

12 Jan
2021

Civil IP Court clamps down on monopoly rights on widely used colours

Turkey - [Kenaroğlu Intellectual Property](#)

- This case involved the use of the same blue and red colour combination for confectionary products
- The court held that the use of identical colours or colour combinations is not in itself sufficient to cause unfair competition
- The decision, which is at odds with previous approaches in similar cases, is currently under examination by the Supreme Court

In Turkey, no one can be granted a monopoly on colours – especially those that are commonly used in the market – and this general principle has been fiercely upheld in a recent decision of the Bakırköy Civil IP Court.

Facts

A leading local confectionery brand (the plaintiff) filed a civil court action against a competitor that had recently shown increasing sales numbers in the market (the defendant) and claimed unfair competition on the ground that the blue and red colour combination that gives character to, and is already identified with, the plaintiff's products had been copied and used by the defendant on the same types of product (eg, chocolate, confectionery and wafers).

The plaintiff also claimed that most consumers of the conflicting products were children, which can be defined as a group with a low level of consciousness, and that use of the same colour combination on the same types of product was enough to cause confusion among such consumers in terms of the products and their origin.

Decision

At the beginning of the trial, the plaintiff demanded an *inter parte* preliminary injunction preventing the defendant's use of the conflicting blue and red colour combination on all products, packaging and advertisement materials bearing the combination. The court rejected the plaintiff's claim based on the fact that the requested preliminary injunction required a detailed evaluation on the main claims of the parties and, should it be granted before completion of the main trial, could cause irreparable losses to the defendant's business.

At the end of the first-instance trial, the court decided to reject the court action on the ground that the use of identical colours or colour combinations – even on the same product range – is not itself sufficient to cause unfair competition, as no one can be granted a monopoly on colours or colour combinations, especially those that are commonly used in the market.

Comment

The court's decision reveals that use of the same colour combination is not considered sufficient to cause unfair competition, even if consumers of the disputed products have a low mental competence.

The case is currently under examination by the Supreme Court, having contradicted previous approaches to similar issues, and the final result is eagerly awaited by those in the food industry.

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