

## Registrability – Device And Design Marks

**“Bottle device with color combination”**

**BEAUTE PRESTIGE INTERNATIONAL vs. TURKISH PATENT INSTITUTE**

**(\* ) 9th Commercial Court of Ankara**

**Case no. 2000/787 – Decision no.2001/738 (September 27, 2001)**

An action (\*) was instituted against the Turkish Patent Institute for the withdrawal of the administrative decision refusing the registration of the plaintiff’s trademark application consisting of a bottle device on ground of absence of distinctiveness.

The plaintiff claimed that the applied trademarks are distinctive having a differentiating and distinctive character, that they are registered in France, and that according 6quinquies of the Paris Convention it is mandatory that the trademarks which have been duly registered in the Home Country shall be accepted to registration in the Paris Union countries.

The defendant objected that said trademarks consist of bottle depiction, that registration of the applied trademarks has been refused since said trademarks do not fall within the scope of Article 5 and 7/1(a) of the Decree Law no.556 and that the non-registrability of the applied trademarks have been independently evaluated in the context of the national laws and that the applied trademarks do not have a distinctive character.

The court in its decision ruled that the trademarks having comprised of color combination and being well known by the women consumers have acquired distinctive character and they are distinguishable from other signs of other enterprises. The court therefore decided to the withdrawal of the defendants refusal decisions on grounds that the trademarks have acquired distinctiveness, that two of the applied trademarks are three dimensional trademarks and that same devices have been registered in France which is signatory state to the Paris Convention and before the WIPO since 1992 in accordance with the request of the plaintiff. Thus the court consequently ruled that Article 5 and 7/1(a) of the Decree Law no.556 can not be implemented due to the first paragraph of 6quinquies of the Paris Convention.

The defendant appealed against the decision before the Supreme Court which has not rendered as yet its decision.