

How staying silent can cause trademark problems in Turkey

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Loss of rights due to inaction is a familiar concept in Turkish Law, and applies in many different types of dispute. In the context of the Trademark Law, it can be defined as follows: "If a rights owner does not take action against the breach of its prior rights for a long time, it loses the right to challenge a trademark, which has been either registered or used in good faith during this period."

In general, the principle of loss of rights due to remaining silent derives from the *bona fide* rules defined in the Turkish Civil Code (TCC). According to Article 2 of the TCC, every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations. The consequence of acting in bad faith is explained in the same article: "The clear abuse of a right is not protected under the law."

The Court of Appeal (CoA) has ruled that not taking an action against the breach of a right can be deemed as implicit acceptance of the situation. Thus, according to a CoA decision of June 2012, if the counterparty believes that its uses will not be challenged, filing an action is considered to be in bad faith. The plaintiff is then found to have lost their rights because they remained silent for too long. The general approach of the CoA is to balance both parties' rights, where the defendant in good faith spends money and invests in a trademark in the belief that the plaintiff has implicitly consented to the current situation.

While retaining Article 2 of the TCC, the Industrial Property Rights Law No. 6769 (IP Law) introduced an explicit provision, Article 25/6, for cancellation actions including the loss of rights due to remaining silent. The article reads: "If the trademark holder has remained silent to the use of a trademark for five consecutive years, where the rights holder knows or should have known about such use, it cannot set forth its trademark as a basis for cancellation, unless the latter trademark registration is in bad faith". This article clarifies that no rights are actually lost by remaining silent, but that there are consequences of not enforcing a right for this length of time, such as not being able to set forth trademark rights against a party after five years.

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