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TURKEY: HAVING BUSINESS IN THE SAME SECTOR IS SUFFICIENT TO PROVE "LEGAL INTEREST"

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In its decision dated January 31 2019, the General Assembly of Civil Chambers of the Court of Cassation concluded that the plaintiff and defendant having business activity in the same sector is sufficient to satisfy the requirement of legal interest in actions concerning a trademark revocation request based on non-use.

In the lawsuit filed before Istanbul (Closed) 4th Intellectual and Industrial Rights Civil Court in 2012, it was requested that the defendant's trademark be revoked partially for goods that were not used.

The defendant could not prove serious use of the trademark but defended itself by noting that the trademark was well known and included the defendant's trade name and therefore it would not be possible for the plaintiff to register the trademark even if the mark could be revoked. Moreover, there was not even a trademark application filed by the plaintiff and rejected based on the defendant's trademark. In light of this information the defendant said there was lack of legal interest.

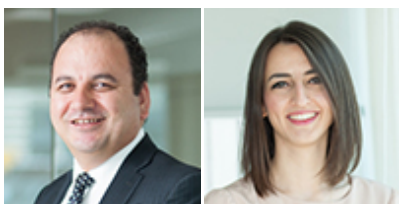
The first instance court, after listening to the parties' allegations and defences, decided on refusal of the action, noting that the plaintiff could not prove the harm it had faced as a result of the registration of the trademark, and it was not possible for the plaintiff to register the trademark as it contained the defendant's trade name. Therefore there was no legal interest in filing the action.

Upon annulment of this decision after appeal examination, the first instance court reviewed the file and decided to maintain its prior decision. This decision was appealed by the plaintiff and examined by the General Assembly of Civil Chambers of the Court of Cassation (Assembly).

The Assembly has evaluated the "legal interest" and "aggrieved party" terms in detail and notes that the "aggrieved party" is not required to have a trademark application. Anyone who enjoys protection arising from the Decree Law numbered 556 (prior to the implementation of the IP code numbered 6769) can file a court action provided that their interest is harmed. Regarding this, the Assembly concluded that the plaintiff, which is in the same business sector as the defendant, can request revocation of the defendant's trademark based on non-use. However, the Assembly upheld the decision of the first instance due to procedural economy arising from the cancellation of Article 14 of the Decree Law numbered 556 by the Constitutional Court in its decision dated December 14 2016.

As a result, even though the Assembly has upheld the decision of the first instance due to procedural economy arising from the cancellation of the ground article, it has in fact made explicit its opinion on legal interest. In light of this decision, having business activity in the same sector of business is considered solely sufficient to fulfil the requirements of "legal interest" and "aggrieved party".

The IP Code numbered 6769 which entered into force on January 10 2017, stipulates that "relevant persons" may file a revocation request which extends the scope of the "aggrieved party" term used in the Decree Law numbered 556. Thus, the evaluations of the Assembly as to the presence of "legal interest" and its decision thereto is considered to be applicable to disputes involving the enforcement of the IP Code as well.



Uğur Aktekin Berrin Dinçer
Özbey

Gün + Partners

Istanbul

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