

## **BROWNI not generic for chocolate cakes, court rules**

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The Ankara IP Court of First Instance has ordered that the trademark ULKER BROWNI CHOCOLATE CAKE be revoked on the grounds of likelihood of confusion with the senior marks BROWNI and BROWNI GOLD (Case 2005/23, October 27 2005).

Eti AS filed a petition for the cancellation of the registration of the mark ULKER BROWNI CHOCOLATE CAKE held by competitor Ulker AS. Eti had unsuccessfully opposed Ulker's application on the basis of its senior registration of the mark BROWNI held since 1986 as well as other registrations incorporating the word 'browni'.

Ulker argued that:

- the difference in the combination of words and other components in its mark and that of Eti's marks eliminated any risk of confusion;
- the object of the registration was to protect its name Ulker rather than the word 'browni'; and
- 'browni' (the Turkish spelling of 'brownie') is a generic name for a type of cake and therefore Eti may not claim exclusive rights to that name.

The court noted that the name Ulker is already well known and therefore it was not probable that Ulker intended to protect it as a trademark. As "chocolate cake" was the name of the product to which the mark applied, it followed that it was the word 'browni' that was the real object of the registration. That word, the court noted, was identical to the prominent element of Eti's BROWNI trademarks, and this identity would confuse the public into thinking that Ulker's mark was part of Eti's series of BROWNI marks. The court also rejected Ulker's argument that the public perceive the word 'browni' as generic. Consequently, it found that the ULKER BROWNI CHOCOLATE CAKE mark was confusingly similar to Eti's BROWNI marks and, accordingly, ordered that it be revoked.

The decision is interesting in that it shows that what is generic in one country or one language may not be generic in another country or language.