

III.A.3. The Prevention and Prohibition of Trademark Infringement

Sigara Sanayi İşletmeleri ve Ticaret A.Ş. instituted an action against European Tobacco Sigara ve Tütüncülük Sanayi ve Ticaret A.Ş. on the grounds of prevention and prohibition of the trademark infringement with respect to the registered trademark Device +2001¹, before the İstanbul 4th IP Court.

Through this appeal, the plaintiff claims that, they have been producing the “cigarette” goods in class 34, under the worldwide notorious Maltepe, Samsun, Tekel 2000 and 2001 trademarks and that the subject trademark Tekel 2001 has been registered in Turkey, since 1995. With this connection, the plaintiff claims that, the use of the European 2005 trademark of the defendant, causes “*confusion*” and “*likelihood of association*” among the average consumers with the TEKEL 2001 trademark.

The defendant states that, they have a registration application for the EUROPEAN 2005² trademark before the Turkish Patent Institute on 06.03.2006 and since the TEKEL 2001 and EUROPEAN 2005 trademarks does not bear any similarity in-between, by particularly taking into account that the TEKEL and EUROPEAN indications and as well as the 2001 and 2005 dates are totally different, there is no confusion and/or unfair competition between these trademarks.

Through submitted evidences, it has been understood that the EUROPEAN 2005 trademark application filed in the name of the defendant has been rejected before the Turkish Patent Institute-Higher Board of Examination.

The Court held that, although the defendant uses the EUROPEAN indication instead of TEKEL and the 2005 date instead of 2001, when both trademarks are examined through their general overall images reflected as a “whole”, there is an obvious confusion among the signs. Besides, through comparative examination of the product packaging of parties, the court observed that the ellipse sign and the color design, which is used on defendant’s cigarette



packaging is the same as with the ellipse sign and color design used in the plaintiff’s



cigarette packaging. Furthermore, the Court further stated that the “2005” indication used in the defendants trademark has been formed in a similar way with the trademark “2001” which is a very distinctive sign for the cigarette goods.

¹ Device+2001 registration no. 165257

² European 2005 application no. 2005/17696

Having examined the product packing and composition of the elements used on packing, the court decided³ that the EUROPEAN 2005 trademark causes an infringement against the plaintiff's registered device+ 2001 trademark.

The defendant has applied to Supreme Court for the re-examination and therefore the cassation of the initial decision of the İstanbul 4th IP Court and the case is still through examination period before the Turkish Supreme Court.

³ *Sigara Sanayi İşletmeleri ve Ticaret A.Ş.v. European Tobacco Sigara ve Tütünçülük Sanayi ve Ticaret A.Ş.* Case No. 2006/399, Decision No. 2007/73 (İstanbul 4nd Court of Intellectual and Industrial Property Rights, March 16, 2007)