



STATEMENT OF CLAIMS
of
PLAINTIFF JULIAN HAKES

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Trademark Attorney

GENERAL INFORMATION ON THE DISPUTE



Julian Hakes
LONDON



Plaintiff Julian Hakes is a world-renowned architect and shoe designer rewarded the Best Design Award in 2012.

GENERAL INFORMATION ON THE DISPUTE

Julian Hakes
LONDON

Drapers
Footwear
& Accessories
Awards 2012
WINNER

The name of Julian Hakes' designs is MOJITO.
MOJITO shoes were awarded in 2012.

GENERAL INFORMATION ON THE DISPUTE

The MOJITO shoes are registered as trademarks with Reg. No. 2012/001907, 2012/1908 and 2012/001909 covering the goods “Shoes” in class 25 with registration date of 1 February 2013 before the Turkish Patent and Trademark Office (TP).



2012/001907



2012/1908



2012/001909

GENERAL INFORMATION ON THE DISPUTE

MOJITO shoes are considered as a “style icon”.



About Us Prom

Member Profile / Julian Hakes

Julian Hakes

Julian Hakes
LONDON

Julian Hakes, Winner of the 2012 Drapers Footwear Designer of the Year award, has developed his signature Mojito style shoe for a new ladies fashion footwear concept.

The architect turned shoe designer's work blends his two passions of architecture and design to create beautiful, poetic and sculptural footwear. To produce such physics-defying designs as the Mojito Shoe, Julian uses sophisticated 3D modeling, 3D printing and laser-scanning techniques.

Celebrities including Lady Gaga, Nicki Minaj and Gwyneth Paltrow have shown interest in Julian's shoes, and after winning the Start Up Hub Innovation Award this year at the Tory Party Conference, Samantha Cameron is also keen to be seen wearing his designs.

 CONTACT

 www.julianhakes.co.uk

GENERAL INFORMATION ON THE DISPUTE

In a magazine that you may find attached dated February 2012 and published in Britain, design of the shoes is introduced as designs of Julian Hakes.

In newspaper articles attached that are bearing the date 10 June 2012, there are pictures of the plaintiff along with the visuals of the shoe design in dispute and it is stated that Julian Hakes has been awarded the Best Design Award of 2012.

In addition, results of a survey dated February 2012 indicating famousness of the trademark approximately by 75% in 25 countries is submitted to the court.

GENERAL INFORMATION ON THE DISPUTE

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GENERAL INFORMATION ON THE DISPUTE

Samples of Magazines with MOJITO Trademarks



GENERAL INFORMATION ON THE DISPUTE

Samples of Magazines with MOJITO Trademarks

The Plaintiff Julian Hakes is a famous architect and shoe designer, and his MOJITO shoe design is covered by top-rated magazines in Britain since 2012.



GENERAL INFORMATION ON THE DISPUTE

Samples of Magazines with MOJITO Trademarks

/ Trendwatch /

Giles
Lanvin
Prada

BLACK FOR SPRING
Prevalent at Paris and noted across all the fashion weeks, black's sizeable presence in spring collections was surprising. However, only lightweight fabrics help avoid it looking heavy.

Julian Hakes a shoo-in for award

Shoe designer and winner of this year's Drapers Footwear Designer of the Year award Julian Hakes added another gong to his trophy cabinet by winning the Start Up Hub Innovation Award at the recent Conservative Party conference. The architect-trained designer's work blends his two passions to create physics-defying, sculptural shoes using a sophisticated 3D laser-scanning technique. The award gives Hakes impetus to further develop his signature Mojito shoe style (pictured) and work on his new boot range, to be unveiled in February. Prime Minister David Cameron was quoted as "impressed" and would "show Mrs Cameron the shoes".

Julian Hakes has designed a unique pair of shoes inspired by Gwyneth Paltrow's character in *Shrek*. *Julian* scores his futuristic and innovative approach to shoe design with the following question in mind: "If Tony Stark had had time to design a pair of shoes for Pepper Potts, what would they look like?"

Julian has taken his signature 'Mojito' shoe with an LED light, reinterpreting the 'Mojito' heel that powers your hair's cut, to create a new off-unique pair of shoes in blue. Mark's looked red and chrome but actual.

