

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

“ROUTE 66”

VAN NELLE TEBEK NEDERLAND BV vs.

UM-KA DERİ İMALATI VE KONFEKSİYON SANAYİ VE TİC. LTD. ŞTİ.

(*) Istanbul 1st Court of Intellectual and Industrial Rights

Case no. 2003/24 – Decision no : 2004/272 - (13.05.2004)

An action (*) was instituted for partial cancellation of the trademark ROUTE 66 for the goods in international class 34 on grounds of non-use within the statutory period.

Upon the refusal of his application for the trademark ROUTE 66 in class 34 against which the defendant’s earlier registration No. 96/013518 for ROUTE 66 was cited, the plaintiff requested the partial cancellation of the defendant’s trademark for the goods in international class 34 by asserting that he is known for producing and marketing of tobacco products throughout the world, that his application has been rejected due to the existence of the defendant’s trademark registration and that the defendants operating in the field of manufacturing leather and ready-to-wear clothing and goods is not using his trademark on the goods of interest for the plaintiff namely “tobacco, products for tobacco users” and that therefore according to the Article 14 of the Decree-Law no. 556 on trade/service marks reading “If, within a period of five years following the registration, the trademark has not been put to use without a justifiable/legitimate reason or if the use has been suspended during an uninterrupted period of five years, the trademark shall be repealed”; the goods “tobacco and products for tobacco users” should be excluded from the specification of defendant’s trademark registration for non-use.

The defendant objected that the action is not well grounded, that the plaintiff is ill willed and that the action should be rejected.

As the defendant did not timely file with the Court the evidence showing serious and uninterrupted use of the trademark ROUTE 66 in respect of goods in class 34, the court has accepted the plaintiff’s

claims and ruled to partially cancel the defendant's trademark as of Article 14 of the Decree-Law by excluding therefrom the goods in class 34.

As the defendant did not appeal the decision is finalized.