

## Repealing Of The Trademark-Non Use During An Uninterrupted Period Of Five Years

“BAHMAN”

**SUPRA DIS TIC. LTD. STI. vs. REEMSTMA CIGARETTENFABRIKEN GMBH**

- (\*) **1st Commercial Court of Istanbul (Beyoglu)**  
**Decision No.1999/143-2000/79 (February 29, 2000)**
- (\*\*) **11th Civil Chamber of the Supreme Court**  
**Decision No.2000/4432-2000/6633 (September 11, 2000)**
- (\*\*\*) **11th Civil Chamber of the Supreme Court**  
**Decision No.2000/9489-2000/9234 (November 23, 2000)**

An action (\*) was instituted claiming the cancellation of the trademark “BAHMAN” on ground of non-use in the country within the statutory period.

The plaintiff asserted that the trademark BAHMAN has been registered for cigarettes in the name of defendant to be valid for ten years as from 18.03.1991 under registration no.127112 and that after the registration of said mark it has not been put to use in the country until the date of institution of the cancellation action and requested that the defendant’s trademark registration be cancelled on such ground for not meeting the requirement of use as provided in Article 14 of the Decree-Law No. 556.

The defendant objected by asserting that the plaintiff is acting in bad faith and instituted the present court case as a counter action to the decision no.1999/54-244 of the Commercial Court of Mersin (*reported in page (6) of our first contribution for 2000 sent in the enclosure of my letter of April 27, 2000*) rendered in respect of the action instituted by the defendant against the infringement of the mark BAHMAN and the unfair competition related thereto, that defendant as a company established in Germany which is a signatory of the Paris Union was exempted from the obligation to use its trademark according to Articles 18/3 and 8/a of the former Trademarks Act No. 556 under which the defendant’s trademark was registered and which was repealed and replaced in June 27, 1995 by the Decree-Law No. 556 on Trademarks currently in force, that any claim for the cancellation of subject

registration can only be put forward after the expiration of five years as from the date of enactment in view of the acquired rights under the former Act, that this period will terminate on June 27, 2000; that furthermore the trademark BAHMAN is used in Turkey on the cigarettes bearing the trademark BAHMAN, imported within the context of a transit trade with other countries in Mersin Free Trade Zone which is within the boundaries of Turkey.

Considering the submitted evidences and the experts' report, the Court in its decision (\*).

Upon defendant's appeal the Supreme Court (\*\*) has upheld the decision of the first instance court on ground that the subject decision is justified according to the information and evidences submitted to the file.

The defendant appealed further for the reconsideration of the decision. In its decision (\*\*\*) the Supreme Court refused to reconsider its decision and decided to uphold it.

These decisions should be considered as landmark decisions in respect of the use in the country and from thereon that use in Free Zones and Duty Free areas may be held not to necessarily infringe trademarks registered in this country.