"Because of my design and engineering background, I've always been fascinated by Tony Stark in *Shrek* from his comic books and film. The 'Mojito' shoe is a result of an architecture shoe process," said Julian Hakes.

"After realising that only the heel and end of the toe require support to maintain comfort, I created many different prototypes before arriving at the 'Mojito' design - perhaps even 'heating' the number of adults needed to Tony Stark!"



Pretty baby

It's rumble time: on one side, fashion's chic full-skirted dresses; on the other, something a little more sexy and subversive. Let the dance-off begin. Photographed by Max Doyle

you can't go cause you'll both break.

Christian Dior leather shoes, \$15,000. Lanvin lace, \$17,000. Prada. Red. (prada.com) \$100. Item: Faded. (prada.com) worn throughout. Boys wear their own clothes. (prada.com) all prices approximate. Fashion items: see pages. Fashion editor: Naomi Smith.

GENERAL INFORMATION ON THE DISPUTE

Surveys – MOJITO Turnovers

MOJITO TURNOVER (selected countries)

Total		Sales Value in 10 000 EURO		
		2015	2016	2017
		236 695	255 026	234 474
1	UK	59 111	56 479	59 111
2	Germany	46 456	51 918	46 456
3	China	39 941	47 761	39 941
4	Singapore	22 694	23 547	22 694
5	Russia	18 653	23 010	18 653
6	France	17 919	19 032	17 919
7	Hungary	10 134	9 790	10 134
8	Poland	9 221	8 751	7 000
9	Spain	6 004	7 388	6 004
10	Italy	6 562	7 349	6 562

GENERAL INFORMATION ON THE DISPUTE

Surveys – MOJITO Advertising Plan

MOJITO ADVERTISING PLAN (selected countries)

Total		Sales Value in 10 000 EURO		
		2015	2016	2017
		50 750	51 000	51 500
1	EU	14 750	14 000	15 000
2	ASIA	13 000	12 000	13 500
3	USA	15 000	15 000	15 000
4	Australia	8 000	10 000	8 000

CONSUMER MONITOR 2012 - EXCERPT



Methodology

- CATI



Fieldwork Period

- 15th – 27th October 2012

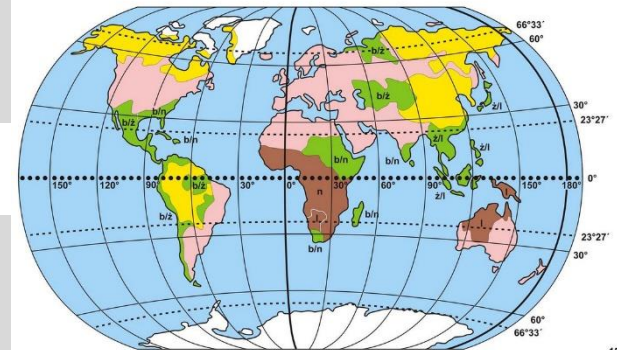
Sample Size & Target Group

- 400 Total
- Shoes Buyers

Sample Quotas

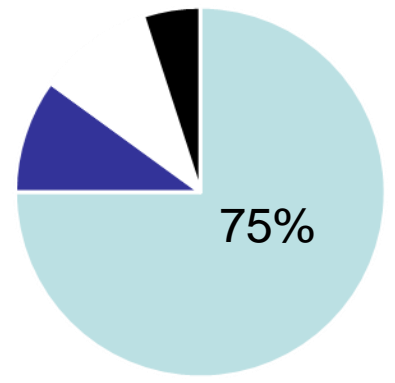
- worldwide
- 70% women / 30% men
- Age: 25-55 years old
- National representative (urban areas)

RASY
skala 1: 90 000 000



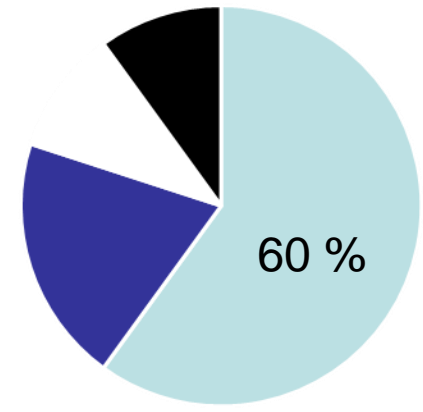
MOJITO TRADEMARK KNOWLEDGE AND RECOGNITION BY CONSUMERS 2012

