

### Victory for Red Bull: IBEX figurative mark rejected on appeal Turkey - Gün + Partners

### Examination/opposition National procedures

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- Red Bull opposed registration of figurative mark IBEX based on figurative mark RED BULL
- Board found that there was likelihood of association/confusion
- Opposition was upheld for goods in Class 30 and Class 32

The Re-examination and Evaluation Board of the Turkish Patent and Trademark Office (TürkPatent) has found that the application for the figurative trademark IBEX was confusingly similar to the figurative trademark RED BULL and, therefore, could not be registered for beverages in Classes 30 and 32.



#### Facts

On August 10 2016 a Turkish company applied to register the figurative trademark IBEX in Classes 30 and 32. Following its publication in the *Official Trademark Bulletin* of the TürkPatent, the opponent opposed the application based on the following earlier trademark registrations:



The grounds on which the opposition was based were:

- likelihood of confusion; and
- risk of damage to the well-known status of the earlier trademarks.

The examiner of TürkPatent's Trademarks Department rejected the opposition, deciding that the trademarks were not similar and that there was no risk that the application would derive an unfair benefit from, or damage the distinctive character/dilute the well-known status of, the opponent's trademarks.

The opponent appealed the decision before the Re-examination and Evaluation Board, which consists of three senior examiners. It argued that the trademarks are confusingly similar due to the blue, grey and red colours, and that the graphic elements (ie, the blue-grey background and the red silhouette of a horned animal) were conceptually similar to the opponent's marks, thus giving the overall impression that the application was derived from the RED BULL marks. The opponent also stressed that the application, if registered, would derive an unfair benefit from the well-known status of its trademarks.

In its decision, the board firstly established that the trademark application at issue consisted of the image of a mountain goat (ibex) in red on a background composed of two different colours (grey and blue), with the word element 'ibex'. In contrast, the opponent's red BULL trademark depicted below consisted of two red bulls on a grey/silver and dark blue background, in combination with the words 'red bull' and 'energy drink'.



The board nevertheless found that the trademarks were sufficiently similar so as to create a likelihood of confusion and/or association. In addition, the board determined that some of the goods falling within the scope of the application were identical or similar to the goods covered by the earlier trademark. Finally, the board stated that the earlier trademark was well known in the relevant sector, and that the possibility of confusion should be assessed in the opponent's favour.

Considering these facts together, the board concluded that there would be a likelihood of association/confusion between the figurative trademark IBEX and the figurative trademark RED BULL and that, in the event of the registration of the application, unfair benefits might be derived due to the well-known status of the opponent's trademark.

As a result, the board partially accepted the opponent's appeal and decided to remove "coffee, cocoa; coffee or cocoa-based beverages, chocolate-based beverages; tea, ice tea" in Class 30 and "beers; preparations for making beer; mineral water, spring water, table water, aerated water; fruit and vegetable juices, their concentrates and extracts, non-alcoholic soft drinks; energy drinks (non-alcoholic)" in Class 32 from the scope of application. The decision of the board is final and binding at the administrative stage.

### Comment

This decision is important as it shows that the board adopted a broader interpretation, not only with regard to the signs, but also with regard to the goods/services. The board properly considered the well-known status of Red Bull GmbH's trademark, and concluded that the registration and use of a similar mark would create confusion for every kind of beverages, not only energy drinks.

Moreover, the examination of the likelihood of confusion based on Red Bull's device trademarks is more favourable than in previous cases.

The case also shows the importance of filing appeals against unfavourable decisions of TürkPatent in the first instance. The board's experienced examiners have a broader understanding of all opposition grounds - including similarity, confusion, well-known status and bad faith - and can guide junior examiners by setting important precedents for brand owners.

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