

Class 46

Class 99

# CLASS 46

Now in its twelfth year, Class 46 is dedicated to European trade mark law and practice. This weblog is written by a team of enthusiasts who want to spread the word and share their thoughts with others.

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## Proper reasons for non-use in Turkey

### Mutlu Yıldırım Köse provides a guest post for Class 46 on a recent Court of Appeal ruling in Turkey

The Court of Appeal (COA) has approved a decision of a first instance court which ruled that the regulatory restriction on the sale of cocktail beverages containing distilled alcohols constitutes a proper reason for non-use of a trade mark in Turkey.



Bacardi & Company Limited filed a trade mark infringement and unfair competition action against a Turkish company using the FREEZER mark on Bacardi BREEZER lookalikes.

Founded 157 years ago, family-owned Bacardi sells its products in more than 150 countries. Protecting the reputation of its brands and the quality of the products consumers expect from Bacardi is critical to the long-term sustainability of the business.

The defendant company filed a counter non-use

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action and argued that Bacardi's BREEZER trade marks have never been used in Turkey and requested revocation of the trade marks.

Indeed, the Bacardi BREEZER mark has not been used in Turkey since its registration date of 2001. But the reason behind the non-use of Bacardi

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BREEZER marks in Turkey was regulatory restrictions. Turkish regulations never let cocktail beverages containing distilled alcohols be sold to consumers.

According to the Turkish Trade Mark Law, a trade mark registration can be revoked if the trade mark in question has not been put to genuine use in Turkey for a continuous period of five years in connection with the goods or services in respect of which it is registered, unless the owner of the trade mark proves that there is a proper reason that justifies this non-use. The Law does not define "proper reason" for non-use.

In the cancellation action, Bacardi argued existence of proper reasons for non-use and stated that Bacardi cannot use BREEZER trade marks in Turkey since Turkish regulations do not allow the sale of cocktail beverages containing distilled alcohols.

The first instance court accepted that such regulatory restrictions were a proper reason for non-use and dismissed the request to revoke the

BREEZER marks for “sparkling beverages containing rum”. The First Instance Court’s decision was approved by the COA and finalized in December 2018.

In parallel, the trade mark infringement and unfair competition claims against the KIRBIYIK FREEZER branded products were also accepted.

In Turkey, decisions in which the court accepts that the trade mark owner had proper reasons for non-use are very rare. Therefore, the decision is an important example demonstrating that regulatory restrictions can constitute a proper reason for non-use.

*Mutlu Yıldırım Köse is a partner of Gün+Partners and a member of the MARQUES Copyright Team*

Posted by: Blog Administrator @ 11.02

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