




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 classes 29, 30 and 32 applied in the name of the defendant, on the grounds that; the defendant’s “PIYALE FORM”
 trademark is confusingly similar with the plaintiff’s prior well-known “**FORM**”² and
 “**FORM**”³ trademarks, registered for the goods in classes 05, 29, 30... 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 and the defendant Gıdasa Sabancı Gıda Sanayi ve Tic. A.Ş. further claimed that;

1. the trademarks are not confusingly similar,
2. the defendant owns a series trademark beginning with the well-known PIYALE indication,
3. the “FORM” designation bearing the meanings “shape, status” is a descriptive word for the intended goods in classes 29 and 30, thus can not be counted as the main element of the trademarks, and
4. therefore the main element of the trademarks are the “ETI” and “PIYALE” designations.

The Court held that the “ETI” and the “FORM” indications of the plaintiff’s trademarks are both well-known trademarks in respect of the plaintiff’s goods and the defendant’s “PIYALE FORM” trademark has been formed and actively been used by mainly highlighting the FORM indication. The Court has further held that the “FORM” indication bearing the meanings “shape, the proper shape of something is meant to be, status..etc.” does not refer to any specific designation for the goods mentioned under classes 05, 29 and 30, thus nothing constitutes any obstacle against the registration, thereof.

The penal of experts stated in their report that the plaintiff’s trademarks “DEVICE+FORM” and “ETI FORM”, are well-known trademarks and on the contrary of the Courts consideration the Experts evaluated the main elements of the trademarks as the “ETI” and the “PIYALE” indications, rather than the “FORM” designation.

Partially adopting the expert’s report, the Court decided⁴ to overrule the refusal decision of the Higher Council and therefore the cancellation of the defendants “PIYALE FORM” trademark with the conclusion that the defendant’s “PIYALE FORM” trademark is confusingly similar with the “DEVICE+ FORM” and “ETI FORM” trademarks and the same will cause a confusion among the average consumers.

As a result the Court has accepted the action and ruled to the cancellation of defendant’s trademark PIYALE FORM.

The Supreme Court has upheld the decision of the Court of First Instance⁵

¹Appl. No. 2000/09220

²Reg. No.135667

³Reg. No. 118808

⁴*Eti Gıda San. ve Tic. A.Ş. v. Turkish Patent Institute & Gıdasa Sabancı Gıda Sanayi ve Tic. A.Ş.* Case No. 2004/435, Decision No. 2005/543 (Ankara Court of Intellectual and Industrial Property Rights, October 5, 2005.)
⁵ 11th Judicial Office of Supreme Court, Case No.2006/13173, Decision no.2007/15747 (December 12, 2007)

