

## **A New Exception to Use Requirement**

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The Turkish Court of Appeals recently rendered a landmark decision regarding the trademark use requirement. According to Turkish practice, trademarks which have not been in use for five consecutive years (starting from the registration date) may be subject to non-use actions. According to local legislation and practice, only the use of a trademark in Turkey fulfills that requirement. Additionally, importing goods bearing the trademark is also considered as “use” for that trademark.

Now, the Turkish Court of Appeals granted a new exception to the above explained rule. In a recent lawsuit which was filed against an international broadcasting company for the cancellation of its trademark based on non-use, the Court of Appeals found that a trademark may meet the use requirement without actually being produced or served within Turkish borders. In the lawsuit, the plaintiff alleged that the defendant was not registered before the Radio and Television Supreme Council for the last five years, which proved that the subject trademark has not been in use in Turkey. The defendant based its defense on the fact that the trademark was in use in Turkey through internet or satellite broadcasting.

The Turkish Court of Appeals upheld the First Instance Court’s decision stating that broadcasting services which are not served within Turkey and provided via satellite or internet are considered as “use of the trademark within Turkey” based on the reason that the defendant’s TV channels are easily viewed by the general public in Turkey. The Court of Appeals agreed that the general public can easily view a TV channel by internet or satellite even though the TV channel does not operate in Turkey.

With this decision, the Appeals Court created an important exception to the use requirement in Turkey. Actually, the Turkish Patent Institute and the First Instance Court have long recognized the use of a trademark via online international shopping sites as fulfilling the use requirement. It seems that with globalization, the principle of territoriality and use-requirement within territory will be slowly eroded.

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