

Registrability- Three Dimensional Marks

“Tablets for dishwashing machines with color combinations”

BENCKISER N.V. vs. TURKISH PATENT INSTITUTE

(*) **4th Commercial Court of Ankara**
Decision no 2000/848 –2002/272 (May 15, 2002)

(**) **4th Commercial Court of Ankara**
Decision no. 2000/864/ 2002/273 (May 15, 2002)

Two further actions were instituted against the Turkish Patent Institute for the withdrawal of the administrative decisions refusing the registration of a national trademark application (*) and five international registrations (**) all consisting of the three dimensional representation of different tablets for dishwashing machines on ground of lack of distinctiveness in the sense of Article 7, parag. 1 (a) and lack of the characteristic to distinguish as a trademark in the sense of Article 5 of the Decree-Law No. 556 on Trade/Service Marks.

The plaintiff claimed that the trademarks applied for are registered in the Country of Origin and that therefore; the decisions of refusal of the Turkish Patent Institute are contrary to Article 6 quinquies of the Paris Agreement and Article 4 and 7, parag. 1 (a) of the Decree Law no.556.

The Turkish Patent Institute objected that the signs for which the plaintiff wishes to obtain trademark registrations are not registrable as trademarks, for lack of the characteristic to distinguish in the sense of Article 5 in that the three dimensional shapes lack the characteristic to distinguish and can not be considered as trademarks.

The court has observed that the devices for which registrations are sought are duly registered in the Country of Origin, that the three dimensional trademarks and their color combination are registrable as trademarks according to Article 5 of the Decree Law no.556 whereby the concerned devices and their color combinations present the characteristics of distinctiveness and that accordingly, they have to be granted protection on the basis of the Article 6 quinquies of the Paris Convention in the member

countries. On such grounds the Court has decided and ruled that the decisions of refusal are to be withdrawn.