



# Session 1: Trade marks

Cancellation of trade marks due to non-use –  
including latest development in Turkish  
trademark practice.



**Dr. Elif Betül Akin**

**Head of Reexamination and Evaluation  
Department / President of BOAs**

***Turkish Patent & Trademark Office***





## Turkish IP Code No 6769

- Use of Trademarks (Article 9)
- Cancellation/Revocation of Trademarks (Article 26)
- Effects of Cancellation (Article 27)

## Administrative Cancellation

January 10, 2024



## Revocation for Non-use

According to Article 26 of IP Code the rights of the proprietor of a trademark will be revoked on the application to the Office, if

- within a **continious period of five years**,
- the trademark has not been put to **genuine use** for the goods and services for which it is registered,
- and there are **no proper reasons** for non-use



Revocation will be effective as of date of the application for revocation. (*ex nunc*)

Request for an earlier date of effect is possible! (Article 27)



## Procedural Aspects

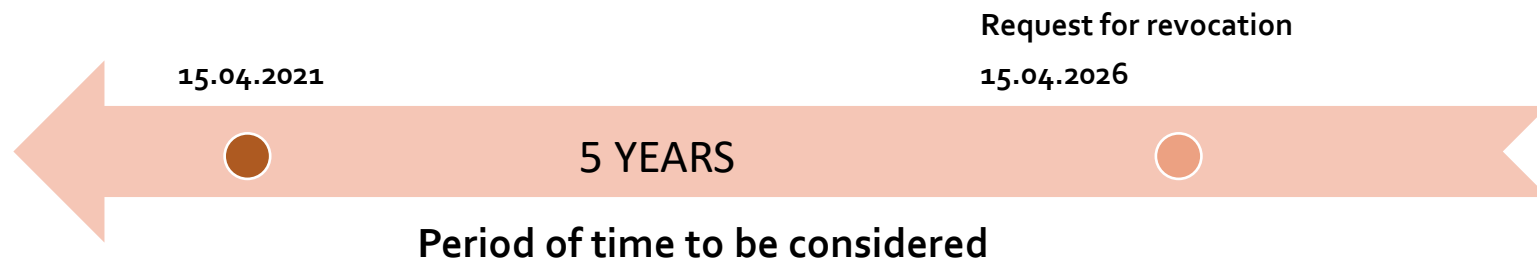
### Who can file an application for revocation?

- Application for revocation can be filed by **interested persons**.

