


II.D.1. Procedural Matters

An action¹ has been instituted against Hayat Kimya for the cancellation of their trademark **LEXUS**² on grounds of the well known character of the plaintiff's trademark ³.

The defendant objected the competence of the court, that the court action should have been instituted at the address of the defendant and that the action should be refused according to Article 63/III, which foresees that the action shall be instituted at the address of the defendant. The defendant requested the court to rule for lack of competence.

Despite the defendant's objection to the competence of the court, it has been determined from the documents submitted to the Turkish Patent Institute that the plaintiff is residing in a foreign country and is represented by a trademark attorney registered with the Turkish Patent Institute. Thus, the court ruled that the court is competent according to Article 63/II of Decree Law No. 556 and case law of Supreme court, since in a cancellation action, the plaintiff as the trademark owner, who wants to protect his trademark against the defendant's acts taking unfair advantage and the acts being detrimental to the distinctive character of his trademark, the plaintiff has the right to institute the action as the real trademark owner at the address of his representative.

According to a prior action⁴, the 11th Division of Supreme Court ruled that according to Article 9/1 of HUMK the court action shall be principally instituted at the address of the defendant, in case where the plaintiff is not residing in Turkey, the competent court shall be accepted as the court at the address of the trademark representative recorded with the Institute and in case the representative is deleted from the registry of the representatives, the court should be instituted at the address of the Turkish Patent Institute.

Accordingly the court has decided for:

- The rejection of the defendant's claim of lack of competence of the court and continued the handling of the case.

¹ Toyota Jidosha Kabushiki Kaisha (Toyota Motor Corporation) vs. Hayat Kimya Sanayii A.Ş., case no. 2007-14, Decision no. 2009-23, Beyoğlu Court of Intellectual and Industrial Rights, decision dated April 30, 2009.

² Registration no. 2002 31430

³ Registration no. 114602

⁴ Supreme Court, case no. 98/5753 and decision no. 98/7769 dated November 13, 1998