

18 Aug  
2020

## District Court upholds foreign mark owner's opposition based on 'genuine right ownership' ground

Turkey - [Gün + Partners](#)

- **Cummins Inc opposed the registration of the mark GENUINE PARTS on the ground of 'genuine right ownership'**
- **The District Court ruled that Cummins had genuine rights in the mark due to its registrations in the European Union and the United States**
- **As the applicant and Cummins operated in the same field of business, the application had been filed in bad faith**

### Background

The principle of 'genuine right ownership', which is regulated by Article 6/3 of the [Turkish Intellectual Property Code No 6769](#), is a very important ground of opposition that often needs to be supported by evidence. Genuine right ownership requires, as a rule, evidence of the effective and earlier use of a mark in Turkey, but can also be supported by additional grounds, such as bad faith.

### Facts

The applicant filed a trademark application for the figurative mark GENUINE PARTS, depicted below:



Cummins Inc filed an opposition, alleging that it was the genuine right owner of the GENUINE PARTS trademark, depicted below, due to its earlier use of the mark in Turkey and its registrations for the same trademark in other countries:



Cummins also alleged that the applicant's filing was in bad faith.

The amount of evidence that Cummins submitted to show its earlier use of the GENUINE PARTS mark in Turkey was limited. This is an important fact in view of the earlier precedents in cases involving bad faith, and because such evidence supports claims of genuine right ownership.

### Decisions

The Turkish Patent and Trademark Office's Trademarks Directorate, its Higher Board and the first-instance civil IP court in Ankara all refused the opposition.

Upon Cummins' appeal, the District Court ordered the rescission of the first-instance decision and upheld the opposition. The District Court ruled that Cummins had genuine rights in the relevant trademark due to its registrations in the European Union and the United States. In addition, as the applicant and Cummins operate in the same field of business, the court found that the applicant's trademark application had been filed in bad faith. The District Court's decision was then approved by the Court of Appeal and thus became final.

The District Court agreed with Cummins that, despite the lack of "considerable" evidence showing use in Turkey, the following facts should be taken into consideration, as a whole, to decide whether genuine right ownership had been established:

- the registrations for the trademark abroad, which showed that the trademark was considered to be "distinctive" in those countries regardless of the word elements, which might be seen as having low distinctiveness; and
- the fact that the applicant operated in the same field of activity as Cummins, which made it highly unlikely that the identity of the marks would be coincidental.

### Comment

A claim of genuine right ownership requires, as a rule, evidence showing the effective and earlier use of the mark in Turkey, but can (and should, wherever possible) also be supported by additional grounds, such as bad faith and copyright infringement. It is not always possible to ascertain at the beginning of a case whether the evidence showing the earlier use in Turkey or the foreign registrations alone will be sufficient, but these additional grounds can provide further incentives - especially to the courts - to accept a genuine ownership claim.

The District Court's decision, which contrasts with the decisions of the Patent and Trademark Office and the first-instance court, shows that initial unfavourable decisions should not discourage claimants when they have a good case.

## Zeynep Seda Alhas

Gün + Partners

## Cansu Evren

Gün + Partners

TAGS

[Europe](#), [Turkey](#)