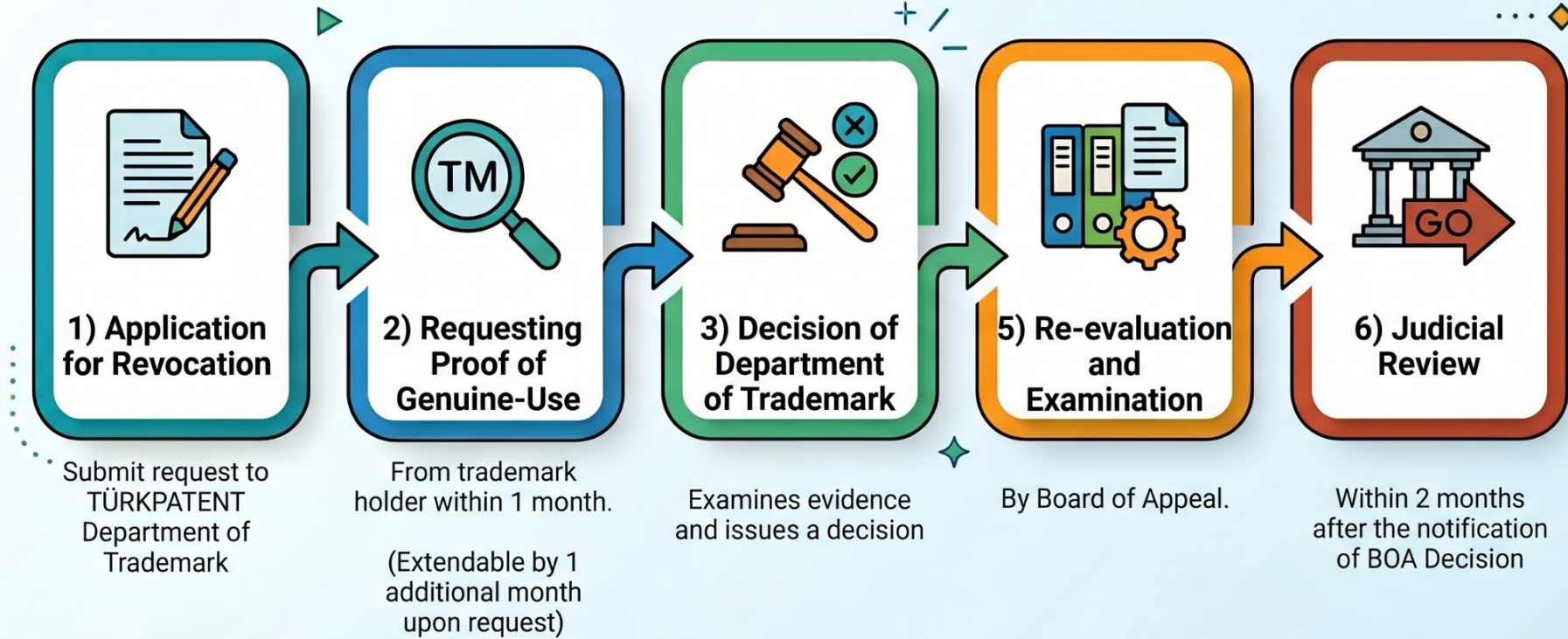
**Burden of proof:** On the **trademark proprietor!**

### Period of time to be considered:

- Trademark registered for more than five years on the date of application for revocation.
- Trademark must have been genuinely used within five years before that date



## ADMINISTRATIVE REVOCATION PROCESS



Generated by Gemini.