Renown worldwide



■ 1. MOJITO ■ Alexander Mc Queen ■ Miu Miu ■ Other

Renown Turkey



■ MOJITO ■ Alexander McQueen ■ Miu Miu ■ Other

CONSUMER MONITOR 2016 - EXCERPT



Methodology

- CATI



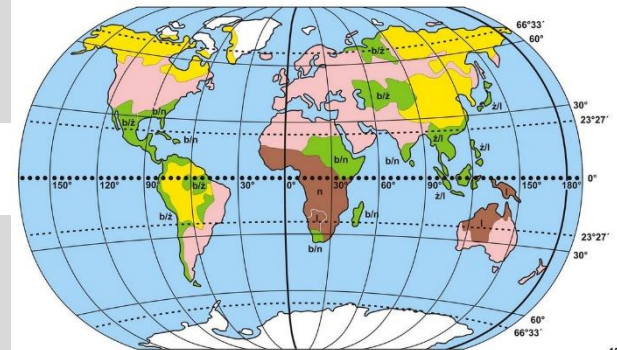
Fieldwork Period

- 15th – 27th October 2016

Sample Size & Target Group

- 400 Total
- Shoes Buyers

RASY
skala 1: 90 000 000

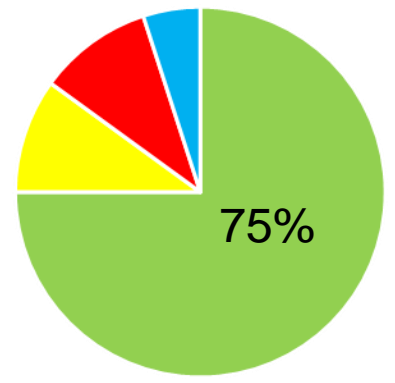


Sample Quotas

- worldwide
- 70% women / 30% men
- Age: 25-55 years old
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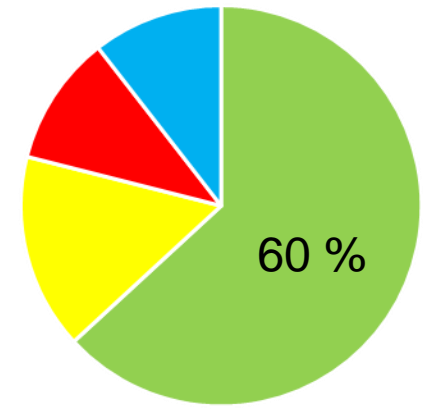
MOJITO TRADEMARK KNOWLEDGE AND RECOGNITION BY CONSUMERS 2016

Renown worldwide



■ 1. MOJITO ■ Alexander Mc Queen ■ Miu Miu ■ Other

Renown Turkey



■ MOJITO ■ Alexander McQueen ■ Miu Miu ■ Other

CONCLUSION OF CONSUMER MONITOR 2012 AND 2016

- MOJITO trademarks have stable awareness.
- The awareness is very high at level of 75%.
- “Design”, „luxory” and “original” are still most characteristic features of MOJITO trade marks.
- MOJITO is the most appreciated for being original and luxury – this feature is driving its purchase intent.

MOJITO TRADEMARKS ON BLOGS

- <http://www.lalalondon.com/2014/08/what-i-wore-julian-hakes/>
- http://www.notey.com/@anamariaoprea_unofficial/external/17025537/magnolia-crush.html
- <http://www.tiphainemarie.com/2012/09/julian-hakes/>
- <http://highheelshighhopesblog.blogspot.com/2015/01/shoe-of-week-mojito-julian-hakes-when.html>
- <https://bluepantsdesign.wordpress.com/2013/01/01/architectural-footwear-julian-hakes-mojito-shoes/>
- <https://thecitizensoffashion.com/2013/01/17/mojito-shoe-from-julian-hakes/>



MOJITO TRADEMARKS ON YOUTUBE



<https://www.youtube.com/watch?v=Cj6rshC1OEY>

<https://www.youtube.com/watch?v=-Zn8tq92huc>

<https://www.youtube.com/watch?v=JSVd7cOI5y0>

<https://www.youtube.com/watch?v=zIz2GL4aUHo>

GENERAL INFORMATION ON THE DISPUTE

MOJITO shoes are luxury goods.

