

Procedural Matters - Appellate Procedure - Jurisdiction/Authority

“MICHONOS” Trademark

MOONSHADOW S.p.A. vs. TURKISH PATENT INSTITUTE

(*) **2nd Commercial Court of Ankara**

Decision no. 1997/2-1997/158 (March 24,1999)

(**) **11th Civil Chamber of the Supreme Court**

Decision no. 1999/5162-1999/7136 (September 27, 1999) (Notified on April 12, 2000)

The defendant appealed against the decision (*) rendered by the first instance court reported in the International Annual Review of 2000 (pages 242 and 243).

The Supreme Court rendered its decision (**) by ruling that, according to the Articles 39 and 40 of the Law on Civil Procedure, the plaintiff's claim for canceling the registration for the trademark “MICHONOS” can not be evaluated unless the plaintiff has been provided by the Court with a time period within which he is to institute a cancellation action against the registrant of the subject trademark in order to enable the registrant to be party to the cancellation action and that, upon the filing by the plaintiff of the cancellation action, said action should be joined with the subject action against the Turkish Patent Institute and that the decision should have been rendered thereafter.

Upon such consideration the Supreme Court over turned the decision (*) as it retained that it is against the rules of the civil procedure to solely invite the registrant to join in an action without being a party to it claiming the cancellation of its trademark registration on ground that no decision can be rendered affecting the right of an applicant/registrant by an action to which the concerned applicant/registrant is not party.