

EFES for beer not confusing with EFE for raki

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The Turkish Court of Appeal has upheld a decision of the IP Court in Ankara which rejected an opposition to the registration of the mark EFE for raki by Elda Enerji Hizmetleri San ve Tic AŞ, the first private company authorized to produce raki by the Turkish Tobacco Products and Alcoholic Beverages Market Regulatory Authority (Case 2006/7083-9027, September 21 2006).

The opposition action had been brought by Anadolu Efes Biracılık ve Malt San AŞ (Anadolu Efes) upon the publication of the application to register EFE for "alcoholic drinks, raki and drinks containing aniseed" in Class 33 of the Nice Classification. Anadolu Efes opposed the application on the basis of its well-known marks EFES PILZEN and EFES PILS registered in Class 32 for beer.

The Directorate of Trademarks and the Re-Examination and Evaluation Board of the Turkish Patent Institute both rejected the opposition on the grounds that the EFES and EFE marks are neither identical nor similar and there exists no likelihood of confusion between them. Anadolu Efes appealed to the IP Court in Ankara.

The IP Court upheld the decision, finding that:

- there is no visual similarity between the signs because EFE is composed of only three letters while the EFES PILZEN and EFES PILS marks consist of two words;
- there is no phonetic similarity between the signs since their pronunciation differs;
- there is no conceptual similarity between the signs - the name Efe is a historical title for a brave and honest person who lived in the Aegean region, rebelled and fought against inequalities, whereas Efes is the name of a famous archeological and tourist site located in Selçuk, also known as Ephesus, and is recognized as a world cultural heritage site; and
- there is no similarity between the general appearance of the signs placed side by side.

The IP Court held that the goods at issue are not identical since they are registered in different classes, namely Classes 32 and 33. The court also rejected Anadolu Efes's argument concerning the similarity of goods by emphasizing that "beer, malt and beer yeast" registered in Class 32 and "alcoholic drinks, raki and drinks containing aniseed" registered in Class 33 can neither complement nor substitute each other. They do not compete with each other or serve the same needs or address the same consumer circles in the same distribution channels. A beer consumer and a raki consumer cannot be misled when making their choice. Therefore it is not possible to assert similarity between the goods.

Accordingly, the IP Court found that there is no likelihood of confusion between the signs and thus rejected Anadolu Efes's appeal.

The Court of Appeal affirmed this decision, following the same reasoning.