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Court of Appeal considers 'likelihood of association' and 'trademark series' concepts

Turkey - Mehmet Gün & Partners

**Examination/opposition
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On December 3 2012 the 11th Civil Chamber of the Court of Appeal upheld a decision of the Ankara Second IP Court in which the latter had determined that the trademark W-KING was confusingly similar to the trademarks W (and device), W RETREAT & SPA, W HOTELS and W HOTELS (and device) in Classes 37 and 43 of the [Nice Classification](#). The IP Court found that adding a word element to the distinctive part of a mark is insufficient to create distinctiveness and eliminate the likelihood of confusion, particularly the likelihood of association.

First, the IP Court had determined that 'W' was the main and distinctive part of the trademarks that were the basis of the opposition, and that 'king' is a word that is commonly used to identify quality, especially in the temporary accommodation and hotel management sector, which fell within the scope of protection of the trademarks. Further, it established that the addition of the word element 'king', even though it is visually and aurally dissimilar to the earlier trademarks, strengthened the likelihood of confusion and could mislead the public - which does not always have the opportunity to compare trademarks in detail - into thinking that:

- there was a link between the companies that owned the marks; and
- the trademark W-KING was part of a series of W trademarks and designated a better quality of services.

The court determined that the visual and aural differences were not sufficient to outweigh the similar effect created by the general impression of the marks. The court noted that the likelihood of association by consumers should be considered when assessing the likelihood of confusion. It stated that even a reasonably attentive and informed consumer, who cannot compare the trademarks side-by-side and who must rely on his/her recollection of services that he/she has been provided in the past, cannot immediately understand that these are different trademarks belonging to two different entities. On the contrary, consumers might consider that the trademark W-KING designates a better quality of services provided by the same entity.

The Court of Appeal upheld the IP Court's decision and confirmed the court's findings on these issues. The decision is important in that the IP Court determined that consumers would perceive the W-KING mark as being part of a series of trademarks and as indicating a better quality of services, even though the marks contain word elements that are visually and aurally different. Further, the decision may serve as a precedent in cases where a word element is added to an earlier single-letter mark. The decision also highlights the concept of 'likelihood of confusion' as applied by the Turkish courts, and shows how the courts will deal with trademark applications that can be considered as being part of a series of earlier trademarks.

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