

Turkish Court of Appeal Confirms Plaintiff's Right to Seek Compensation Based on Hypothetical License Fee

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The Turkish Court of Appeal recently confirmed a case upholding a plaintiff's right to seek compensation for trademark infringement based on a hypothetical license fee that would have been paid if the infringing party had used the trademark under a legal license agreement. The court approved the First Instance Court's earlier decision to accept the claims, calculating compensation by considering all characteristics of the case, since the plaintiff had not provided a sample license agreement.

In the dispute at hand, the plaintiff sought a remedy for infringement, as well as compensation. It claimed that the defendant's use of its registered trademark and packaging in same color and stylization constitutes a trademark infringement.

The defendant requested dismissal of the action by arguing that its use falls within the scope of the fair use exception.

The plaintiff requested compensation based on a hypothetical license fee, in accordance with Article 66(2)(c) of Turkish Trademark Decree Law. Under this provision, in case of infringement, the trademark owner can demand the value of the actual loss, as well as any loss of profit incurred. To calculate the compensation, the trademark owner is entitled to choose a license fee that would have been paid if the infringing party had used the trademark under a legal license agreement.

The First Instance Court partially accepted the plaintiff's infringement claims. It stated that since the plaintiff had not submitted any sample license agreement, compensation would be calculated by considering the other characteristics of the dispute, such as the value of the trademark, sales incomes and advertisement expenses.

Although the defendant filed an appeal, the Court of Appeal approved the lower court's decision, noting that all evidence had already been considered on legal grounds.

(Case reference: Yarg. 11. HD, 22.06.2016, 2015/10989 E., 2016/6891 K.)

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