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Court of Appeal reverses own decision in WING CHUN case

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- **The First-Instance IP Court rejected a request for the invalidation of the mark WING CHUN in Classes 41 and 45, and the Court of Appeal affirmed**
- **On further appeal, the Court of Appeal reversed its own opinion**
- **The court held that the mark should be invalidated for some of the remaining services in Class 41**

Background

In 2011 the defendant applied to register the trademark WING CHUN in Classes 41 and 45, including sports activities, educational services, organisation of symposiums and conferences, publication of magazines and newspapers, production of films and radio-television programmes, legal services and security services.

The education, sports, culture and entertainment services were removed *ex officio* from the list of goods and services by the Turkish Patent and Trademark Office based on absolute grounds of refusal, as Wing Chun is a traditional Southern Chinese close-range combat style and a form of self-defence. The defendant did not appeal this partial refusal and its trademark was registered for the remaining services in Classes 41 and 45 in 2013.

In 2014 the plaintiff, an autonomous sports federation operating under the supervision of the General Directorate of Youth and Sports, requested the invalidation of the WING CHUN trademark, arguing that, according to the rule of law, marks which consist, exclusively or mainly, of signs or names used by everyone in a field of trade, or which serve to distinguish those that belong to a specific professional, artistic or commercial group, shall not be registered.

First and second-instance decisions

The First-Instance IP Court accepted that 'Wing Chun' is the name of a type of sport, but rejected the invalidation request. The court reasoned that the mark was distinctive for the remaining services in Classes 41 and 45 (not including sport services) and did not serve to distinguish a specific professional, artistic or commercial group, as claimed by the plaintiff.

Following a first appeal by the plaintiff, the decision of the First-Instance IP Court was approved by the 11th Civil Chamber of the Court of Appeal.

Decision on further appeal

Upon further appeal, the same chamber of the Court of Appeal reversed its opinion and held that the WING CHUN mark should be invalidated for some of the remaining services in Class 41 (ie, organisation of symposiums and conferences, publication of magazines and newspapers, production of films and radio-television programmes), since it was a sign which is used by everyone in the trade and, thus, cannot be monopolised by a single party through trademark registration, in light of the aforementioned rule of law.

Comment

This decision is interesting since it is very rare for the Court of Appeal to do a complete U-turn on the same subject, as both first appeals and review applications are examined by the same chamber of the Court of Appeal - namely, the 11th Civil Chamber. Keeping that in mind, clients are advised to exhaust all possible steps of appeal against an unfavourable decision rendered by the lower courts or even the Court of Appeal itself.

Further, even though the services related to sports activities had already been removed from the specification of the trademark by the Patent and Trademark Office during the *ex officio* phase (ie, before registration), the Court of Appeal found that the mark should also be kept free for use by anyone in the trade for other services in Class 41. However, it is not totally clear why the Court of Appeal specified only some services in Class 41 and excluded other services in Classes 41 and 45. For instance, the authors are of the opinion that the WING CHUN mark should also be kept free for use for security services, considering that Wing Chun, as a type of sport, can also be practiced in connection with security services.

The case has now been returned to the First-Instance IP Court for a retrial as per the Court of Appeal's decision.

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