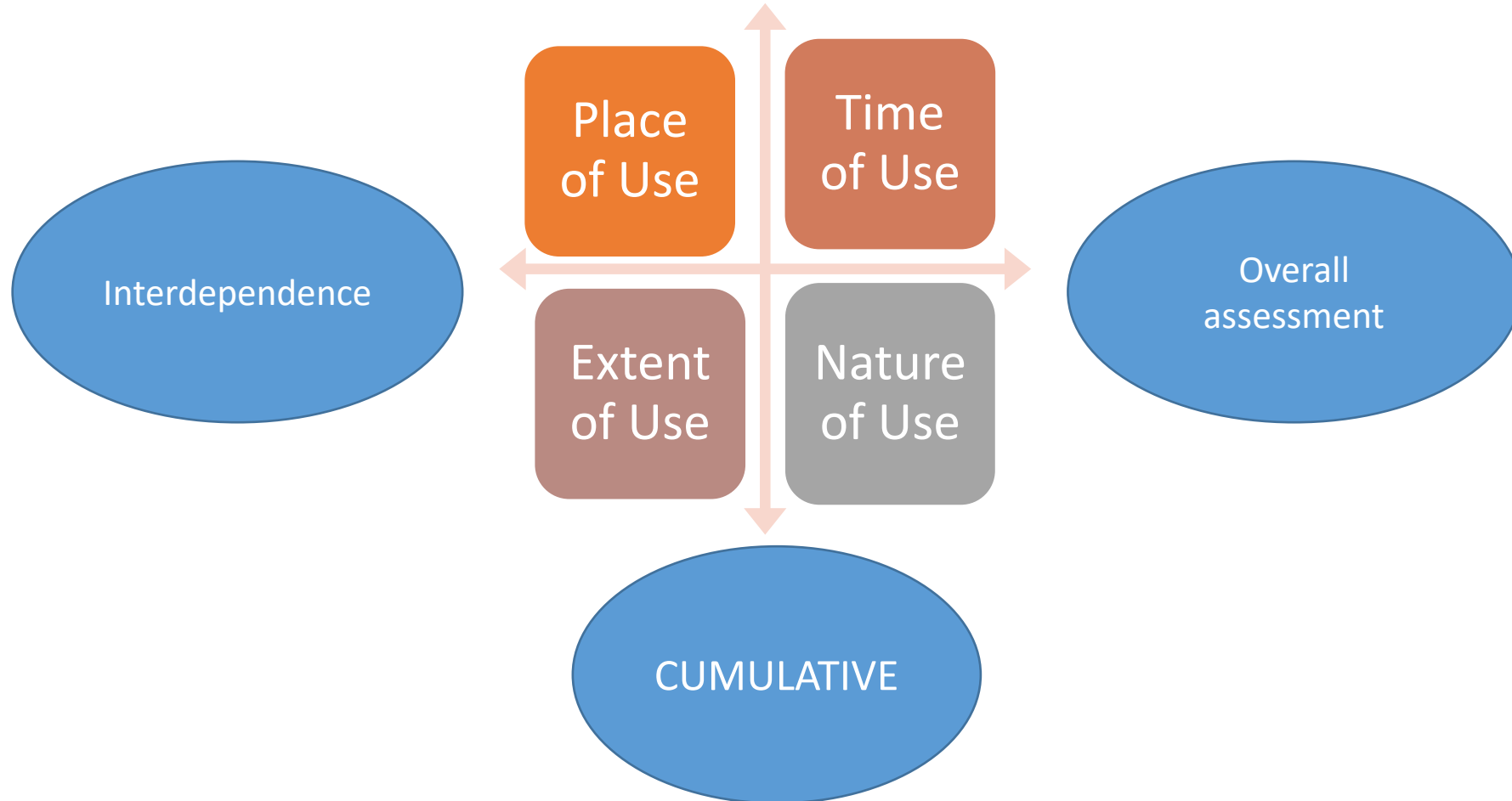
## CONCEPT OF GENUINE USE

Genuine use is **actual** use of the mark with a **real commercial purpose** depending on the characteristics of the market concerned, **not merely token**, serving solely to preserve the rights conferred by the mark.

The purposes of genuine use is **not to assess commercial success** or the economic strategy of an undertaking, nor is it to restrict TM protection to large-scale commercial use.



## Assesment of Genuine Use



Genuine use demonstrated by objective evidence of **effective and sufficient use of the trademark** on the relevant market.



# What types of evidences?

- Invoices
- Catalogues, brochures
- Packages, labels, photos, price lists
- Advertising materials, catalogues & brochures
- Newspaper advertisements, social media coverages
- Market surveys, opinion polls
- Annual reports
- Expert reports, affidavits
- Custom documents, declarations from Chamber of Commerce....





## Procedural Aspects- Notification



2026-M-4091

Class: 9 (Vending machines, Fire extinguishers, welding apparatus, sunglasses etc)

- Revocation requested for all goods.
- TMD: Request was notified to TM holder. Neither evidence nor request for additional time submitted in due time. Revocation request accepted, TM revoked for all goods.
- **BoA: Notification was invalid.** TM attorney should have been notified
- **Procedure over substance!**

**Appeal upheld, decision annulled, remittal to Trademark Department**



## Extent of Use



All the goods/services  
in Class 9 and 42

- The owner argued that trademark was registered in 2019 (when courts held revocation authority, **TÜRKPATENT lacked the power to revoke** it; the applicant **lacked legal interest** and acted in bad faith.
- Evidence: the owner submitted only two invoices (one within time) of computer services and design) trade registry records, and website screenshots.
- BoA: Not sufficient **to prove genuine use**.