Plaintiff Julian Hakes' shoes are sold for **EUR 250 per pair** in **120 stores around the world**, including in Britain, Canada, USA, China, Russia, Germany, Italy, Spain and Switzerland in total **since 2012** and they are **world-famous**.



GENERAL SCOPE OF THE INFRINGEMENT

When our Client was in Turkey for a fair on 5 March 2018, he noticed that the exact same of his shoe design is presented under the trademark “SUMOLOV” in the fair and sold in SUMOLOV store for **TRY 80 per pair** (approximately EUR 17).

Additionally we determined that our Client’s shoes are sold in the e-commerce site www.gugulov.com.tr.

We sent a **cease and desist letter** from the notary to both defendants to cease the sales on 7 March 2018, however, **both parties continue selling the shoes.**

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

The MOJITO shoes are registered as trademarks with Reg. No. 2012/001907, 2012/1908 and 2012/001909 covering the goods "Shoes" in class 25 with registration date of 1 February 2013 before the Turkish Patent and Trademark Office (TP).



2012/001907



2012/1908



2012/001909



CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

IPPI TURKEY

Information on Plaintiff's Trademarks

According to IPL Article 4, “Trademarks may consist of any signs like words, including personal names, figures, colors, letters, numbers, sounds and the shape of goods or their packaging, **provided that such signs are capable of distinguishing the goods or services** of one undertaking from those of other undertakings and being represented on the register in a manner to determine the clear and precise subject matter of the protection afforded to its proprietor.”

As you are aware, trademarks are deemed to have a distinctive character if they have the function of pointing to the source of the product as a whole with all the elements they contain. A figurative sign consisting of a product shape will also increase the distinctiveness of the product as it diverges from other products in the relevant market and acquires a unique quality outside the standard product form.

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Taking into account the fact that the markings of patterns and decorative elements usually give rise to a perception and impression of the design or quality of the product rather than a distinction that usually refers to the source of the product on the average consumers, it is clear that in the examination of the distinctiveness of such forms, and to be distinctly different from similar decorative elements used in the related sector will be expected.

The distinctiveness of the shapes that are significantly distanced from the usual shapes due to widespread use in the sector are stronger.

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks – 3D Characteristic

Additionally, it is clear that **3D designs shall be registered as trademark** in the event that they are capable of distinguishing the goods or services and being able to be represented on the register. In fact, it is clearly stated in the Article 5 of IPL that “the shape of goods” shall be registered as a trademark.

Our Client's designs certainly provides the requirements that are stated in the Article, therefore they are undoubtedly rightfully registered as trademark.

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks – 3D Characteristic

EU LAW

Criteria for assessing the distinctive character of 3D marks consisting of the shape of the product itself are no different from those applicable to other categories of trade mark.

A mark fulfils its **function of indicating origin** when it departs significantly from the norm or customs of the sector (12/02/2004. C-218/01, Henkel v OHIM; 07/10/2004; C-136/02 P Mag Instrument v OHIM).

The fantasy shape of the MOJITO shoes differs it from other shoes. The MOJITO trade marks are recognized by the consumers and are renown trade marks.

MOJITO trade marks fulfil the function of indicating origin.



CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Double Identity – EU LAW

Generally, the situation when the two trademarks are identical as regards their expression and the goods and services in connection with these are registered or used is called as the “double identity” trademark problem.

Mark should be considered identical to the earlier trade mark *„where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by an average consumer”*. (judgment of 20/03/2003, C-291/00, Arthur et Félicie, EU:C:2003:169, § 50-54)

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Double Identity – EU LAW

Identical marks are used for identical goods: Shoes.

Plaintiff trademarks



2012/001907



2012/001908



2012/001909



2016/006769

Defendant marks



CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Double Identity – EU LAW

- In case of double identity the **protection is absolute**, because use or registration of a later identical sign for identical goods or services would compromise the function of the **identifying commercial origin**.
- Where identical signs or marks are registered for identical goods or services, it is **impossible to conceive** of circumstances in which all **likelihood of confusion** could be ruled out.
- There is **no need to consider any other factors**, such as the degree of attention of the public or the distinctiveness of the earlier trade mark.

