

**TURKISH PATENT INSTITUTE
TRADEMARK DEPARTMENT**



2011-O-299272
02/08/2011

**PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING
THE INTERNATIONAL REGISTRATION OF MARKS**

Notification of a refusal of pretection based on an opposition pursuant to Rule 17(3) of the
Common Regulations.

Our Reference : 2010/10818

I- Name and address of the Office making the notification:

**TURKISH PATENT INSTITUTE
Trademarks Department
Hipodrom Caddesi No: 115
06330 Yenimahalle ANKARA
TURKEY**

**Telephone: +90 312 3031000
Telefax : +90 312 3031333**

II- The international registration which is subject to refusal:
1026734 28red

III- Name and address of the holder of the international registration which is subject to the refusal:
**CALIDRIS 28 AG (S.A.)
30, Esplanade De La Moselle L-6637 Wasserbillig LUXEMBOURG**

IV- Name and address of the opponent:

**RED BULL GMBH
Trademark Department Am Brunnen 1 A-5330 Fuschl Am See AUSTRIA**

(First opposition has been filed on 20/08/2010, second opposition (against the decision of the
Oppositions Section) requesting re-examination at the Re-examination and Evaluation Board
has been filed on 21/03/2011)

V- Grounds for refusal based on an opposition:

☒ Confusingly similar to the following mark(s) (extract(s) enclosed):

National Registration Number(s): 2007 56794 - red

VI- Provision of the Decree-Law No.556 pertaining to the Protection of Trademarks: **Article 8**

(The relevant provisions to the Turkish Trademarks Act are enclosed.)

VII- (i) ☐ Refusal for all the goods and services.

(ii) ☒ Refusal for some of the goods and services:

CLASS 32: Mineral waters and aerated waters; non-alcoholic, vitamin-containing and isotonic beverages; refreshing beverages containing caffeine; taurine beverages containing caffeine; soft drinks for energy supply; fruit drinks and fruit juices; syrups and other preparations for making beverages.

VIII- GENERAL INFORMATION:

Appeals may be lodged against the refusals of the Institute.

The holder of the international registration may lodge an appeal against the refusal of the Re-examination and Evaluation Board to the authorized courts. The appeal has to be lodged through the intermediary of a lawyer who is domiciled in Turkey. The appeal must be received no later than 2 months after the notification date of this refusal by WIPO to the applicant or his representative. If no appeal is received within this time limit, the designation will be considered as totally / partially refused protection in Turkey in accordance with this refusal.

IX- Notification Date of Refusal (dd/mm/yyyy): 09.08.2011

X – Signature by the Office : TURKISH PATENT INSTITUTE
TRADEMARKS DEPARTMENT


Tolga KARADENİZLİ
Trademark Examiner

Number of continuation sheets:

TURKISH PATENT INSTITUTE
Detailed Trademark Information

National Application Number	: 2007/56794	Date of National Application	: 09/01/2007
National Registration Number	: 2007 56794	Protection Date	: 09/01/2007
International Registration Number	: 937150	Date of International Registration	: 09/01/2007
Mark	: red		

RED

Holders :

Name : RED BULL GMBH
Address : Trademark Department Am Brunnen 1 A-5330 Fuschl Am See AVUSTURYA

Nice Classification :

32

List of goods and/or services :

Non alcoholic beverages including refreshing drinks, energy drinks, whey beverages and isotonic (hypertonic and hypotonic) drinks (for use and/or as required by athletes); beer, malt beer, wheat beer, porter, ale, stout and lager; non alcoholic malt beverages; mineral water and aerated waters; fruit drinks and fruit juices; syrups, essences and other preparations for making beverages as well as effervescent (sherbet) tablets and powders for drinks and non-alcoholic cocktails.

**RELEVANT SECTIONS OF THE
DECREE-LAW NO.556 PERTAINING TO
THE PROTECTION OF TRADEMARKS**

Relative Grounds for Refusal for Registration of a Trademark

Article 8 - Upon opposition by the proprietor of an application for registration of a trademark or of a registered trademark, the trademark applied for shall not be registered under following conditions:

a) If the trademark applied for is identical with a registered trademark or a trademark that has an earlier application date and the protection is sought for the identical goods and services,

b) If because of its identity with or similarity to a trademark which has an earlier application date or a registered trademark and because of the identity or similarity of the goods and services covered by the trademarks there exists a likelihood of confusion on the part of the public and the likelihood of confusion includes the likelihood of association with the registered trademark or with the trademark which has an earlier application date.

Upon opposition by the proprietor of a trademark, a trademark shall not be registered where an agent or representative of the proprietor of the trademark has applied for registration thereof his own name without the proprietor's consent and without a valid justification.

