

Infringement & Defenses- Likelihood Of Confusion

“RED BULL/ POWER BULL ENERGY DRINK+ DEVICE” Trademarks

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)

An action (*) was instituted for the cancellation of the trademark POWER BULL ENERGY DRINK + DEVICE registered under no. 206842 on grounds of trademark infringement and unfair competition.

The plaintiff claimed that the drink bearing his trademark RED BULL is being produced and marketed throughout the world, that said trademark is registered in 80 countries and registered since 1995 in Turkey, that his trademark is well-known. The plaintiff further claimed that there are court actions instituted between himself and the defendant, that the defendant’s POWER BULL trademark is confusingly similar to his RED BULL trademark and use of the trademark POWER BULL on identical goods leads to trademark infringement and gives the impression that there is a business relation between the plaintiff and the defendant. Therefore, the plaintiff claimed the cancellation of the defendant’s trademark registration no. 206842, compensation of material damages and stopping the infringement of his trademark and trade name and unfair competition.

The defendant objected by asserting that the court action prosecuted before 5th Commercial Court of Istanbul concerns the trademark POWER BULL, whereby his trademark is POWER BALL; that those two marks are not connected in writing and semantically; that there are many trademarks in U.S.A. including the word BULL together with such words as “cola” that products are not similar as to the weight, size, color, shape and design of the packaging. The plaintiff further claimed that the consumers would not confuse the products due to the price difference thereof.

The expert’s report ordered by the Court concluded that the color composition and design pattern of the defendant’s product packaging leads to confusion and constitutes parasitary competition in the sense of the Article No. 57/b.5 of Turkish Code of Commerce regarding the unfair competition and

that the use of a priorly registered trademark or a well-known/ non-registered trademark for identical or similar goods or services is respectively a ground for refusal and a ground for cancellation according to Article No. 42 of Decree-Law No. 556 on Trade and Service Marks.

On such grounds, the expert's report concluded that the defendant's trademark should be partially cancelled by excluding therefrom the word "Ball" and the "Bull device" so that the trademark will consist of the word "Power" only.

The Court accepting the plaintiff's claims in the light of the evidences gathered and following the conclusions of the favorable expert's report has ruled for the cancellation of defendant's trademark registration No. 206842 POWER BALL ENERGY DRINK, in its entirety and ordered to stop the defendant's act of unfair competition, to stop the production and distribution of goods carrying the subject trademark and their sale within the country or for exportation, the payment of 1.000.000.000.- TL as moral compensation, the confiscation where necessary the destruction of the goods bearing subject trademark and all packagings, boxes, printed materials used in the production thereof as well as printed paper carrying the cancelled trademark including invoices and all promotional material.

The Court has further ordered the publication of the ruling in one of the largest newspapers with nationwide distribution.