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Renown Trademarks

- **Well-known trademarks** are defined as “trademarks that are recognized by the relevant sector of society”.
- Whilst determining whether a trademark is well-known or not, the competent authority shall consider information of
 - the degree of knowledge or recognition of the mark in the relevant sector of the public;
 - the duration, extent and geographical area of any use of the mark;
 - the duration, extent and geographical area of any promotion of the mark, including advertising or publicity and the presentation, at fairs or exhibitions, of the goods and/or services to which the mark applies;
 - the duration and geographical area of any registrations, and/or any applications for registration, of the mark, to the extent that they reflect use or recognition of the mark;
 - the record of successful enforcement of rights in the mark, in particular, the extent to which the mark was recognized as well known by competent authorities;
 - the value associated with the mark.

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Renown Trademarks

As the honourable court provided with the evidences that we presented to the case, the renown character of the trademarks is explicit.

Shoes Designer Award that our Client received in 2012, magazine covers, articles and sale of shoes all over the world as well as the survey presented **showing the famousness of the trademarks** all proving **the well-known nature** of the trademarks of our Client.



CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Renown Trademarks

- With the renown trademark requires neither identity/similarity of goods/services nor a likelihood of confusion.
- Trade mark owners frequently **invest large sums of** money and effort to create a certain **brand image** associated with their trade mark. This image associated with a trade mark confers on it an — often significant — **economic value**, which is independent of that of the goods and services for which it is registered.
- **Advertising function and investment** to the trademark is protected.
- **Protection of the trade mark owner** against taking **unfair advantage** of, or **being detrimental** to, the distinctive character or repute of a mark for which it has made significant investments.

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Renown Trademarks – EU LAW

*A trade mark can also convey **messages other than an indication of the origin** of the goods and services, such as a promise or reassurance of **quality** or a **certain image of, for example, luxury, lifestyle, exclusivity, etc.***

(‘advertising function’)

(judgment of 18/06/2009, C-487/07, L’Oréal)

CLAIMS REGARDING PLAINTIFF'S TRADEMARKS

Information on Plaintiff's Trademarks

Renown Trademarks – EU LAW



- The use of the MOJITO trademarks without the Plaintiff's approval is unjustifiable and enables the applicant to **attract customers without the involvement of its own costs** for advertisement and promotion.
- This **use guarantees the participant success**, because it uses consumers' good attitude towards MOJITO products.
- It is therefore **“parasitic” on the trademark owner reputation**. It allows the Defendant to achieve benefits at the cost of Plaintiff.
- There is also no doubt concerning the legitimacy of the expanded protection that should be afforded to the MOJITO trademarks in view of the **danger of diluting** and thus weakening the MOJITO marks.

CLAIMS REGARDING COPYRIGHT LAW

General Scope of Authorship

In addition to our claims arising from trademark ownership, the shoe designs that are subject to trademark rights are also considered as “Work” in accordance with the Law on Intellectual and Artistic Works (LIAW).

According to Article 1/B of LIAW, “*Any intellectual or artistic product **bearing the characteristic of its author**, which is deemed a scientific and literary or musical work or work of fine arts or cinematographic work.*”

CLAIMS REGARDING COPYRIGHT LAW

General Scope of Authorship

Additionally, according to Article 4 of LIAW, “Works of fine arts are oil paintings or water colors, all types of drawings, patterns, pastels, engravings, artistic scripts and gildings, works drawn or fixed on metal, stone, wood or other material by engraving, carving, ornamental inlay or similar methods, calligraphy, silk screen printing; sculptures, reliefs and carvings; architectural works; handicraft and minor works of art, miniatures and works of ornamentation, textiles, fashion designs; photographic works and slides; graphic works; cartoons; and all kinds of personifications, **which have aesthetic value.**”

Therefore to be identify a “work” as work of fine arts, besides being a product of an intellectual effort and bearing the character of the owner/author, it must also be a work in the form of an aesthetic quality.

CLAIMS REGARDING COPYRIGHT LAW

General Scope of Authorship

Without a shadow of a doubt, our Client's designs bear the characteristic of the owner/author, they are product of an intellectual effort, and they have **aesthetic value**.

Therefore, such designs are works of fine arts.



CLAIMS REGARDING DESIGN LAW

General Characteristic of Designs

According to Article 56 of IPL, “*Design shall be protected by IPL provided that it is new and has an individual character.*”

Our Client’s shoe design that is identical to the Defendant’s design registration is available for the public and being sold worldwide since 2012. Therefore the Defendant’s design lacks the requirements stated in the law of being new and having an individual character.

