

Turkish Court Rules on Likelihood of Confusion for Combined Trademark Application Involving “House Mark + X”

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The highest body within the Turkish Court of Appeal system recently rendered a decision in which it discussed the likelihood of confusion for a "House mark + X" combined trademark. The court held that the house mark and also the secondary word element (the product name) are both dominant. Therefore, the existence of house mark does not remove the likelihood of confusion.

In the dispute at hand, Company B filed a trademark application involving a combination of its house mark and a secondary word element (product name), in the format "House Mark + X".

Company A opposed Company B's trademark application, claiming that the word "X" is visually, phonetically and conceptually similar to Company A's earlier trademark registration, which covers the same trademark class which Company B had made the later application for.

In its opposition, Company A claimed that confusion could arise due to the existence of similar word elements in both trademarks. However, the opposition was rejected by the Re-evaluation and Examination Department of the Turkish Trademark and Patent Office ("**TPTO**").

Upon the opposition being refused, Company A initiated a lawsuit seeking to overrule the rejection, as well as expunge the Company B's trademark application from the TPTO's register.

Both the TPTO and Company B requested the lawsuit be dismissed, arguing that the disputed trademark lacked distinctiveness for the secondary word element, which also includes Company A's house mark.

The Court of First Instance ruled in Company B's favour, holding that the dominant and distinctive element of the later application is the house mark, and the trademarks are both visually as well as phonetically different.

Company A appealed the Court of First Instance's decision. The Court of Cassation overruled the Court of First Instance's decision. Company A argued that the application's word element is not secondary, but rather should also be considered to be a dominant element, together with the house mark. The Court of Cassation confirmed the likelihood of confusion claims.

The file was sent back to the Court of First Instance for a re-examination. However, the Court of First Instance insisted that its former decision should stand, in favour of Company B. Therefore, the matter was escalated again, this time to the highest body within the Court of Cassation, the Assembly of Civil Chambers ("**Assembly**").

The Assembly agreed with the Court of Cassation's decision in favour of Company A, recognizing the similarity between the application's second word element and earlier registration. It held that since both the house mark and other word element are written with same type font and size, both have dominant character. Accordingly, the Assembly held that Company B's later trademark application, which covers the same class, poses the likelihood of confusion.

Case reference: HGK., E. 2017/73 K. 2017/1048 T. 31.5.2017; only available in Turkish at this [link](#).

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