Patent Institute decision confirms broad protection of well-known marks

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In *Red Bull GmbH v Mavi Dunya Gida Dag Paz Tic Ltd Sti* (December 12 2010), the Re-examination and Evaluation Board of the Turkish Patent Institute has held that there was a likelihood of confusion between the trademarks BULLDOZER ENERGY DRINK and RED BULL among the Turkish public.

On February 16 2009 Mavi Dunya Gida Dag Paz Tic Ltd Sti, a company established in Turkey, filed an application to register the following figurative trademark in Class 32 of the Nice Classification:

Red Bull GmbH filed an opposition on the grounds that the mark applied for was confusingly similar to its word mark RED BULL and its figurative RED BULL mark, registered for goods in Class 32: Red Bull also argued that its trademarks were well known in Turkey.

The Trademarks Department Directorate of the Patent Institute rejected the opposition, finding that the mark applied for was not confusingly similar to either of the RED BULL marks.

Red Bull appealed to the Re-Examination and Evaluation Board of the Patent Institute. Red Bull maintained that:

- the trademarks at issue were confusingly similar;
- the well-known status of the RED BULL marks should be taken into account when examining the similarity of the marks; and
- the application had been filed in bad faith since the mark applied for included the word 'bull', a blue and red colour scheme and the word 'energy drink', which were all used in the figurative RED BULL mark.

The Re-examination and Evaluation Board held that there was a likelihood of confusion on the part of the public due to:

- the well-known status of the RED BULL marks;
- the fact that the application contained the words 'bull' and 'energy drink' in combination with a blue and red colour scheme; and
- the fact that the application covered the same goods as those covered by the RED BULL marks.

The idea that the rules on confusing similarity should be applied favourably to well-known trademarks has long been argued by the Turkish legal doctrine. However, the Court of Appeals

established this principle only five years ago in a case involving the trademarks TIC TAC and ZIK ZAK. Since then, the courts have been consistent in their application of the principle, but the Patent Institute has been less so. The decision in the present case thus shows that the Patent Institute has improved its implementation of the principle in recent years.