

FILA v EILO: Re-examination and Evaluation Board carries out global appreciation of visual aspects of conflicting marks

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- **FILA Luxemburg SARL** opposed the registration of the figurative mark **EILO** based on the earlier well-known **FILA** marks
- While the Trademarks Department rejected the opposition, the Re-examination and Evaluation Board decided in the opponent's favour
- The board notably concluded that the application was similar to the **FILA** marks in its overall appearance

The Re-examination and Evaluation Board of the Turkish Patent and Trademark Office has recently rejected a trademark application that was similar to the stylised word element (logo) of a well-known trademark.

Background

On 22 October 2020 the applicant, a natural person, filed an application to register the figurative trademark **EILO** (depicted below) in Class 18:



After the application was published in the *Official Trademarks Bulletin*, **FILA Luxemburg SARL**, the owner of the well-known **FILA** marks (depicted below), filed an opposition against the application on the ground that there was a likelihood of confusion with the **FILA** marks:



The opponent emphasised that the well-known status of the FILA marks should be taken into account as a factor that increased the risk of confusion and bad faith.

The Trademarks Department of the Patent and Trademark Office rejected the opposition on 23 November 2022, ruling that the application was not similar to the FILA marks and, therefore, there was no likelihood of confusion among the public. The Trademarks Department also rejected the opponent's bad-faith claim on the ground that no concrete evidence showing the applicant's bad faith was submitted.

The opponent appealed to the Re-examination and Evaluation Board.

Decision

On 23 November 2023 the board accepted the appeal. In deciding in the opponent's favour, the board took into account the recognition of the FILA marks; it concluded that the application was similar to the FILA marks in its overall appearance and, therefore, could be perceived as part of a series of FILA marks. Having further determined that the trademarks covered the same or similar goods and services, the board found that there was a likelihood of confusion and that the application should be rejected.

On the other hand, the board held that there was no need to examine the bad-faith allegations: these would not have any effect on the outcome of the appeal considering that the application had been rejected in its entirety due to the likelihood of confusion with the FILA marks.

Comment

The decision serves as an example of a global appreciation of the visual aspect of trademarks in the examination of similarity. It also reminds brand owners that they should not neglect to register their trademarks in the form in which they are actually used, to ensure that they are able to enforce their rights fully.

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