

## RAPALA CASE SUMMARY

<b>Jurisdiction:</b>	Republic of Turkey / Beyoglu Court of Intellectual and Industrial Property Rights.
<b>Subject Heading:</b>	I.F. Famous and Well-Known Marks
<b>Case Name and Citation:</b>	The RAPALA Case Case no.2008/38 – Decision No.2009/66
<b>Plaintiff:</b>	RAPALA VMC OYJ
<b>Defendant:</b>	RIDVAN KASAPOGLU
<b>Marks Associated with Goods/Services:</b>	The Plaintiff's trademark registration no. 2002/13298 RAPALA, which is also the main element of the Corporate name as well as the surname of the owner of the Plaintiff Company, covers the goods in class 28, namely as " <i>Fishing equipment</i> ". The Defendant's trademark registration no. 2006/19196 RAPALA covers the goods in classes 18 and 25, namely as " <i>Processed or unprocessed leather and hides, artificial leather, cowhide, lining leather... Articles made of leather, imitation leather and other materials not included in other classes: Bags, suitcases, wallets, portfolios, bags for carrying children (port-babies, kangaroos), leather or cowhide boxes and trunks, check book cases, card cases, empty vanity bags, empty tool set bags, leather key holders, money bags, sacks, back packs, briefcases, shopping and school bags...Umbrellas, parasols, sun visors, walking sticks...Whips, harness, saddlery, stirrups and saddle belts...Intestines, artificial intestines (used to fill sausages, salami and hot-dogs, etc.)...</i> " in class 18 and " <i>Clothing (inner and outer clothing) made from all kinds of material, except clothing for protective purposes: Clothing made from cotton, knitwear, denim, leather, paper and similar materials; sports clothing; bath and beach clothing; underwear, gloves... Socks... Footwear: shoes, high boots, boots, slippers, bootees and parts thereof, sports shoes and pegs thereof, shoe parts namely, soles, heels, legs and upper parts... Headgear, hats, berets, caps, caps with visor...Special articles included in this class for babies: Cloths made of textile for babies, dipper cloth made of textile for babies baby shirts, nylon underwear, bibs (except paper bibs)...Neckties, bow-ties, foulards, shawls, head scarves, pareos, false collars, bandannas, wrist bands, muffs, arm bands, head bands, wrist bands... Belts, pant suspenders, garters...</i> " in class 25.
<b>Nature of Case:</b>	The Plaintiff RAPALA VMC OYJ owner of the well-known trademark RAPALA brought a cancellation action against the defendant RIDVAN KASAPOGLU with respect to the registration no. 2006/19196 RAPALA trademark dated 12.02.2008, based on " <i>likelihood of association</i> ", " <i>confusion</i> ", " <i>notoriety</i> " and " <i>bad-faith</i> ".
<b>Prior Decisions:</b>	Not Relevant

**Overview of Decision and Ruling:**

The court decided that the conditions exist for the cancellation of the defendants' trademark, taking into account the notoriety of the plaintiff's RAPALA trademark as well as being the surname of the establisher of the Plaintiff Company and also a part of the Company name, being in-use in Turkey since the year 1998, whereas the defendant's trademark is registered on 2007, having no meaning in Turkish and there is no possibility that the defendant has the possibility not to know the trademark. To this effect, it has been granted that the RAPALA indication is not one of those signs which are open to the usage of everybody in the sector and in fact the same belongs to the surname of a real person and also the Cooperate name of the Plaintiff Company.

The court further explained that the existence of likelihood of confusion is accepted even if part of the average consumers are subject to the risk of confusion rather than all consumers. Thus, the fact that the trademarks of the plaintiff and defendant are registered in different classes has no importance with respect to the evaluation of likelihood of confusion. The court also held that the plaintiff's trademark RAPALA, on basis of the evidences submitted to the court, is well-known according to the Paris Convention. Therefore the registration of an identical trademark in even different classes and in the name of any 3rd party without the permission of the plaintiff is not possible. Even the registration of the RAPALA trademark for goods in classes 18 and 25 should be accepted as the confirmation of the notoriety of the trademark, and evidences the intention to take unfair advantage of the plaintiff's trademark. The court found it impossible to accept the possibility that the defendant created the plaintiff's trademark by chance, particularly considering the fact that the word RAPALA is the surname of the Plaintiff Company owner, meaningless word and created by its actual owner. The defendant also could not submit any evidence to prove that the trademark has been created by himself and has any specific meaning.

The court has accepted that the defendant has registered the RAPALA trademark for goods in classes 18 and 25 in bad faith, with the intention of taking unfair advantage from the notorious of the RAPALA trademark. Thus, on grounds of likelihood of confusion, notoriety, bad-faith on basis of Article 8/1 (b) of Decree Law No. 556, Article 6 bis of Paris convention, Article 7/1 (i), 8/IV and Article 42 of Decree Law No. 556, the court ruled for the invalidation of defendant's RAPALA trademark reg. No. 2002/13298 for goods in classes 18 and 25.

**Importance of Case:** This decision is important because it establishes that the likelihood of confusion created by identical marks but in different classes shall also be rejected in the existence of bad-faith and well-known trademarks.

**Images/Description:**

**RAPALA**

Defendant's Mark

**RAPALA**

Plaintiff's Mark

**Contributor Firm: DERIS PATENTS & TRADEMARKS AGENCY A.Ş.**