2026-M-4831

**Appeal rejected, TM revoked**



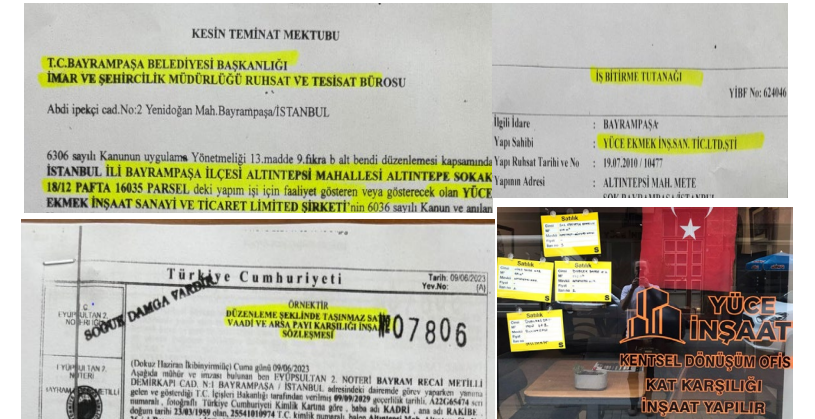
## Extent of Use



All the services included in class 35,  
36, 37, 39, 41,42 and 43

- Evidence submitted: construction & real estate documentation: contractor query records, building visuals, and store images, construction permits, work completion certificates, commercial Documents: Invoices, contracts, activity certificates, and bank guarantee letters, marketing materials:
- Registration maintained for «**construction services**»

**TM partially revoked, no appeal filed, decision confirmed**





## Nature of Use: Defining independent "Sub-Categories"



Class 5: Medicines for human and animal health, therapeutic creams, vaccines, vitamins, pregnancy tests, and diagnostic preparations...

- Evidence (invoices, shelf photos, internet articles) sufficiently proved use only for "**medicines for human health**" (specifically for infertility treatment)
- BoA: Human medicines" and "animal health medicines" constitute **independent and consistent sub-categories** within Class 5.
- Use in one sub-category (human health) does not automatically protect unrelated sub-categories (animal health, chemical products, diagnostic kits).
- Registration maintained "**medicines for human health**"

**Appeal rejected, TM partially revoked**



## Nature of Use: Use of the Mark In an Altered Form

Mark as registered



Classes: 06 / 20 / 24 / 35 /

Mark as used

The image shows evidence of the mark being used in an altered form. On the left, a photograph of an event entrance features a sign with the ORGE logo and the text "• mutfak • banyo • kapi". A red box highlights the logo. To the right, a document contains a table with columns for "No.", "Mark", "Miktar", "Birim", "Kategori", "Tarih", "Gözetim", "Gözetim", "Gözetim", "Gözetim", "Gözetim". Below the table, there is a section titled "Misyon - Vizyon" with sub-sections "MİSYONUMUZ" and "VİZYONUMUZ". A red box highlights the ORGE logo in the top left corner of this document. Another red box highlights the ORGE logo in the top right corner of the document, which is slightly different from the registered mark.

- TM holder claimed the mark used extensively in the furniture and construction sectors. Submitted invoices, catalogs, and social media screenshots as evidence
- BoA: adding the letter "O" to the beginning of "rge" altered the mark and its pronunciation
- Addition was not a minor change, created a **new commercial impression**
- Does not constitute genuine use of the registered trademark.

**Appeal rejected, TM revoked**



Questions?





**Gülay Göksu**

**NSN Law Firm**

**Member**

**FICPI Türkiye**





# Non-Use Cancellation in Turkey

From Court to TPTO: Key Considerations in Cancellation Proceedings and Trademark Portfolio Management



# What Has Changed in Practice?

## Before

- Court proceedings
- Long timelines
  - Less effective in some cases in achieving the desired outcome
  - Less preferred due to time and cost

## Now

- Administrative system (TPTO)
- Faster and easier to initiate
  - More effective in some cases in achieving the desired outcome in achieving the desired
  - Creates a stronger incentive to initiate non-use actions



# What to Consider in Cancellation Proceedings?

## APPLICANT'S PERSPECTIVE

**01**

---

Active Monitoring is Required

**02**

---

Retroactive Effect of Cancellation / Legal Interest

**03**

---

Selective Approach to Goods/ Services



## 01-Active Monitoring is Required

# Follow the File — Evidence Is Accessible

Evidence submitted by the trademark owner is **not formally notified** to the applicant under the current system.

