

Turkish Patent Institute reconsiders Absolut refusal Turkey - Gün + Partners

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A trademark application consisting of a 3D multi-visual representation of the famous Absolut vodka bottle filed for Class 33 alcoholic beverages was initially rejected by the Turkish Patent Institute (TPI) on absolute grounds, as the application was found devoid of distinctive character under Article 7(a) of Trademark Decree Law 556.

In response to an appeal, the TPI board held that even though there were no sufficient grounds to declare the application inherently distinctive: “the long established use of the mark and the intense promotional activities conducted over the years” showed that the mark had acquired distinctiveness through use and was therefore capable of registration as a trademark.

The evidence submitted during the appeal included information on:

- the Absolut Company Aktiebolag and over 100 years of history of its Absolut alcoholic beverage mark;
- Absolut vodka’s global sales for the past 30 years; and
- global advertising campaigns, sponsorships of high-level arts and culture projects such as the Andy Warhol-designed Absolut bottle of 1985 and hundreds of awards received over the years.

This evidence was supported by information on:

- the widespread commercial use of the mark in Turkey since 1979;
- advertising campaigns, arts and culture projects, events and parties in Turkey sponsored by Absolut; and
- the many local media references.

Even though the evidence clearly showed both the global and local fame of Absolut and its nature extending to a ‘lifestyle mark’, what made the real difference in the appeal was the information and evidence focusing on the trademark function of the Absolut bottle itself.

The worldwide trademark registrations for the Absolut bottle, samples of its use in promotional materials and advertising campaigns and material focusing on the bottle itself had a significant effect on the deliberations of the TPI examiners. A special edition Absolut Istanbul bottle design created by a Turkish artist, which was later used in promotional activities and appeared regularly in the Turkish media, left no doubt as to the importance given to the promotion of the bottle itself and its exposure among the Turkish public.

An expert report submitted to a separate IP court concerning the 2D version of the Absolut bottle was also included as evidence. The report concluded that the extensive global commercial use of the mark for a substantial period of time and the investment made in its promotion resulted in its recognition among the relevant public and showed that the mark had acquired distinctiveness through use.

Eventually, in light of the evidence submitted, the trademark application for the Absolut bottle was accepted.

The TPI board’s decision shows that acquired distinctiveness of 3D marks can be demonstrated with qualitative evidence of long-established use of the mark and promotional activities. In order to prove long-established use and promotional activity, any evidence may be submitted, including information about the product, annual sales, samples of promotional activities and advertisements (preferably in chronological order). However, the regulatory restrictions introduced in recent years in Turkey with regard to the promotion of alcoholic beverages in public make it difficult to build or maintain acquired distinctiveness of marks in this sector.

It is therefore advisable that owners of alcoholic beverage brands claim rights over the use of their trademarks in Turkey and exercise those rights as soon as possible. In particular, where acquired distinctiveness is claimed, they should act quickly to make use of the evidence available to them from the years before the restrictions on promotion of alcoholic beverages were introduced (September 18 2013) lest it loses its effectiveness and validity to help secure registrations.

Uğur Aktekin, Gün & Partners, İstanbul

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