





I.D.LIKELIHOOD OF CONFUSION

The plaintiff Eti Gıda San. ve Tic. A.Ş. instituted a court action against Gıdasa Sabancı Gıda Sanayi ve Tic. A.Ş. and the Turkish Patent Institute for the cancellation of the final decision of the Higher Council regarding the refusal of the opposition filed in the name of the plaintiff

against the “”¹ trademark application, for the goods in class 32 applied in the name of the defendant, on the grounds that; the defendant’s “PİYAFORM” trademark is

confusingly similar with the plaintiff’s prior well-known “”², “”³ and

“”⁴ trademarks, registered for the goods in classes 05, 29, 30 and 32 in the sense of 556 Decree Law, Article 8/1 (b) and 8/4.

Both defendant’s asserted that the refusal decision of TPI is well-grounded as the trademarks are not confusingly similar and the defendant Gıdasa Sabancı Gıda Sanayi ve Tic. A.Ş. further claimed that;

1. The main element of the “PİYAFORM” trademark is the “PİYA” designation and not the “FORM “designation,
2. The average consumers memorizes the trademarks as a whole, in this context the defendant’s trademark will also be memorized as a whole –PİYAFORM-, through the memories of the average consumers,
3. the plaintiff’s trademarks are not only formed of the “FORM” designations and also includes secondary word/device elements, thus it is not possible to make similarity evaluations by separating the trademarks and,
4. the “FORM” designation bearing the meanings “shape, status” is a descriptive word for the intended goods, thus can not be counted as the main element of the trademarks.

As the plaintiff; during the opposition period did not mention and base the opposition over the “device+FORM” and “device+ ETI FORM” trademarks, these trademarks have not been taken in account during the Court procedures. Therefore, the similarity examination has only been evaluated through the “PİYAFROM” and “ETI FORM” trademarks.

The Court held that, both trademarks cover the same goods under class 32 and as the “FORM” indications used under the plaintiff’s and the defendant’s trademarks are mainly used to discriminate the goods and services from; both the third parties goods & services and also from the other goods& services purchased under the main and well _known trademarks “ETI” and “PIYALE”. Therefore, in the consideration of the Court, both the plaintiff’s and the defendant’s trademarks bears the “FORM” indication as the main element of the trademarks.

As a conclusion the Court decided⁵ to overrule the refusal decision of the Higher Council and therefore cancellation of the defendants “PİYAFORM” trademark with the conclusion that the defendant’s “PİYAFORM” trademark is confusingly similar with the “ETI FORM” trademarks and the same will cause a confusion among the average consumers.

As a result the Court accepted the action and ruled to the cancellation of defendant’s trademark “PİYAFORM”.

The Supreme Court upheld the decision of the Court of First Instance

¹Application no. 2003/26042

²Registration no.135667

³Registration no. 118808

⁴Registration no.2000/240889

5 *Eti Gıda San. ve Tic. A.Ş. v. Turkish Patent Institute & Gıda Sabancı Gıda Sanayi ve Tic. A.Ş.* Case No. 2004/944, Decision No. 2005/135 (Ankara Court of Intellectual and Industrial Property Rights, March 10, 2005.) |
6 11th Judicial Office of Supreme Court, Case No.2007/8527 - Decision no.2007/12053 (September 28, 2007)