Upon opposition by the proprietor of a non-registered trademark or of another sign used in the course of trade, the trademark applied for shall not be registered provided that;

a) the rights to the sign were acquired prior to the date of filing for registration of the trademark, or the date of priority claimed for the application for registration,

b) the sign confers on its proprietor the right to prohibit the use of a subsequent trademark,

A trademark applied for which is identical or similar to a registered trademark or to a trademark with an earlier filing date may be used for different goods and services. However, where in the case of a registered trademark or of a trademark which has an earlier filing date for registration, the trademark has a reputation and where the use without due cause of trademark applied for would take unfair advantage of, or be detrimental to the distinctive character or repute of the registered trademark or of the trademark with an earlier application date, upon opposition by the proprietor of the earlier trademark, the trademark applied for shall not be registered even to be used for goods and services which are not similar to those for which the earlier trademark is registered.

Upon opposition by the holder of the relevant right, the trademark applied for shall not be registered if it contains the name, photograph, copyright, or any industrial property rights of the third parties.

Upon opposition, trademark applied for which is identical or similar to a collective or a guarantee mark shall not be registered within three years from the date of expiry of the collective or of the guarantee mark.

Trademark applied for which is identical or similar and which is to be registered for the identical or similar goods and services of a trademark which has not been renewed, upon opposition shall not be registered within two years of the expiry date.

PART SIX

Appeals Against the Decisions of the Institute

Appeals

Article 47 - Appeals may be placed against the decisions of the Institute.

Where an appeal is made for an interim decision, a separate appeal shall be allowed upon decision becoming final.

Persons Entitled to Appeal

Article 48 - Any party adversely affected by a decision of the Institute may appeal. Others party to the procedures with respect to the decisions shall have natural right of appeal

Form of Appeal

Article 49 - Notice of appeal must be filed in writing at the Institute within two months after the date of notification of the decision. The fee for appeal has to be paid when filing of the notice for the appeal to be examined. The grounds for appeal must be filed in a written statement within two months of the notification of the decision. Where the statement of grounds for appeal has not been submitted within this period the appeal shall be deemed not to have been filed.

Rectifying a Decision

Article 50 - The related department of the Institute upon deciding that the appeal is true and right may rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

If the appeal is not found acceptable by the related department, the appeal shall be forwarded to the Re-examination and Evaluation Board by the department without comment as to its merits.

Examination of Appeals

Article 51 - The Re-examination and Evaluation Board shall consider the appeal if the appeal is admissible.

The Re-examination and Evaluation Board shall invite the parties to submit their observations within the period prescribed by the Implementing Regulation, on the observations of the other parties or those of itself.

Decision in Respect of Appeal

Article 52 - After the examination, the Re-examination and Evaluation Board shall deliver its decision.

Actions before the Court against the Decisions

Article 53 - Actions may be instituted, within two months of the notification of the decision, at the authorised court against the final decisions of the Re-examination and Evaluation Board in respect of the appeals provisioned in Articles 47 through 52 inclusive.

PART NINE

Persons Authorized to Act and Trademark Agents

Persons Authorized to Act

Article 80 - The following are authorised to act before the Institute with respect to trademarks:

- a) natural or legal persons who have filed the application. Legal persons may only be represented by those duly empowered by their respective authorised bodies.
- b) trademark agents.

Those who are domiciled outside the country can only be represented by trademark agents.

Where an agent has been appointed, all procedures are executed through the agent. All notices made to the agent shall be considered to have been made to the assignee.

Y.İ.D.K. Karar Tarihi : 09.09.2011



T.C.
TÜRK PATENT ENSTİTÜSÜ
Yeniden İnceleme ve Değerlendirme Kurulu

Başvuru No	: 2010/10818	Başvuru Tarihi	: 16.12.2009
Marka Adı	: 28red		
Başvuru Sahibi	: CALIDRIS 28 AG (S.A.)		
Vekil	:		

Karar No : 2011-M-2971

İtiraz Sayısı	: 2011-G-70857	İtiraz Tarihi	: 21/03/2011
İtiraz Sahibi	: RED BULL GMBH		
Vekil	: UĞUR AKTEKİN (GÜN DAN. HİZM. LTD. ŞTİ.)		

KONU

556 sayılı Kanun Hükmünde Kararnamenin 36 ncı maddesi uyarınca verilen ilana itirazın reddi kararına yapılan itirazın incelenmesi.

GÖRÜŞ VE DÜŞÜNCELER

2010/10818 başvuru numaralı "28red" ibareli başvurunun ilanına yapılmış olan itirazın Markalar Dairesi Başkanlığınca reddi kararına karşı, başvurunun 2001 08566, 2006 32327, 161269, 2007 56794 sayılı "red bull", "red bull", "red bull", "red" ibareli markalar ile karıştırılma ihtimali, itiraz gerekçesi "red bull" ibareli markanın tanınmışlığı ileri sürülerek, başvurunun 32 ve 33'üncü sınıflarda yer alan mallar bakımından reddedilmesi talebiyle yapılan itiraz incelenmiştir.

