTI” means plural, diversity and that the term “CANAL” means the creation method of any work or object, or an installation having electronic character or the broadcasting of the information or news and that “MULTICANAL” being the essential component means configuration of the TV having plural lines and therefore can not be registered due to Article 7/1-c of the Decree Law no. 556 for lack of distinctiveness.

The plaintiff’s appeal was not favorably received and the Supreme Court (**) upheld the decision of the first instance on grounds that “MULTI” indicates the plurality namely the “quantity” of the goods/services referred in Article 7/1-c of the Decree Law no.556 and “CANAL” means the TV or radio line and therefore does not have a distinctive character. The Supreme Court in its decision further held that although the plaintiff has claimed that the use and promotion of the trademark has

been firstly effected by themselves and their trademark has acquired distinctiveness whereby the registration of the trademark according to last paragraph of Article 7 of the Decree Law no.556 has been disregarded by the T.P.I., the plaintiff having neither requested the registration of their trademark application filed with the Turkish Patent Institute on the basis of the last paragraph of Article 7 of the same Decree Law nor referred to said provision in their objection lodged against the Higher Council of Re-examination and Evaluation Council can not base their action on said provision against the refusal decision of the Higher Council which is to strictly evaluate and decide as of the claims put forward by the applicant, especially considering that the plaintiff did not submit any evidence with the court in this regard.