

## Registrability – Likelihood Of Confusion (Similarity Of Trademarks)

### “MAGGI+BUBBLE DEVICE/ MAYAM+BUBBLE DEVICE” Trademarks

#### SOCIETE DES PRODUITS NESTLE S.A vs. THE TURKISH PATENT INSTITUTE

- (\*) **3<sup>rd</sup> Commercial Court of Ankara**  
**Decision no. 1996/678 - 1998/428 (May 14, 1998)**
- (\*\*) **11<sup>th</sup> Civil Chamber of the Supreme Court**  
**Decision no. 1998/9442 - 1999/1386 (February 22, 1999)**  
**(Notified on April 4, 1999)**
- (\*\*\*) **3<sup>rd</sup> Commercial Court of Ankara.**  
**Decision No. 1999/234-2000/105 (March 2, 2000)**

An action (\*) was instituted against the Turkish Patent Institute for the withdrawal of the administrative decision rejecting the opposition raised by the plaintiff against the trademark application “MAYAM + BUBLE DEVICE” on ground of identity of the “BUBBLE DEVICE” therein with that of the plaintiff’s well-known trademark” MAGGI + BUBBLE DEVICE”.

The plaintiff has asserted that the trademark “MAGGI + BUBBLE DEVICE” enjoys worldwide reputation and is registered on 28.12.1990 in Turkey and on 07.01.1971 as an International trademark, that the registration of the subject trademark would infringe the trademark “MAGGI+BUBBLE DEVICE” and would deceive the public. On such ground the plaintiff claimed the withdrawal of the decision rejecting the opposition as well as the recognition of the worldwide reputation of its trademark “MAGGI + BUBBLE DEVICE”.

The T.P.I. objected by asserting that the trademarks are not similar since the trademark “MAYAM” consists of a circle shaped bubble device similar to dialog bubble used in cartoons marked with a thin black line and the word “MAYAM” in it, whereby the plaintiff’s trademark consists of red elliptical drop shaped design on a yellow ground and the word “MAGGI” written with yellow letters in it. The defendant further asserted that the trademarks are composed of essential and secondary elements and

that as the essential elements of the subject trademarks consist of the words “MAYAM” and “MAGGI” which do not show any similarity and as the secondary device elements are different there is no trademark infringement and the average consumer would not be deceived.

The 3rd Commercial Court of Ankara favorably considering the claims of the defendant has ruled (\*) that the administrative decision is to be upheld. However, upon the plaintiff’s appeal the Supreme Court (\*\*) overturned the initial decision (\*) on grounds that the plaintiff’s claim concerning the world-wide reputation of its trademark has not been considered, and that according to the Article 8/4 of the Decree-Law No.556 on the Protection of Trademarks “in case the prior registered trademark is well-known the trademark applied for shall be refused even if it is to be used in respect of differing goods and services”.

The 3rd Commercial Court of Ankara has upheld the Supreme Court’s decision (\*\*) and adopting the conclusions of the experts’ report, it ruled (\*\*\*) that the plaintiff’s trademark “MAGGI & BUBBLE DEVICE” is a well-known trademark in the sense of the Article 6bis of the Paris Convention and of Article 7 parag. 1 (i) of the Decree-Law No. 556, that the device in the trademark application “MAYAM + BUBBLE DEVICE” is identical with the bubble device of trademark registration “MAGGI + BUBBLE DEVICE”, that the registration of the trademark “MAYAM + BUBBLE DEVICE” will constitute unfair competition with regard to the bubble device of the well-known trademark “MAGGI” and ruled on such grounds for the withdrawal of the decision of the Turkish Patent Institute rejecting the plaintiff’s opposition.