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## Victory for Red Bull as trademark office refuses application for blue and grey colour mark

Turkey - [Gün + Partners](#)

- **Red Bull opposed an application for a colour combination mark for goods in Class 32 based on earlier colour/device marks for identical goods**
- **The examiner found, among other things, that there was no risk that the application would take unfair advantage of, or be detrimental to, the distinctiveness or well-known status of Red Bull's marks**
- **The board disagreed, finding that the application was confusingly similar to Red Bull's marks and might mislead consumers as to the source of the goods**

The Re-examination and Evaluation Board of the Turkish Patent and Trademark Office (TURKPATENT) has found that an application for a colour mark was confusingly similar to Red Bull's colour/device trademarks and, therefore, could not be registered for goods in Class 32.

### Facts

On 28 December 2017 a Turkish company applied to register the colour mark depicted below in Class 32.



Following its publication in the *Official Trademark Bulletin* of TURKPATENT, Red Bull opposed the application based on the earlier trademark registrations depicted below:



The mark in the middle is a colour mark described as a “blue colour on the left (Pantone 2747C) and a silver colour on the right (Pantone 877C), equally and vertically separated”.

The grounds of the opposition were:

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

The examiner of TURKPATENT’s Trademarks Department rejected the opposition, deciding that:

- the trademarks were not similar;
- there was no risk that the application would take unfair advantage, or damage the distinctive character/dilute the well-known status of, the opponent’s trademarks; and
- there was insufficient evidence to prove the bad faith of the applicant.

Red Bull filed an appeal against the decision before the Re-examination and Evaluation Board, arguing that the trademarks were confusingly similar as the application consisted solely of the colours blue and silver and covered goods in Class 32, including energy drinks. Red Bull also argued that the application would take unfair advantage of the well-known status of its trademarks, and that the applicant had acted in bad faith by choosing these colours for identical goods.

## Decision

The board first established that the trademark application at issue is a colour combination trademark, consisting of the colour blue with a wavy outline and the colour grey on either side. While the applicant did not specify codes for the colours, the board acknowledged that the application was similar to Red Bull’s colour mark and device marks, considering the colour choice and overall impression. Accordingly, the board confirmed that the opposed application was confusingly similar to Red Bull’s colour mark and device marks, and might mislead the average consumer as to the source of the mark - also taking into account the identity of the goods and the fact that Red Bull’s marks, both colour and device, are always used together with Red Bull’s well-known RED BULL mark.

As a result, the board accepted Red Bull’s appeal and rejected the application in its entirety - that is for “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. The decision of the board is now final.

## Comment

This decision is important as the board adopted a broader interpretation in terms of the similarity of device marks and granted a significant level of protection to colour marks. The board compared a device mark with a colour mark, and confirmed that Red Bull’s colour combination - regardless of the possible

differences in description - should be protected against closely similar marks, notwithstanding their specific designs.

The board also took into consideration the average consumer's awareness of the colour/device marks and acknowledged that their distinctiveness should be assessed accordingly.

The decision also shows the importance of filing appeals against unfavourable first-instance decisions of TURKPATENT. The board's experienced examiners have a broader understanding of all opposition grounds - including, but not limited to, similarity, confusion, well-known status and bad faith - and can guide junior examiners by setting important precedents.

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