

KIPTON CASE SUMMARY

Jurisdiction: Turkey

Subject Heading: I.D.1. Similarity of Marks

Case Name and Citation: UNILEVER N.V. v. KARALI CAY SANAYI TICARET VE GIDA PAZARLAMA ANONIM SIRKETI, Case No. 2009/36, Decision No. 2010/1 (Beyoglu Court of Intellectual and Industrial Rights, February 11, 2010)

Plaintiff: UNILEVER N.V.

Defendant: KARALI CAY SANAYI TICARET VE GIDA PAZARLAMA ANONIM SIRKETI

Marks Associated with Goods/Services: Plaintiff's LIPTON trademarks especially registered in classes 5,29,30,32 and defendant's KIPTON trademark no.2007 59313 registered in classes 29,30 and 32

Nature of Case: Cancellation action based on likelihood of confusion due to similarity of marks and due to the notoriety of plaintiff's trademark, bad faith of the defendant

Prior Decisions:

Overview of Decision and Ruling:

The plaintiff claimed that; the trademark LIPTON is a well-known trademark by supporting such claim with related documents and information, that defendant's trademark KIPTON is confusingly similar to their worldwide known LIPTON trademark in their overall in respect of visual and phonetic aspects due to only one letter of difference between them, that the specifications of the trademarks are overlapping and both of the trademarks are being used for daily consumption products where the consumers do not pay high attention and time which also increases the risk of confusion between the trademarks and that the defendant has acted in bad faith with the aim of taking unfair advantage from the reputation of plaintiff's trademarks by choosing such trademark. And requested from the Court the cancellation of defendant's trademark registration for KIPTON.

The defendant claimed that; the trademark KIPTON can not be considered as confusingly similar to plaintiff's LIPTON trademark since the first letters of the trademarks are different which have more importance in respect of the first impression appearing in consumers minds, that plaintiff's trademark is well-known in respect of specific

goods in classes 5 and 30 and does not have a general awareness in respect of goods in classes 29 and 32. And requested from the Court the rejection of the court action.

In the light of the evidences submitted by the parties and of the expert report which is in plaintiff's favor, The Court has determined that; plaintiff's trademark should be accepted as a well-known trademark at defendant's application date for the denomination KIPTON and therefore should enjoy the rights/protection arising from the Paris Convention; that LIPTON and KIPTON can be considered as almost identical to each other in their overall in respect of visual and phonetic aspects; considering that plaintiff's trademark has reached to a high level of notoriety, quality and trust before the public defendant's trademark has been filed with the aim of taking unfair advantage from such reputation and from the advertisement power of plaintiff's well-known trademark.

The Court has ruled to the cancellation of defendant's trademark no. 2007 59313 KIPTON and deletion of the related record from the trademark registry and prevention of the use of this trademark after the finalization of the cancellation and to charging the defendant to pay all the expenses for the litigation costs.

Importance of Case: The Court has accepted the similarity between the trademarks of which first letters are totally different, also considering the notoriety of plaintiff's trademark in the same sector.

Images/Description:

Contributor Firm: Deris Law Office