**What You Should Do**

The TPTO system now allows access to the file and submitted evidence. **Follow the owner's defence and evidence, and respond where needed.**

**⚠ Active monitoring is required** —do not assume you will be automatically informed of evidence submissions by the trademark owner.



## 02- Retroactive Effect of Cancellation & Legal Interest

### Default Rule

Cancellation is effective **as of the filing date** of the cancellation request.

### Earlier Effect May Be Requested

This is **not automatic** —it must be justified. A relevant example: prior refusal of the applicant's mark based on the earlier mark.

- i When seeking an earlier effective date, always ensure the legal interest is clearly documented and substantiated in the request.



## 03-Selective Approach to Goods & Services

Focus on goods/ services where there is a **clear legal interest**.

### Efficiency of Review

A more targeted request helps the TPTO carry out a more efficient review.

### Fee Implications

Full acceptance allows the deposit fee to be **fully refunded**. However, if the cancellation is fully or partially rejected, the deposit is **not refunded**.

☐ A targeted scope of goods/ services is both strategically and financially advantageous.



# What to Consider in Cancellation Proceedings?

## TRADEMARK OWNER'S PERSPECTIVE

### 1 Act Quickly – Deadlines Are Strict

Deadlines are short and strict. Late submission of evidence may lead to loss of rights.

### 2 Be Selective with Evidence Evidence

Prioritise strong evidence (e.g. invoices, sales records).  
Avoid overloading the file with weak or irrelevant documents.

### 3 Ensure Clarity

Evidence should clearly show the mark, date and use. Make it easy for the Office to understand the use.



# What to Consider Under the New System for Trademark Portfolio Management?

## ❖ PROACTIVE PORTFOLIO AUDIT:

- ✓ Non-use not only creates a risk of cancellation, but also affects enforceability: **Risk of non-use defence in oppositions, invalidation and infringement actions.**
- ✓ Review vulnerable marks and consider alternative filing strategies.

## ❖ MAINTAIN STRONG EVIDENCE OF USE: Do not wait until a cancellation action is filed to begin gathering evidence. Proactive documentation is no longer optional—it is a core part of portfolio management.

## ❖ MORE SELECTIVE OPPOSITION: Avoid relying vulnerable marks where possible.

## ❖ FILING STRATEGY (IR vs National):

- ✓ In cases of ex officio risk due to a prior mark that is not in use, national filings may offer more flexibility
- ✓ The TPTO may wait for the outcome of non-use cancellation in national applications
- ✓ This may not always be possible for IR applications due to time constraints



**Eleni Kokkini**

PPT Legal, Greece

*Vice President  
Study & Work Committee*





# Session 1: Trade marks

Cancellation of European Trade marks due to non-use: Basic rules and latest developments



# The basic EUTMR provisions: Article 58(1)(a) and 58(2)

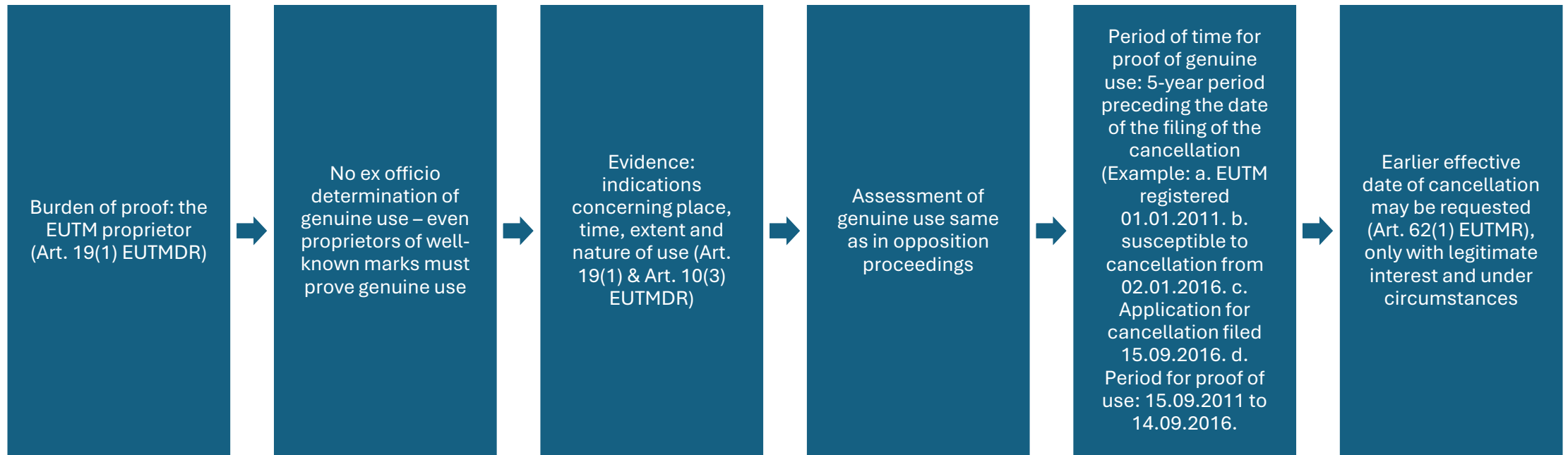
Article 58(1)(a): 1. The rights of the proprietor of the EU trade mark shall be declared to be revoked on application to the Office or on the basis of a counterclaim in infringement proceedings:

