

III.F.1. Non-Use

General Motors Corporation instituted an action against Rute Ithalat ve Ihracat Anonim Sirketi for the cancellation of the trademarks HUMMER¹, HUMMER², HUMMER DEVICE³, HUMMER DEVICE⁴, on grounds of non-use within the statutory period.

The plaintiff argued that the trademarks had not been put to use by the defendant. In light of this fact, the plaintiff requested the cancellation of the trademarks HUMMER, HUMMER, HUMMER DEVICE, HUMMER DEVICE for non-use. The plaintiff further claimed interlocutory injunctions to prevent the assignment of the trademarks to a third party.

The defendant asserted pendency and stated that the plaintiff had already claimed invalidity of the trademarks before the 1st Istanbul Court of Intellectual and Industrial Property Rights in another action by the case number 2005/399; had not instituted the current action within the 5 years foreclosure and further asserted that conditions for interlocutory injunctions have not been occurred and it had used the mark and such use had not been interrupted for a period of more than five years. The defendant submitted documentary evidence, to support such use by himself and his licensees.

The Court refused the pendency claim of the defendant that the plaintiff claims cancellation of the same trademarks in the case number 2005/399 before the Court of Istanbul 1st Industrial and Intellectual Rights but on grounds of bad faith and confusion whereas the present claim of the defendant depends on the non-use.

The Court appointed a panel of experts, which compiled a report on the use of the HUMMER trademark. Based on its findings, the panel declared that the defendant had used the trademark and that the use had not been interrupted for more than five years.

The Court determined that providing of license to third parties constitutes the use of the trademark.

Accordingly, the Court, refused the plaintiff's claim for cancellation of the defendant's trademark registration⁵

¹ Registration No. 200.022

² Registration No. 201392

³ Registration No. 181840

⁴ Registration No. 199307

⁵ General Motors Corporation v. Rute Ithalat ve Ihracat Anonim Sirketi, Case No. 2007/16, Decision No. 2009/12 (Beyoglu Court of Intellectual and Industrial Rights, March 05, 2009).