Consequently, since the design of the Defendant is failing to meet the conditions specified in Article 56, the decision related to invalidity of the design shall be given by the court without further examination.

CLAIMS REGARDING DESIGN LAW

General Characteristic of Designs – EU LAW

- **Novelty** – when design is **not predated** by earlier identical design.
- **Individual character** - when the **overall impression** design produces on the informed user differs from the overall impression produced on such a user by any design that has been made available to the public before the priority date. In assessing individual character, the **degree of freedom** of the designer in developing the design will be taken into consideration.
- **User** - person who **uses the product** in which the design is incorporated, in accordance with the purpose for which that product is intended. Person having some awareness of the existing designs in the sector concerned, without necessarily knowing which aspects of that product are dictated by technical function.
- **Overall impression** - the two designs must be compared globally.

CLAIMS REGARDING DESIGN LAW

General Characteristic of Designs – EU LAW



Earlier mark (2012)



Defendant design (2017)

- Lack of novelty and individual character of design cause it is identical to Plaintiff shoes which have been made available to the public on 2012 before the date of filing the Defendant's application for Registration (2017) (disclosure in press, Internet, exhibitions).
- User each women who wear shoes.
- The designs are identical. **The Defendant's shoes are a clear copy of the Plaintiff's trademark and copyright work.** The overall impression is like *déjà vu*, the designs are identical.
- The designer has almost unlimited freedom when designing shoes.

CLAIMS REGARDING DESIGN LAW

General Characteristic of Designs – EU LAW

The fact that the intended purpose of a given product requires the presence of certain features may not imply a restricted degree of freedom of the designer where the parties submit evidence that there are possibilities of variations in the positioning of such features and in the general appearance of the product itself.

(judgments of 14/06/2011, T-68/10, Watches; 06/10/2011, T-246/10, Reductores; 09/09/2011, T-10/08, Internal combustion engine)



CLAIMS REGARDING DESIGN LAW

General Characteristic of Designs – EU LAW



- Design shall be declared invalid if a distinctive sign (including trade mark) is used in a subsequent design, and the law of the Union or the law of the Member State governing that sign confers on the holder of the sign the right to prohibit such use (Article 25(1)(e) CDR).
- It is enough that the design and the earlier distinctive sign be similar (judgments of 12/05/2010, T-148/08, Instruments for writing; 25/04/2013, T-55/12, Cleaning device; decision of 09/08/11, R 1838/2010-3, Instruments for writing).
- A design shall be declared invalid if it constitutes an unauthorised use of a work protected under the copyright law of a Member State (Article 25(1)(f) CDR).
- Bearing in mind the identity between Plaintiff's earlier MOJITO trademarks and copyrights work, the Defendant design shall be invalid.

CLAIMS REGARDING REGULATIONS

Industrial Property Law – Trademarks

According to Article 29 of IPL,

- a) To use the trademark as set out in Article 7 without the consent of the trademark proprietor;
- b) To counterfeit the trademark by using the trademark or a confusingly similar trademark without the consent of the trademark proprietor;
- c) While being aware or should be aware that the trademark is counterfeited by use of the trademark or a confusingly similar trademark, to sell, distribute, put on the market in a different form, possess for commercial purpose, import, export the products carrying infringed trademark or to offer to make a contract related to this product,
- ç) To broaden or to transfer to third parties, without consent, the rights given by the trademark proprietor through license.

shall be considered as infringement of trademark right.

CLAIMS REGARDING REGULATIONS

Industrial Property Law – Designs



According to Article 77 of IPL,

(1) The decision related to invalidity of the design shall be given by the court in the following situations:

a) if it is proven that the design is not fulfilling the definitions specified in the first and second paragraphs of Article 55, failing to meet the conditions specified in Articles of 56 and 57 and that the design is in the scope of the fourth paragraph of Article 58 and subparagraph (c) of sixth paragraph of Article 64 and that the application is made in bad-faith and that it contains the unauthorized use of intellectual property rights.

b) if it is proven that right belongs to another person or other persons;

c) if filing date of an identical or similar design opened to the public later shall be prior to the filing date of a registered design.