(a) if, within a continuous period of five years, the trade mark has not been put to genuine use in the Union in connection with the goods or services in respect of which it is registered, and there are no proper reasons for nonuse; however, no person may claim that the proprietor's rights in an EU trade mark should be revoked where, during the interval between expiry of the five-year period and filing of the application or counterclaim, genuine use of the trade mark has been started or resumed; the commencement or resumption of use within a period of three months preceding the filing of the application or counterclaim which began at the earliest on expiry of the continuous period of five years of non-use shall, however, be disregarded where preparations for the commencement or resumption occur only after the proprietor becomes aware that the application or counterclaim may be filed;

2. Where the grounds for revocation of rights exist in respect of only some of the goods or services for which the EU trade mark is registered, the rights of the proprietor shall be declared to be revoked in respect of those goods or services only



# Basic legal requirements:



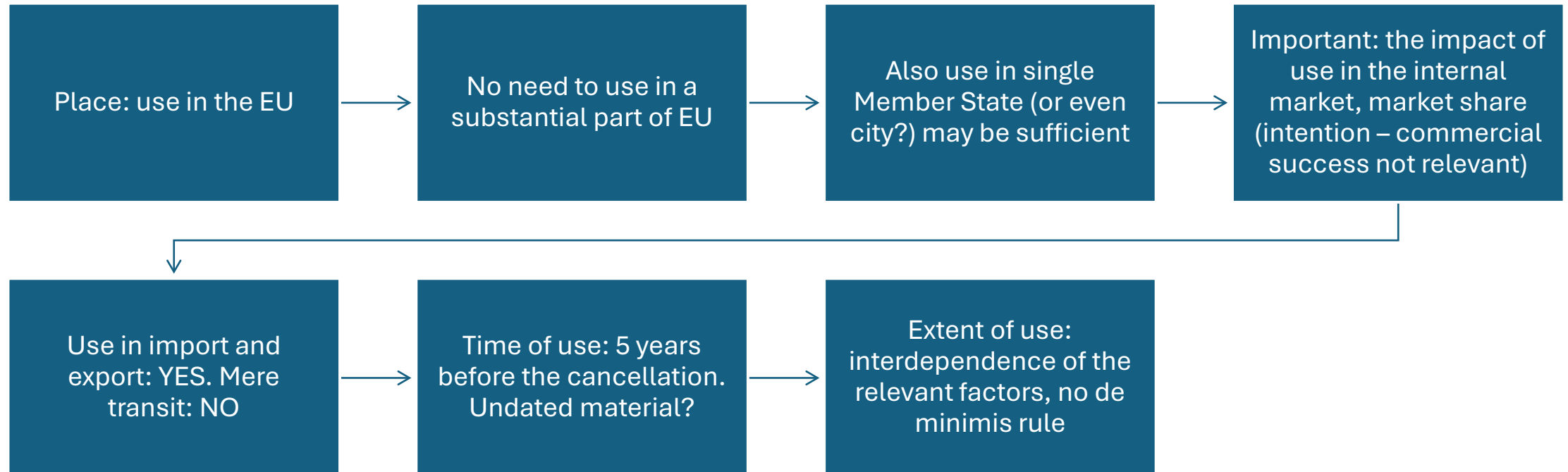
## General principles on the standard of proof (Minimax C-40/01 & Laboratoire de la mer C-259/02)

