

# World Trademark Review *Daily*

**Spherical-shaped wafers held not to infringe Raffaello marks  
Romania - Nestor Nestor Diculescu Kingston Petersen**

**Confusion**

April 28 2011

The Bucharest Tribunal has rejected an action for infringement filed by Soremartec SA (a company of the [Ferrero Group](#)), the producer of the Raffaello chocolates (white chocolate pralines coated with coconut), against the Romanian distributor of the Polish Lumar product (spherical-shaped wafers filled with cream and coated with coconut).

Soremartec requested that the court order the Romanian company to cease marketing, importing and distributing the Lumar product in Romania on the grounds that such actions infringed its trademark rights in the Raffaello pralines. In support of its claim, Soremartec invoked the following trademarks, both protected in the Romanian territory and registered for goods in Class 30 of the [Nice Classification](#):

- a three-dimensional (3D) international trademark (Registration 729178, January 18 2000):



- a two-dimensional international trademark (Registration 798984, February 20 2003):



Soremartec claimed that the Romanian company was infringing its trademark rights because the shape and appearance of the Lumar product were similar to those of the Raffaello pralines.



The Bucharest Tribunal found that the claim of infringement was inadmissible due to, among other things, the fact that Soremartec's trademark registrations did not confer rights over the 3D shape of a "praline covered with coconut": the 3D mark protected the Raffaello packaging with certain distinctive graphical elements, while the second trademark protected the two-dimensional image of a chocolate praline coated

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with coconut.

Moreover, the court stated that the shape of the Raffaello pralines lacked any distinctive character, as it was used by several producers of chocolate products in Romania.

Finally, the court found that the packaging of the Lumar product was not similar to that of the Raffaello product, pointing out that the Lumar packaging displayed trademarks that are protected on the Romanian territory for goods in Class 30 (registered in the name of the Polish producer of the Lumar product).

Soremartec has appealed the Bucharest Tribunal's decision to the Bucharest Appeal Court.

*Delia Belciu and Ana-Maria Baci, Nestor Nestor Diculescu Kingston Petersen, Bucharest*

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