

Debate on time limits in cancellation actions put to an end

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The General Assembly of the Court of Appeals has put an end to the debate as to the interpretation of the expression 'date of registration' in Articles 14 and 42 of the Trademark Law 556 (Case 2007/11-974-2007/962, December 12 2007).

Çenay Feyzioglu filed an action for the cancellation of Çetin Çakir's trademark BIO COS (and design) or the removal of the design from the trademark based on the earlier registered trademark LOTUS (and design). Feyzioglu had also filed an action for unfair competition against Çakir. In the cancellation action, Feyzioglu alleged that Çakir had registered the mark in bad faith.

The cancellation action was dismissed by a local court and Feyzioglu appealed. The Court of Appeals upheld the lower court's decision on the grounds, among others, that the five-year time limit for filing a cancellation action had expired. Feyzioglu filed a request for review.

After further review, the Court of Appeals reversed the lower court's decision on the grounds that Feyzioglu's allegation of bad faith should have been considered by the lower court. The case was remanded to the lower court, which again dismissed the action. On appeal, the case came before the General Assembly of the Court of Appeals.

Under the law, the time limit for filing a cancellation action is five years starting from the date of registration. At issue before the General Assembly of the Court of Appeals was whether:

- the date of registration of a mark is the protection date (ie, the date that appears on the trademark registration certificate) or the date on which the mark is entered in the register; and
- Feyzioglu's cancellation action had been filed in a timely fashion.

The Court of Appeals held that the protection date is the same as the date of application and that the date of application is not the date of registration of a trademark. Therefore, the protection date shall not be considered as the starting date of the five-year time limit in cancellation actions. According to the court, the date on which the mark is entered in the register shall be considered as the date of registration for the purpose of determining the limitation period in cancellation actions. In the case at hand, as the last act of the registration procedure was carried out on December 1 1997, the court held that the date of registration of the trademark should be December 1 1997.

The issue of time limits in cancellation actions was also discussed by the Istanbul Civil IP Court of First Instance in November last year. In that case, the court concluded that the limitation period should be calculated from the date of publication of the trademark in the Official Gazette (for further details please see "Landmark decision on time limits in trademark cancellation actions"). In the present case, the Court of Appeals further clarified the issue: the date on which the last act of the registration procedure is carried out shall be deemed to be the date of registration and mark the start of the five-year limitation period. The decision of the Court of Appeals is binding.