Yapılan incelemede, "28red" ibareli başvuru ile itiraz gerekçesi markalardan 2001 08566, 2006 32327, 161269 sayılı "red bull" ibareli markaların, "red" ibaresini ortak olarak içerdiği görülmekle birlikte, görsel, işitsel (yirmi sekiz red - red bul) ve kavramsal yönden (28 kırmızı - kırmızı boğa) bütünüyle bıraktıkları izlenim itibariyle karıştırılabilecek ölçüde benzer markalar olmadıkları ve başvuru ile söz konusu markalar arasında karıştırılma ihtimalinin bulunmadığı kanaatine varılmıştır. İtiraz gerekçesi "red bull" markası, içecek sektöründe tanınmış markalardan olmakla birlikte, karşılaştırılan markalar arasındaki yukarıda bahsedilen farklılıklar da göz önüne alındığında, başvuru ile "red bull" markaları arasında tanınmışlıktan kaynaklı ilişkilendirme veya karıştırılma ihtimalinin ortaya çıkacağı yönünde yeterli kanaat oluşmadığından, belirtilen markalar ve tanınmışlık gerekçe gösterilerek yapılan itirazlar haklı görülmemiştir.

Diğer taraftan, "28red" ibareli başvuru ile itiraz gerekçesi markalardan 2007 56794 sayılı "red" ibareli markanın, görsel, işitsel ve kavramsal yönden bütünüyle bıraktıkları izlenim itibariyle, 556 s. KHK'nın 8/1-(b) bendi anlamında karıştırılabilecek derecede benzer markalar oldukları kanaatine varılmıştır. Ayrıca, başvuru kapsamında yer alan "*SINIF 32: Mineral waters and aerated waters; non-alcoholic, vitamin-containing and isotonic beverages; refreshing beverages containing caffeine; taurine beverages containing caffeine; soft drinks for energy supply; fruit drinks and fruit juices; syrups and other preparations for making beverages.*" malları ile itiraz gerekçesi 2007 56794 sayılı markanın tescil kapsamındaki "*SINIF 32: Non alcoholic beverages*

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including refreshing drinks, energy drinks, whey beverages and isotonic (hypertonic and hypotonic) drinks (for use and/or as required by athletes); beer, malt beer, wheat beer, porter, ale, stout and lager; non alcoholic malt beverages; mineral water and aerated waters; fruit drinks and fruit juices; syrups, essences and other preparations for making beverages as well as effervescent (sherbet) tablets and powders for drinks and non-alcoholic cocktails." mallarının aynı/aynı tür/benzer mallar olduğu tespit edilmiştir. Bu çerçevede, başvuru kapsamındaki 32'nci sınıfa dahil mallar bakımından, başvuru ile itiraz gerekçesi 2007 56794 sayılı marka arasında, 32'nci sınıfa ait malların ilgili tüketici kesimi açısından, ilişkilendirilme veya karıştırılma ihtimalinin ortaya çıkacağı sonuç ve kanaatine varılmıştır.

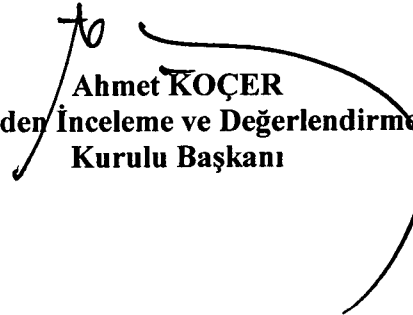
Buna karşılık, başvuru kapsamındaki 33'üncü sınıfa ait alkollü içecekler (biralar hariç) açısından, bilhassa bu sınıfa dahil şaraplar bakımından, başvuru ile itiraz gerekçesi markada ortak olarak yer alan "red" (kırmızı) ibaresi, söz konusu malların ilgili tüketici kesimi tarafından cins, çeşit belirten bir ibare olarak algılanacağından, başvuru konusu markadaki "28" sayısının söz konusu sınıf açısından markanın asli ayırt edici unsuru olarak algılanacağı düşünülmüş ve bu nedenle 33'üncü sınıfa dahil mallar bakımından, başvuru ile itiraz gerekçesi markalar arasında karıştırılma ihtimalinin bulunmadığı kanaatine varılmıştır.

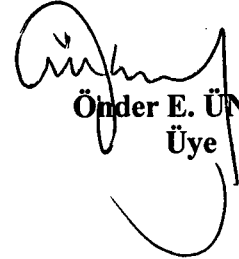
Sayılan nedenlerle itirazın kısmen kabulü gerekmiştir.

KARAR

2007 56794 sayılı itiraz gerekçesi marka ile karıştırılma ihtimali gerekçesi bakımından itirazın kısmen kabulüne ve başvurunun mal/hizmet listesinden **"SINIF 32: Mineral waters and aerated waters; non-alcoholic, vitamin-containing and isotonic beverages; refreshing beverages containing caffeine; taurine beverages containing caffeine; soft drinks for energy supply; fruit drinks and fruit juices; syrups and other preparations for making beverages."** çıkartılmak suretiyle tescil işlemlerinin devamına oybirliği ile karar verilmiştir.


H. Tolga KARADENİZLİ
Üye


Ahmet KOÇER
Yeniden İnceleme ve Değerlendirme
Kurulu Başkanı


Önder E. ÜNSAL
Üye