

Acquiescence

“TELSIM”

Telsim Tic. İthalat Ltd. Sti. vs. Telsim Mobil Telekomünikasyon Hiz. A.Ş.

**(*) 5th Commercial Court of Ankara
Decision No 1998/973-1999/429 (July 15, 1999)**

() 11th Civil Chamber of the Supreme Court
1999/8169-2000/1726 (March 2, 2002)**

An action (*) was instituted for trademark infringement and for the determination and stopping of unfair competition claiming the exclusion of the word TELSİM from the defendant's trade name and the publication of such decision.

The plaintiff claimed that it has been established in 1983 for producing, importing, exporting and trading of all kinds of electronic devices, especially telecommunication devices and for maintaining services thereof, that the word TELSİM has been used since 1979 in their promotion and advertising and that same is protected as a registered trademark since April 10, 1997, that the defendant firm has been established in 1994 and since then it has built hundreds of telephone exchanges throughout Turkey and is providing cellular telephone services in this regard and has developed under a “monopolistic structure” rapidly. The plaintiff pointed out that although he has been silent due to the defendant's might for a certain period of time, the unfair competition of the defendant has grown unbearably since he has been losing awards of contracts due to the confusion caused by defendant and since the consumers/clients of the defendants are constantly transmitting directly to them their complaints the defendant's services and products. The plaintiff requested the determination and stopping of unfair competition claiming the exclusion of the word TELSİM from the defendant's trade name and the publication of such decision by asserting that the defendant's use of the word TELSİM, which is the plaintiff's registered trademark and the characterizing component of its trade name, as trade name and as a trademark constitutes trademark infringement and unfair competition.

The defendant objected that the action has not been timely instituted and that the defendant firm has been established in 1993 upon the Telsim Pan Rupa Mobil Telefon Sistemi Agreement with PTT (former public establishment for telecommunication and postal services) for telecommunication and communication service purposes and has invested million dollars especially for mobile telephone services and for licenses in this regard, that the number of his consumers reached 850.000. The defendant put forward that since he has no registered trademark it is not possible to rely on the Decree-Law no.556 on trademarks and that the goods and services on which the trademarks are used are different and therefore there is no likelihood of confusion between the trademarks. The defendant claimed the rejection of the plaintiff's claims by asserting that he has been using his trade name since 1993 and that the trade names in question are not confusingly similar besides the above arguments.

The court decided that the defendant's claim regarding lapse of the legal period for instituting a court action is not well-grounded as well as the claims regarding the similarity of the of the trade names, which are identical and are used, for similar goods and services and other claims and objections in view of the plaintiff's registered trademark TELSİM. The court rendered its decision, however, by holding that the resolution of the subject matter depends on the issue whether instituting such court action is against the rule of "bona fide" use of rights of the Turkish Civil Code, (Art 2) since the silence of the plaintiff for a long time, although he has known the defendant's trade name and activity due to the fact that the Agreement between the defendant and PTT is known to the public, shows the plaintiff's acquiescence and constructive consent. The Court further held that where the plaintiff had objected before, the defendant might have chosen a different course of action and that regarding the matter of dispute, instituting such court action after a considerably long time is abuse of rights and rejected the plaintiff's action on such grounds.

Upon plaintiff's appeal (**) the Supreme Court has upheld the decision of the first instance court.