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Red Bull triumphs in opposition before the Turkish Patent and Trademark Office

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- **The Turkish Patent and Trademark Office's reasoning in an opposition involving Red Bull sheds valuable light on how it assesses likelihood of confusion.**
- **The office went against its normal practice by concentrating on the figurative elements of the two marks, rather than verbal ones.**
- **The ruling should reassure brand owners that opposition procedures can be a smart way to guard their marks from potential confusion.**

The Turkish Patent and Trademark Office has upheld Red Bull's opposition against an application for a composite mark intended for energy drinks.

Background

The applicant, a food company established in 1996, sought to register the below trademark in Class 32 – particularly for energy drinks.



(BLACK TALLBOSS mark)

This application passed the initial examination and was published in the *Official Trademark Bulletin of the Turkish Patent and Trademark Office*, for possible third-party oppositions.

Red Bull challenged the application based on likelihood of confusion with its earlier registration for the following mark.



(Black and gray trapezoid mark)

The office found that the trademarks are similar to one another with regard to visual, phonetic and conceptual aspects and cover similar goods. It concluded that there was thus a likelihood of confusion between the marks.

As a result, the application for the BLACK TALLBOSS trademark was rejected.

The applicant did not challenge the office's decision and therefore the refusal is final and binding.

Comment

The BLACK TALLBOSS mark is a composite mark consisting of word elements combined with a figurative element and a background featuring two colours. Red Bull's black and gray trapezoid mark is a mere graphic mark, consisting of a colour combination and a trapezoid device.



Where a trademark is composed of verbal and figurative elements, generally the verbal elements dominate, since words are recognised in the same way by viewers, while figurative elements are mostly impressionistic. While this is not the rule of law and there are several cases where figurative elements have been found to be dominant, such as the present one, the Turkish Patent and Trademark Office's approach has mostly been in line with this reasoning.

However, the decision in the case at hand shows that the office clearly found the figurative element of the BLACK TALLBOSS mark to be the main element and therefore, the lack of a verbal element in Red Bull's black and grey trapezoid mark did not eliminate the overall similarity between the marks resulting from the similarity of the colour combinations and graphic features.

We normally see a limited perspective from the office towards figurative trademarks consisting of colour combinations only, which can make it challenging to prevent applications for marks with similar colour combinations to the earlier marks. However, in this instance the office adopted a broad interpretation with respect to the similarity of the signs and found confusing similarity between them.

In this respect, this decision supports the Turkish Patent and Trademark Office's broader and more liberal examination of likelihood of confusion and is a reminder to brand owners to take the available administrative steps before the office rather than acting conservatively.

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