

Procedural Matters - Apellate Procedure - Jurisdiction/Authority

“CASADEI”

Calzaturificio Casadei S.p.A vs. Turkish Patent Institute and Cicek Kundura ve Tic. Ltd. Sti

**3rd Ankara Court of Intellectual and Industrial Rights, Case no. 2007/137, Decision no. 2007/145
(June 11, 2007)**

Calzaturificio Casadei S.p.A instituted an action against the Turkish Patent Institute for the withdrawal of its decision on absolute grounds of refusal, partially rejecting plaintiff’s trademark application for CASADEI and against Cicek Kundura for the cancellation of their trademark for CASADEI¹ registration cited against the plaintiff’s trademark application.

The Institute asserted that the decision is in accordance with the provisions of the Decree Law No. 556 on the protection of trade\service marks and whereas the defendant asserted that the competent court is the Court of Istanbul on Intellectual Rights for hearing the cancellation of its registration.

Considering that it is not mandatory to direct the action concurrently against the Turkish Patent Institute and the registrant, as co-defendants, on grounds that the defendant’s trademark registration was valid at the time of the decision of Higher Council of T.P.I. for partial rejection on absolute grounds of refusal and that the cancellation action is not likely to affect the action for the withdrawal of T.P.I.’s decision; the Court held that the claims for the cancellation of the defendant trademark registration are to be heard independently from the present action under a separate action.

The court ruled that it has no competence to hear the case in respect of the plaintiff’s claim for cancellation of the defendant’s trademark registration and that the case is to be transferred to the competent and responsible Court of Istanbul on Intellectual and Industrial Rights, where the defendant has its commercial establishment.

Accordingly the court has decided for:

¹ Registration no.2000 24677

- The rejection of the plaintiff's claim for the cancellation of defendant's trademark on grounds of lack of competence of the court,
- The transfer of the case to the competent and responsible Court of Istanbul on Intellectual and Industrial Rights².

² *Calzaturificio Casadei S.p.A*² vs. *Turkish Patent Institute*² and vs. *Çiçek Kundura San. ve Tic. Ltd. Şti* , Case no. 2007/137, Decision no. 2007/145, (3rd Ankara Court of Intellectual and Industrial Rights), (June 11, 2007).