

IAR CASE SUMMARY TEMPLATE

Jurisdiction: Turkey

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

Case Name and Citation: UNILEVER N.V. vs ERPAZ GIDA, Case No. 2009/107; Decision No.2010/54 (Beyoglu Court of Intellectual and Industrial Rights, September 30 2010)

Plaintiff: UNILEVER N.V.

Defendant: ERPAZ GIDA İHTİYAÇ MADDELERİ İMALAT VE PAZARLAMA LİMİTED ŞİRKETİ

Marks Associated with Goods/Services: Plaintiff's DOVE trademarks especially registered in classes 3 and 21 and defendant's DORES DEVICE trademark no.2006 14261 registered in classes 3 and 21

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

Prior Decisions:

Overview of Decision and Ruling: The plaintiff claimed that; the trademark DOVE is a well-known trademark registered in the well-known trademark list of the Turkish Patent Institute, that defendant's trademark DORES is confusingly similar to their worldwide known DOVE trademark in their overall in respect of visual and phonetic aspects, especially considering the addition of its specialized script which is very similar and reminiscent of the well-known specialized script used in DOVE trademark to the similar word element DORES; that the specifications of the trademarks are overlapping/directly connected and both of the trademarks are being used for daily consumption products where consumers do not pay high attention 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 consisting of similar word and device/script element. And requested from the Court the cancellation of defendant's trademark registration for DORES DEVICE.

The defendant claimed that; they own a prior trademark registration for DORES registered in class 16, that the trademark DORES can not be considered as confusingly similar to plaintiff's DOVE trademark due to

the sufficiency of the two letters of difference between them and due to the differences between their device and color elements, that packages of the products on which the subject trademarks are used are totally different from each other which prevents the risk of confusion between the trademarks. 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 is a well-known trademark and therefore the defendant has not acted as a prudent business man, acted in bad faith and has the aim of taking advantage from the reputation of plaintiff's well-known DOVE trademark series, that the first syllables of the trademarks DOVE and DORES which have more importance in respect of the first impression appearing in consumers minds are identical; the specialized writing character of their first D letters are identical, both of the trademarks have similar script/device element and therefore the trademarks DOVE and DORES can be considered as confusingly similar to each other; that both of the trademarks are registered for goods in classes 3 and 21 which are being used for daily consumption/cleaning and personal care products where consumers do not pay high attention and therefore the risk of confusion between them is increasing.

The Court has ruled to the cancellation of defendant's trademark no. 2006 14261 DORES DEVICE 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 been convinced that DORES DEVICE trademark was not a newly created word mark and not sufficiently distinctive from DOVE despite of several different elements in the overall outlook of defendant's trademark.



Images/Description:

Contributor Firm: Deris Patents and Trademarks Agency