

Republic of Iraq  
Federal Supreme Court  
Ref. 11 /federal /2019



Kurdish text

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The Federal Supreme Court (F.S.C.) has been convened on 18/12/2019 headed by the Judge Madhat Al-Mahmood and the membership of Judges Farooq Mohammed Al-Sami, Jaafar Nasir Hussein, Akram Taha Mohammed, Akram Ahmed Baban, Mohammed Saib Al-Nagshabandi, Abood Salih Al-Temime, Michael Shamshon Qas Georges and Hussein Abbas Abu Al-Temmen who are authorized in the name of the people to judge and they made the following decision:

The plaintiff:

Hezar Hama Gareeb -his agent the attorney Haider Hasan Alsafar.

The defendants:

1. The Minister of commerce and industry in Kurdistan region/ being in this post.
  2. Director of the trade-marks registration directorate/ being in this post.
- } Their agent the legal official  
Arselan Shaikh  
Ahmad

The claim:

The agent of the plaintiff claimed in the case petition that his agent the owner of the trade-mark (Yeksan) that is registered for the ministry of industry and minerals of the federal government/ trade-mark and business data office by the number (75105) under the commodity classification (29) according to the provision of trade-

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mark and business data No.(21) for 1957 the amended, and his client rights was affected because the defendant ordered a registration request for the same trade-mark with the same commodity classification under the name of (Atson corporation) in contradicting to the provision of the law without having that power, as this is the power of the federal ministry of industry and minerals according to article (2) of the mentioned law which stipulated that (A record shall be kept in the Ministry of industry and minerals that is in the custody of the registrar, in which all trade-marks shall be recorded and ..... ) also the mentioned law stated in clause (2<sup>nd</sup> and 4<sup>th</sup>) of it the provisions of collecting fees under it and transferring these fees to the state treasury as sovereign fees and that this represents the authority of the state over all its lands, also, Iraq is an important member of the WIPO organization for intellectual property, and accordingly, the official bodies accredited by law legally represent Iraq before it, including the federal ministry of industry and minerals exclusively, for all that the agent of the plaintiff requested the F.S.C. to judge the invalidity, illegality and illegitimacy of the trade-mark registration proceedings conducted by the defendant, and to repeal all the taken procedures regard the trade mark (Yeksan). After informing the defendants with the case petition, the first defendant the minister of commerce and industry in Kurdistan region/ being in this post responded with the draft attached to the case petition requested in it to reject the case for not

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basing on legal justification because the F.S.C. jurisdiction is stipulated in article (93/3<sup>rd</sup>) of the constitution and it didn't included adjudicating in the lawsuits arises from implementing the laws, decisions, regulations, instructions and procedures issued by the authorities of Kurdistan region, and that the trade-marks directorate in the region was introduced under the decision of the presidency of Kurdistan region No.(123 on 29/6/2001) and the decision of the government presidency of Kurdistan region No.(1/26/2638) on 30/6/2002, as the powers to register trademarks have been transferred to the ministry of industry and trade in accordance with the decision of the Economic Council of the presidency of the Kurdistan region government No.(29) on the session No.(99) on (8/2/2010) as implement to the decision of the coalition provisional authority No.(80) for 2004, and these decisions are in force according to the provision of article (141) of the constitution which stipulates the continuation of the laws issued by the Kurdistan region parliament and the decisions taken by the Kurdistan region government, including court decisions and contracts since 1992 unless amended or annulled, the constitution of Iraq republic has stipulated the exclusive jurisdictions of the federal government and left all but that to the government of the region, also, the registration of trademarks in the region falls within the jurisdiction of the ministry of commerce in the region's government, in addition to that there is cooperation between the two parties in terms of adopting the

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trademarks registered with both parties and coordination in the registration stages, and that terrorist operations and political and economic differences between the governments of the center and the region prevented the application of the results achieved by the federal trademarks registration office with its counterpart in the region after their joint meeting, the region's government is keen to activate what has been agreed upon according to the minutes of the joint meeting between the two offices. After completing the required procedures according to the F.S.C. Bylaw No.(1) for 2005 the date 18/12/2019 was scheduled for the argument, the court convened and call upon the parties and starts the argument in presence and public, the agent of the plaintiff repeated the case petition and requested to judge according to it, the agent of the defendants responded that he submitted the answering draft summarized it stating that the federal cassation court issued a decision indicates that the authority to issue a trademark document is of the trademark registry department in the ministry of industry and minerals. During scrutiny the court found that the case is completed for reasons of judgment and decided to close the argument, and issued the following decision publicly in the session.

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### **The decision:**

During scrutiny and deliberation by the F.S.C. the court found that the plaintiff agent challenged in his case petition the violation of the defendants when registered the trade mark (Yeksan) that is registered for the ministry of industry and minerals of the federal government by the number (75105) under the commodity classification (29) according to the provision of trade-mark and business data law No.(21) for 1957 the amended, by registering it under the name (Atson corporation) in contradiction to the provision of the mentioned law, and he requested the F.S.C. to judge the invalidity, illegality and illegitimacy of the trade-mark registration proceedings conducted by the defendant because it is not basing on the law, and to repeal all the taken procedures regard the trade mark (Yeksan), and to burden the defendants all the expenses and advocacy fees. The F.S.C. stated that it jurisdictions are stipulated in article (93) of the constitution and article (4) of it law No.(30) for 2005 to consider the challenges against the laws that violates the constitution, and not the challenges of the laws that violates other laws, therefore considering thus lawsuit is out of the F.S.C. jurisdictions which bind to reject it from the aspect of lacking the jurisdiction. Accordingly the F.S.C. decided to reject the lawsuit and to burden the plaintiff the expenses and advocacy fees for the defendants' agent amount of one hundred thousand Iraqi dinars. The decision has been issued unanimously and final according to the provision of article (94) of the constitution and article (5) of the F.S.C. law No.(30) of 2005 and issued publicly on 18/12/2019.