

INFINITY case highlights importance of global appreciation

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Legal updates: case law analysis and intelligence

- The PTO, and subsequently the Re-examination and Evaluation Board, upheld an opposition against a mark containing the word 'infinity' in Class 41 based on earlier INFINITY marks
- The First Instance Court disagreed, finding that the marks had different overall appearances due to the devices and colour combinations used
- The Regional Court of Appeal and the Court of Cassation rejected the subsequent appeals

The Court of Cassation has approved the First Instance Court's decision in a case involving several INFINITY marks, shedding light on the principle of global appreciation of trademarks in the similarity examination.

Background

On 8 January 2018 the applicant filed an application to register the trademark depicted below for "flying services by means of paragliding" in Class 41 before the Turkish Patent and Trademark Office (PTO):



After the application was published in the *Official Trademarks Bulletin*, Civan Türedi filed an opposition against the application on the ground of likelihood of confusion. The opposition was based on the following trademarks:



No 2011 00054



No 2014 98358

C&C|Infinities'

No 2004 26172

The PTO's Trademarks Department accepted the opposition, and the applicant's appeal against the decision was rejected by the Re examination and Evaluation Board. The applicant then filed a cancellation action against the board's decision before the Ankara IP First Instance Court.

First-instance court decision

The court cancelled the board's decision approving the rejection of the application.

In its reasoned decision, the court examined and compared the trademarks as a whole by taking into account how the secondary elements used in the trademarks contributed to their distinctiveness. The court determined that, even though the word 'infinity' was a common element in the parties' trademarks and the additional word elements lacked distinctiveness on their own due to their meanings, 'infinity' is an English word with a particular meaning and the parties' trademarks had acquired different meanings as a result of the combination of 'infinity' with the secondary word elements. In addition, the trademarks had different overall appearances due to the devices and colour combinations used. The court concluded that there was no likelihood of confusion between the trademarks and, therefore, the board's decision rejecting the applicant's appeal was not justified.

Further appeals

The first-instance decision was appealed by the opponent and the PTO; however, their appeals were rejected by the Regional Court of Appeal. A second appeal was then filed before the Court of Cassation; however, this appeal was also rejected, so the first-instance decision is now final.

Comment

The decision serves as an important example of the global appreciation of trademarks from a visual point of view in the similarity examination, especially highlighting the role of the common element's meaning, as well as the colour and device combinations. These factors resulted in a finding that there was no confusing similarity between the trademarks.



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