

Who is a Relevant Consumer?

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In many jurisdictions, "relevant consumer" is one of the most frequently used and necessary expressions when determining not only the likelihood of confusion between trademarks but also the notoriety level of a trademark.

The word "relevant" adds a degree of variability to the expression and naturally, the relevant consumer group varies depending on the goods or services marketed.

Turkish Trademark Decree Law no. 556 Pertaining to Protection of Trademarks does not contain any expression similar to "relevant consumer"; instead, the concerned group of people is described generally as 'the public'.

However, in practice, the 11th Circuit Court of Appeal (which handles trademark and unfair competition cases), evaluates what "the public" consists of in each and every case with its own conditions. The need to evaluate this expression on a case-by-case basis arises because the type, quality or character of the goods and services always changes the concerned group of people who are familiar with the trademark.

Generally, the 11th Circuit Court of Appeal accepts that the relevant consumer group consists of the average consumer to whom the product and services are marketed. As a general rule it is accepted that an average consumer pays an average level of attention to the differences between trademarks and can easily overlook minimal differences.

Moreover, an average consumer might easily link a later, similar trademark with a former, familiar trademark which could lead to the later trademark benefiting from the notoriety of the former trademark.

As the group of people concerned with the product and services changes, the level of attention of the average consumer also changes. The Court of Appeal and the Turkish Patent Institute (TPI) expect a higher level of attention from some groups of consumers (such as experts, specialists, doctors, etc).

The attention levels of these special groups are generally not the same as that of a group concerned with a consumer item. Considering the precedent cases, it is possible to say that the price, quality, nature or availability of the goods and services change the courts' point of view in determining the relevant consumer group and its level of attention.

Below are examples of some relevant consumer groups and their level of attention for specific goods or services:

- In a case where two trademarks were used on alcoholic beverages the court determined the relevant consumer to be a "general adult consumer who is capable of shopping by him/herself".
- In a case where two trademarks were used on personal care products (such as body moisturizers) the court described the relevant consumer as follows: "the relevant consumers are buyers who are not experts in the market, have limited or average information about the product and do not pay much attention to the product that they are purchasing."
- In a case where two trademarks were used on goods within the scope of classes 29 and 30 (especially on biscuits), the court described the goods as high-demand products that are consumed on a daily basis and determined that the relevant consumer is an average consumer who can easily be confused and deceived about similar trademarks, cannot realize the difference between the trademarks immediately and may end up buying a product other than the one intended.

- In a case where two trademarks covered prescription drugs and medical products the court determined the relevant consumer to be "a consumer group with a high level of attention: namely, doctors and pharmacists."
- In contrast with the case above, in a case where two trademarks also covered prescription drugs the court held that the relevant consumer (doctors and pharmacists) has an average level of attention as long as the trademarks do not contain the name of the active ingredient.
- In another case where two trademarks covered pharmaceutical preparations, the court determined that the trademarks contain the drugs' active ingredient and are therefore classified as 'weak' trademarks. The court held that small changes might be enough to overcome similarity or likelihood of confusion as the pharmaceutical preparations are sold only with a prescription. In other words, the court determined that the relevant consumer group is doctors and pharmacists who pay a high level of attention to the product.

As stated above, the "relevant consumer" plays an important role in determining the likelihood of confusion between trademarks and the well-known character of a trademark. The courts accept the existence of likelihood of confusion when a part of the relevant public is under risk of confusion. On the contrary, in order to accept the well-known character of a trademark it should be widely known among the relevant consumer group.

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