

Bad-faith filings in Türkiye: how credible is the trademark PETSHOP for musical instruments?

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14 March 2025



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TURKEY

Legal updates: case law analysis and intelligence

- The plaintiff, which has been using PETSHOP as a non-registered trademark since 2008, sought the invalidation of PETSHOP for “musical instruments” in Class 15
- The IP Court denied the plaintiff’s claims based on its earlier rights in the non-registered mark since the plaintiff’s earlier use did not relate to Class 15 goods
- However, the court concluded that the defendant’s PETSHOP mark had been filed in bad faith

A recent case involving the mark PETSHOP reflects the common appearance of bad-faith filings in Türkiye, and considers whether the abuse of Article 5/1(d) of the IP Code may be deemed a bad-faith filing.

Background

The plaintiff has been operating a pet shop and using PETSHOP as a non-registered trademark since 2008. The plaintiff had also been operating the website at www.petshop.com.tr since 2008 for its online sales of pets and pet-related goods.

The defendant registered PETSHOP as a trademark in 2019 for “musical instruments and their cases” with the aim to obtain a domain name – at that time, in order to be allocated a domain name in Türkiye, it was necessary to own a registered right such as a trademark or trade name. The defendant then attacked the plaintiff’s domain name based on his registered trademark and allocated the domain name to himself.

Following this, the plaintiff filed a court action requesting the invalidation of the defendant's registration for PETSHOP on the basis of its earlier rights in its non-registered trademark, as well as the defendant's bad faith, and sought to prevent access to the disputed domain name.

IP Court decision

The IP Court denied the plaintiff's claims based on its earlier rights in the non-registered trademark PETSHOP, since the defendant's trademark is registered for "musical instruments and their cases" in Class 15, while the plaintiff's earlier use did not relate to goods in this class. It was not possible to admit that the sign in question had been widely and continuously used by the plaintiff in the course of trade in Türkiye **in respect of the goods/services at stake** prior to the date of protection of the disputed trademark registration.

However, the IP Court established that the defendant had been registering trademarks consisting of commonly used words (eg, INFLUENCER, OTO, VERIFIED, STEAKHOUSE, CV, TABLET, BEACH and COIN) in relation to goods and services for which they were not descriptive or in common use. The court further found that the defendant's real objective in registering such trademarks was to obstruct well-intentioned third parties, contrary to the purpose and functions of a trademark.

In light of the above, the IP Court stated that the defendant's PETSHOP trademark had been filed in bad faith, contrary to the justified purpose and functions of a trademark. It invalidated the defendant's trademark registration on the basis of bad faith, and allowed the plaintiff's request to prevent access to the domain name 'petshop.com.tr'.

Appeal decisions

Both the Regional Court of Appeals and the Court of Cassation upheld the IP Court's decision, and the case was thus finalised.

Comment

The decision highlights that the registration of weakly distinctive or commonly used words as trademarks – even for goods and services for which they are not descriptive or commonly used – with the sole intention of preventing third parties from using these signs in the course of trade shall be considered as contradicting the principles of honesty and fairness.

Further, the decision shows that the absolute ground for refusal under Article 5/1(d) of the IP Code (in parallel with Article 7(1)(d) of Regulation 2017/1001), which prevents the registration of signs that consist exclusively of words or indications that have become customary in the current language or in the *bona fide* and established practices of the trade, is vulnerable to potential abuses. Since such signs are not refused *ex officio* by the IP Office where registration is sought for non-related goods and services, and once such signs have proceeded to registration, the only option is to file an invalidation action before the courts, which requires substantive time, effort and expense. Bearing that in mind, rights owners should monitor the publication of official trademark bulletins and act against potentially problematic (descriptive) filings at the administrative stage.

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