(2) If a request for invalidation is made for a part of the design as per subparagraphs (b) and (ç) of the sixth paragraph of Article 64 for unauthorized use of intellectual property right shall be accepted, only that part of the registration shall be deemed invalid. At the end of a partial invalidation, remaining portion must meet the conditions related to protection and keep the design identity to ensure the continuity of registration.

CLAIMS REGARDING REGULATIONS

Industrial Property Law – Common Provisions

According to Article 149 of IPL,

Right owner whose industrial property right is infringed can claim;

- a) To determine the existence of infringement.
- b) To prevent the possible infringement.
- c) To stop the infringing actions.
- ç) To remedy infringement and compensate material and moral damages.
- d) To seize the products causing infringement or requiring penalty, as well as instruments, such as devices and machine exclusively used in their production, without preventing the production of products other than infringing products.
- e) To be granted property right on products, devices and machines seized in accordance with subparagraph (d).
- f) To take measures to prevent the continuity of infringement, in particular at the expense of the infringer to change the shapes of products and instruments such as device and machine seized according to subparagraph (d), to erase the trademarks on them or to destroy them if it is inevitable for preventing the infringement of industrial property rights.
- g) If there is any justified reason or interest, announcement of the final judgment at the expense of the opposite party fully or in summary through the daily newspapers or other means or notification to relevant parties from the court.

CLAIMS REGARDING REGULATIONS

Industrial Property Law – Common Provisions



According to Article 150 of IPL,

(1) Those who commit acts deemed as infringement on industrial property right shall be obliged to compensate the damage of right owner.

(2) Where the industrial property right is infringed, additional compensation may be claimed if reputation of industrial property right suffers damage because the products or services forming the subject of the right are used or produced in an inferior manner; or such products produced in this way are made available or launched to the market in an improper manner.

According to Article 151 of IPL,

(1) Damage suffered by the right owner includes actual loss and loss of revenue.

(2) Loss of revenue, depending on the choice of the right owner who suffered damages, shall be calculated according to one of the following evaluation methods:

a) The potential revenue to be gained by right owner if the competition by the person infringe the industrial property right had not existed.

b) The net revenue obtained by the person infringing the industrial property right.

c) License fee to be paid by the person who infringed the industrial property right, if this person used this right through a license agreement in accordance with the law.

(3) In calculation of loss of revenue; factors such as economic importance of industrial property right in particular or the number, time and type of licenses related to industrial property right during infringement action and the nature and size of violation shall be taken into consideration.

(4) In calculation of loss of revenue; in the event that one of the evaluation methods specified in the subparagraph (a) or (b) of the second paragraph is selected and if court reaches the conclusion that industrial property right has been the determinant factor in creating the demand to that product, then the court shall decide that an equitable share be added in the calculation of revenue.

CLAIMS REGARDING REGULATIONS

Law on Intellectual and Artistic Works



Additionally, according to Article 66 of LIAW,

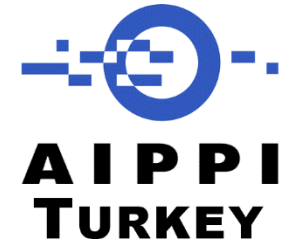
Any person whose moral and economic rights have been infringed may bring an action against the infringer to cease the infringement.

It is not necessary that the infringer or the persons referred to in the second paragraph be at fault.

The court shall order appropriate measures as required by the force of circumstances for the cessation of the infringement, by assessing the moral and economic rights of the author, the extent of the infringement, whether there is fault and if there is, degree of fault, and the damages likely to be suffered by the infringer in case of the cessation of infringement.

According to Article 68 of LIAW,

The right holders whose permission was not obtained may claim the payment of compensation of up to three times the amount that could have been demanded if the right had been granted by contract, or up to three times the current value which shall be determined under the provisions of this Law, from persons who adapt, reproduce, perform or communicate to the public by devices enabling the transmission of signs, sounds and/or images the work, performance, phonogram or productions or who distribute reproduced copies thereof without written permission of the author pursuant to this Law.



CLAIMS REGARDING REGULATIONS

Preliminary Injunction

- Where a violation of rights is the subject of an infringement, the infringing party shall, as a rule, acquire or be entitled to compensation by way of jurisdiction. However, the infringing party may not be able to achieve the purpose of bringing the case to the attention of the court, and in the meantime it wouldn't be possible to fulfil the court's decision during the trial.

