

Marks may be confusingly similar even where common element is generic/descriptive

By Uğur Aktekin and Güldeniz Doğan

WTR, 28.05.2012

Within the context of an invalidation action, the Ankara Third IP Court has held that the figurative trademark NEO CARE (depicted below), which covers goods in Class 5 of the [Nice Classification](#), was confusingly similar to the trademark NEXCARE, which also covers goods in Class 5.

The court considers that the device element of the NEO CARE mark was not distinctive and that the main element of the mark was its word element.

Although this is not explicitly mentioned in the decision, the court agreed with the plaintiff's argument that, even though the prefixes 'neo' and 'nex' might be found to be dissimilar, the marks were aurally similar due to the use of the word 'care' in both marks.

Given that the goods covered by the trademarks were identical or similar, the court established that the only difference between the marks - the letters 'X' and 'O' - was not sufficient to distinguish them. In addition, the court determined that the English word 'care' and the Greek word 'neo' (meaning 'new') would be known by Turkish consumers and, therefore, the NEO CARE mark had no distinctive character with regard to goods in Class 5.

The decision is important in that the court determined that consumers would perceive the NEO CARE mark as a word mark, even though it includes a device. Further, the decision may serve as a precedent in cases where a party seeks to register a trademark the first part of which might be considered to be dissimilar to the distinctive part of an earlier trademark, but the second part of which, even though it is descriptive or generic, is identical to the second part of the earlier mark.