

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

“TITLES” trademark

**Türksan Turizm San. Ve Tic. A.Ş. vs Straub Corporation Limited**

(\*) 1st Court of Istanbul on Intellectual and Industrial Rights,  
Case no. 2006/635, Decision no. 2007/178

Straub Corporation Limited instituted an action<sup>(\*)</sup> against TÜRKSAN TURİZM SAN. ve TİC. A.Ş. for the cancellation of the trademark TITLES<sup>1</sup> on grounds of non-use within the statutory period.

The plaintiff claimed that cited trademark has not been put to use by the defendant and requested thereby the cancellation of the trademark TITLES registration no. 188943 on grounds of non-use.

The defendant asserted that it has not used the trademark since it has been in a financial breakdown due to the economic crisis in 1999 and due to the sequestrations and therefore it asserted that the non-use caused by a legitimate reason.

The Court has cited that there is no disagreement that the trademark has been registered on 01.09.1997 and has not been used from 1999 until the date the court action has been instituted namely 26.12.2006.

With the Article 14 of the Decree Law No.556 it is intended that the legitimate cause shall not arise from a fault or a fact, which can be attributed to the trademark holder. Neither it can be seen as a legitimate case that the trader has been in a financial breakdown and has been put under sequestrations, nor the sequestration of the trademark interferes the use or the disposal of the trademark. Anyway since in case of non-use of the trademark the cancellation of the trademark is to be discussed, the effectively use of the trademark can not be stopped legally with the sequestration. Moreover, since the economic crisis in 1999 it has been passed more than 9 years. As stated above, due to the non-use of the trademark without any legitimate reason for a period of 5 years and according to the Article 14 of the Decree Law No.556 the cancellation conditions have been constituted, the Court held under mentioned decision regarding the cancellation of the trademark.

The Court has ruled

-Accepting the plaintiff's request, cancellation of the trademark no.188943 registered in the name of the defendant on 01.09.1997 and continuation of the injunction until the decision is finalized,

- Charging the defendant to pay all the expenses for the litigation costs.

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<sup>1</sup> Registration no.188943