

O/354/20

TRADE MARKS ACT 1994

SUPPLEMENTARY DECISION

IN THE MATTER OF TRADE MARK APPLICATION NO. 3243547

BY

ŞÖLEN ÇİKOLATA GIDA SANAYI VE TİCARET ANONİM ŞİRKETİ
TO REGISTER THE FOLLOWING TRADE MARK



IN CLASS 30

AND

OPPOSITION THERETO (NO. 410605)

BY

YADEX INTERNATIONAL GMBH

Background

1. On 8 October 2018 a decision in the above opposition proceedings was published under reference number BL O/634/18. Whilst upholding the opposition, that decision was provisional, since the earlier mark relied upon had not yet attained protection. The Opponent was directed to notify the registry when the status of its registration changed.
2. By way of letter dated 13 July 2020 the Opponent's representative notified the registry that the EU designation of International Registration no.1308730 had been accepted, with a designation date of 7 April 2016 and a priority date from 3 November 2015.
3. This supplementary decision makes no changes to the contents of decision BL O/634/18 in so far as it concerns the assessment of the goods and services, the extent of likelihood of confusion nor the outcome at paragraph 41.

Supplemental decision

4. Paragraphs 42 and 43, as expressed in decision BL O/634/18, are to be disregarded and replaced as follows:

“Outcome

42. The opposition based upon section 5(2)(b) has succeeded in full and subject to any appeal, the application will be refused.

Costs

43. As the Opponent has been successful, it is entitled to a contribution towards its costs. Awards of costs in proceedings are based upon the scale as set out in Tribunal Practice Note 2 of 2016. Applying this guidance, I award costs to the Opponent on the following basis:

Preparing a notice of opposition	£300
and reviewing the counterstatement:	

Preparing submissions in lieu of hearing:	£300
Official Fee: ¹	£100
Total:	£700

44. I order Şölen Çikolata Gıda Sanayi Ve Ticaret Anonim Şirketi to pay Yadex International GmbH the sum of £700 as a contribution towards its costs. This sum is to be paid within two months of the expiry of the appeal period or within twenty one days of the final determination of this case if any appeal against this decision is unsuccessful.”

5. Taking account of the amendments included herein, the provisional decision in favour of the Opponent in opposition 410605, together with the associated award for costs, becomes final subject to any appeal. The appeal period begins from the date of this supplementary decision.

Dated this 16th day of July 2020

Leisa Davies
For the Registrar

¹ Whilst the Opponent originally relied upon an additional ground under section 5(3), it withdrew reliance on this ground during the proceedings. The reimbursement of the official fee has therefore been apportioned accordingly.