

Court of Cassation expands on similarity assessment for short, number marks

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- The Court of Cassation (CoC) has determined that there is a likelihood of confusion between the trademarks N11 and OTEL 11
- The decision reflects the CoC's current approach to assessing the similarity of short trademarks composed of numbers
- Rather than taking a narrow approach requiring obvious similarity, the CoC evaluated all the factors together and found a likelihood of confusion, even though the main element of each disputed mark was a number

The 11th Civil Chamber of the Court of Cassation (CoC) has ruled that there is a likelihood of confusion between the trademarks N11 and OTEL 11 (15 February 2024, 2023/3633 E (Merits), 2024/1117 K).

Background

The applicant filed a trademark application for OTEL 11 in Class 43.

The opponent, one of the largest online shopping websites in Türkiye, requested refusal of the application on the following basis:

- OTEL 11 created a likelihood of confusion with its earlier, well-known trademarks, which include N11, covering Class 43 services.
- Its trademarks are well known and the application was filed in bad faith.

Earlier decisions

The Turkish Patent and Trademark Office refused the opposition and the opponent's subsequent appeal.

The opponent filed a cancellation action against the office's decision, arguing that it was not justified since the phrase "11" was well known and increased the degree of similarity between the trademarks; therefore, there was a likelihood of confusion between the trademarks, also considering that both marks covered the same services in Class 43.

In response, both the applicant and the office argued that there was no likelihood of confusion between the trademarks; therefore, the refusal decision was justified.

The first-instance court rejected the action on the grounds that the trademarks were not similar; therefore, there was no likelihood of confusion. Since the trademarks were not similar, the court also rejected the plaintiff's well-known status and bad-faith claims.

The plaintiff appealed, and the Regional Court of Appeal upheld the first-instance decision. The plaintiff appealed again.

CoC decision

The CoC noted that the plaintiff owned the serial trademarks, which included the phrase "11" and covered services in Class 43. It held that considering the phrase "OTEL" was not distinctive for services in Class 43, the main element of the disputed mark was also "11". Therefore, considering that the trademarks covered the same services in Class 43, there was a likelihood of confusion between the marks.

The file has been sent to the first-instance court. After the compliance decision of the first-instance court, the decision will be final.

Comment

The CoC decision reflects the court's current approach to assessing similarity among short trademarks composed of numbers. In past decisions regarding the similarity of such marks, the CoC would generally decide that the marks were not similar unless there was an obvious similarity between them, taking a very narrow approach.

In its recent decision, the CoC evaluated all the factors together, particularly considering that the plaintiff owned serial trademarks using the phrase "11", and decided that there was a similarity and a likelihood of confusion between the trademarks even though the main element of each of the marks – the phrase "11" – was a number.

The decision is important because it shows the CoC's current approach to examining the similarity of short trademarks composed with numbers, and therefore, should be taken into account in future when evaluating the similarity of such marks in similar matters.



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