

Courts grant broad protection to weak trademark

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- The Turkish courts have ruled in favour of the owner of a mark consisting of a very common expression
- The courts found that, even though '*İyi Yaşam*' is a common expression, the plaintiff's intensive use strengthened the distinctiveness of the mark
- Arguably, such outcome is not in line with previous Court of Cassation decisions

In a recent decision, the Court of Cassation has favoured the registrant of a weakly distinctive sign in the similarity examination by ignoring the principle of the overall impression created by the marks.

Background

The plaintiff was the owner of the mark İYİ YAŞAM (meaning 'good/well life' in English), registered in Classes 3, 5, 9, 10, 14, 16, 21, 24, 25, 28, 29, 30, 31, 32, 35, 36, 37, 38, 41, 43 and 44 since 2006. The plaintiff opposed the defendant's application for the mark depicted below ('İyi Yaşam Festivali' meaning 'Good/Well Life Fest') in Classes 35 and 41 before the Turkish Patent and Trademark Office (PTO):



The opposition was based on a likelihood of confusion, genuine right ownership, well-known status, copyright and bad-faith filing.

Following the PTO's final decision dismissing the opposition on all grounds, the plaintiff filed a court action to cancel the PTO's decision and invalidate the defendant's trademark.

IP Court decision

In the first-instance trial, the IP Court found as follows:

- The main element of the plaintiff's trademark is '*İyi Yaşam*'.
- The plaintiff's intensive use strengthened the distinctiveness of its trademark.
- The element 'well' in the defendant's trademark conveyed the concept of 'wellness', while 'fest' in the defendant's trademark conveyed the idea of a 'festival'. Therefore, the disputed mark would be perceived as meaning 'Good/Well Life Fest' and, due to the conceptual similarity between the marks, could be confused with the plaintiff's İYİ YAŞAM mark.

The IP Court not only found that there was a likelihood of confusion, but also allowed some of the plaintiff's other claims, such as genuine right ownership and well-known status.

Appeal decisions

Upon appeal, the Regional Court of Appeals upheld the IP Court's decision, noting that even though '*İyi Yaşam*' is a common expression, the plaintiff had used this mark intensively and the defendant's trademark was confusingly similar to the plaintiff's trademark. Therefore, it was appropriate for the IP Court to acknowledge a likelihood of confusion pursuant to Article 6/1 of the IP Code. On the other hand, the Regional Court of Appeals did not comment on the genuine right ownership and well-known status claims.

In the last round of appeal, the Court of Cassation simply upheld the ruling without assessing the merits of the dispute, and the decision was finalised in favour of the plaintiff.

Comment

Arguably, although the IP Court found – and the Regional Court of Appeals confirmed – that the plaintiff had used the İYİ YAŞAM mark intensively and could thus be granted extended protection against confusingly similar signs, ‘İyi Yaşam’ is a very common expression which has a very low distinctive character for the goods/services at issue. Therefore, it should not be granted such a broad protection.

Further, the opposed mark contains distinctive elements, namely a stylised ‘W’ and the stylised element ‘Wellfest’ in a bigger font, while the expression ‘İyi Yaşam Festivali’ at the bottom of the mark is used as a secondary element describing the nature of the festival, hence preventing a likelihood of confusion when the overall impression created by the marks is considered.

In line with decisions of the Court of Justice of the European Union and the EUIPO, the owner of a weak trademark must endure the registration and use of similar signs by others (as emphasised in various decisions of the Turkish Court of Cassation), and the addition of even minor elements is sufficient to distinguish signs from each other. However, this recent ruling does not align with former decisions of the Court of Cassation and provides the registrant of a weakly distinctive trademark with an absolute right.



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