

## Registrability- Three Dimensional Marks

“conic shaped appetizer”

PEPSICO INC. vs. TURKISH PATENT INSTITUTE

(\*)Court of Ankara on Intellectual and Industrial Rights,

Case no. 2004/1156 – Decision no.2006/312, decision of May 25, 2006, notified on June 7, 2006.

An action<sup>(\*)</sup> was instituted against the Turkish Patent Institute for the withdrawal of the Turkish Patent Institute’s final decision refusing the trademark application no.2002/33265 THREE DIMENSIONAL FIGURE for a conic shaped appetizer on grounds of non-distinctiveness.

The plaintiff’s attorney claimed that the application no.2002/33265 THREE DIMENSIONAL FIGURE is a distinctive and a registrable sign and that the plaintiff requested the withdrawal of the Turkish Patent Institute’s final decision.

The defendant’s attorney claimed that the decision of the Turkish Patent Institute is justified, as the trademark application is devoid of distinctive character in accordance with Article 7/a of the Decree Law no.556 and requested the rejection of the action.

The Court held that a trademark may consist of all kind of signs which distinguish the goods and services of one undertaking from the goods and services of other undertakings in accordance with the Article 5 of the Decree Law, that the legal definition of a trademark consists of two elements: first the sign and secondly the distinctive character that the sign may consist of words, including personal names, designs, letters, numerals, **the shape of the goods or (of) the packagings**, capable of being represented graphically or by similarly descriptive means and capable of being published and reproduced by printing. The court also mentioned that distinctive character expresses the features and the elements, which distinguishes one sign from another and that a sign can be distinctive as of its beginning or as of its longstanding use.

The court also asserted that signs, which are not close to the name of the notion or does not remind the registered goods/services, are accepted as distinctive as of their beginning, that the plaintiff’s sign

consisted of a conic shaped appetizer figure and that the plaintiff's figure is not descriptive over the goods in classes 29 and 30 and therefore shall be accepted as distinctive enough to distinct the covered goods from another business's goods. The court also held that registration of the sign in Middle and South America for the same classes prior to the application date constitutes presumption to its distinctiveness.

As a result the Court decided to accept the action in accordance with 4 bis of Paris Convention and Article 15 of TRIPS and ruled to the withdrawal of the Turkish Patent Institute's final decision.