- Actual use, not merely token
- Consistent with the essential function of the mark (guarantee the identity of the origin of the goods/services)
- Use on the market, no internal use
- Relating to goods or services marketed or about to be marketed
- Real exploitation of the mark, with the purpose of maintaining or creating a share in the market
- No “one size fits all”: nature of goods/services, characteristics of the market concerned, scale and frequency of use
- “Quality, not quantity counts” / No de minimis rule





# Place, time and extent of use





# Use as a trade mark



No purely illustrative use or on promotional goods and services



Use as a sign or business name? Depends on the circumstances



Use as a domain name: usually only identifies website as such



Use publicly and outwardly, in the context of commercial activity



Goods and services offered free of charge?



Use on merchandize items?



Use for services: business paper, advertising, invoices



Use on the internet?

Use of the mark as registered or of an acceptable variation: challenging! (also see CP8 Common Practice)

- Case of simultaneous use of independent marks (e.g. house mark and sub-brand): criterion of remaining independent and perception by the public.
- Use in a form different from the one registered: a) which elements are distinctive and contribute to the distinctive character b) identify differences and evaluate the impact of variations





## Use in connection with registered goods / services

- Aladin case T-126/03: cancellation = permissible limitation of proprietor's rights
- Assessment of goods / services used in comparison of category of registered goods / services
- Relevance of classification? (in some cases the class chosen may be crucial)
- Aladin case: if category able to be divided into subcategories: protection afforded only to subcategory to which the goods/services in use belong (challenging exercise, matter of justification)



# Recent EUIPO & court case trends and developments



RoboBett case: BoA R 0623/2025: Litigation risk is not a justification for non-use! Ongoing legal battles (infringement or opposition proceedings) do not excuse a failure to use a mark. Legitimate reasons for non-use must be objective obstacles independent of the proprietor's will, not strategic commercial caution.



CJEU Dialoga case: T-1075/23: even if a trademark is well-known, it must still meet the "genuine use" requirement for all registered goods and services to avoid partial revocation.



Zoom decision of the BoA: R 270/2025-2 and R 272/2025-2: "ZOOM" trademark cancelled for certain hardware, demonstrating that even famous brands risk losing protections if the mark is not actively used in the specific commercial sectors listed in the registration



# Recent EUIPO & court case trends and developments



**03/09/2025, T-1/24, SANDOKAN, EU:T:2025:818**: Vague evidence, low social media activity, or limited sales are insufficient to prove genuine use. Invoices must directly relate to the registered services, and the proprietor has the burden of proof to show actual, sustained market use.



Mediation Available for Cancellations (June 2024, since 01.07.2024): (<https://www.euipo.europa.eu/en/news/mediation-service-available-for-eutm-cancellations>).



# Thank you for your attention!

Any questions? Contact me at [eleni.kokkini@ficpi.org](mailto:eleni.kokkini@ficpi.org) or [ek@pptlegal.gr](mailto:ek@pptlegal.gr)



# Seminar Cocktail Reception

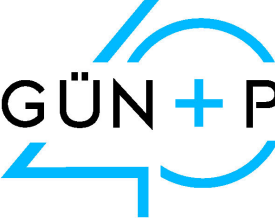
sponsored by

**ATG** | LAW FIRM

**PARAGON**·IP

MOROĞLU ARSEVEN

**INV**  **KAT**  
INTELLECTUAL PROPERTY SERVICES

 **GÜN + PARTNERS**



**Strengthening the practice of the independent IP attorney**

[www.ficpi.org](http://www.ficpi.org)