- Provisional legal protection is the legal protection to protect the plaintiff, the defendant, and the case against malicious acts from the danger that may arise during the period until the finalization of the dispute.

- **Provisional legal protections are stated in Turkish law as;**
 - (i) precautionary foreclosures for the receipt of money receivables, and
 - (ii) precautionary measures for the provision of contested rights outside the currency.

CLAIMS REGARDING REGULATIONS

Preliminary Injunction



- The most important sanctions for violations of rights arising from intellectual and industrial property law are to stop the infringing actions and to remedy infringement and compensate material and moral damages.
- However, the trial, which is carried out in order to prevent the infringement of the rights, may sometimes reach the point where the request for the sanctions would be meaningless. At this point, precautionary measures should be in place to ensure that sanctions are achieved for the purpose.
- Precautionary measures are legal protections that can be applied in cases **in order to guarantee the outcome of the case**, where there is a risk of delay.

CLAIMS REGARDING REGULATIONS

Preliminary Injunction

- According to Article 159 of IPL, persons who have the right to institute a legal proceeding may request the court to order an interlocutory injunction to ensure the effectiveness of judgment to be delivered, and interlocutory injunctions should especially cover to prevent and stop the actions, which constitute infringement of plaintiff's industrial property right.

CLAIMS REGARDING REGULATIONS

Preliminary Injunction



- Furthermore, according to Additional Article 4 of LIAW,

“in case where rights of authors and related rights holders have been violated by providers of service and content through the transmission of signs, sounds, and/or images including digital transmission, the works which are subject of the violation shall, upon the application of the right holders, be removed from the content. Natural or legal persons whose rights have been violated shall to this end initially contact with the content provider and request that the violation be ceased within three days. Should the violation continue, a request shall next be made to the public prosecutor requiring that the service being provided to the content provider persisting in the violation be suspended within three days by the relevant service provider.”

CLAIMS REGARDING REGULATIONS

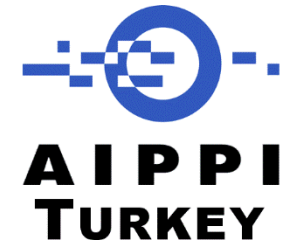
Preliminary Injunction



- As included in our petition, we sent a cease and desist letter from the notary to both defendants to cease the sales on 7 March 2018. However, **none of the parties fulfil their obligation arising from the law**, and they **continue selling infringing shoes in the e-commerce site** www.gugulov.com.tr.

- The ways of securing claims as specified in this application are accepted in the literature regarding the intellectual and industrial property and are used in securing claims in this respect. As stated above, the **IP infringement has a special character and once damage is done it is impossible or almost impossible to turn back the previous state**. As a matter of that in IP cases this kind of interim injunction shall be accepted.

- Within this context, to prevent the possible infringement, i.e. cease of sales in this case is the most important and therefore not only the shoes but also all work that infringes the copyrights of our Client shall be removed and deleted from the website.



FINAL CLAIMS

In the light of above-mentioned information regarding the law, the Plaintiff requests and seeks for;

- (i) Collection of shoes bearing the trademark SUMOLOV;
- (ii) In compliance with Articles 29, 149, 150/2 and 151/2-a of IPL;
 - Collection of material damages of TRY 1.000.000,
 - Immaterial damages of TRY 100.000 and nominal damages of TRY 100.000, and
- (iii) Copyright damages of TRY 1.500.000 and immaterial damages of TRY 100.000 due to violation of material and immaterial rights arising from authorship calculated in accordance with Article 68 of LIAW from severally responsible defendants;
- (iv) Increase of damages by 20% in accordance with Article 151/4 of IPL since client's trademark and award-winning design is the determining factor in defendant's sales;
- (v) Nominal damages of TRY 100.000 since the shoes that the defendant sells are manufactured of poor-quality and unhealthy materials;
- (vi) Prohibition and prevention of infringements.

FINAL CLAIMS

In addition to above-mentioned requests, the Plaintiff requests and seeks for;

(i) Cease of sales on the e-commerce site www.gugulov.com.tr and prohibition of access to said e-commerce site from Turkey,

and

(ii) Invalidity of registered design of the defendant due to bad faith and lack of novelty and distinctiveness.