

INTELLECTUAL PROPERTY AND TRADEMARK REGISTRATION IN TURKEY

by

Özlem Hatice Bakırcı

In recent years, Turkey has become one of the internationally attractive business centers in the world. Compliance with quality, protection and formality standards relating to different sectors of the economy has always been an important objective for businesses. The intense commercial activity both on an international and national level imposes the necessity to safeguard the properties of business entities and individuals in order to validate their commercial activities.

Due to its candidature for the European Union, which has advanced to accession negotiations in 2005, Turkey further extended its scope of legislative and administrative activities. In this context, Turkey has also signed various international conventions in several legal areas and has become a member of the World Intellectual Property Organization (WIPO) and also is a party to numerous related conventions. **International treaties to which Turkey is a party are** Paris Convention for the Protection of Industrial Property, Trademark Law Treaty, The WIPO Convention, The Madrid Protocol, and World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

In this brief article, I will try to give an outline of Trademark Registration regulations in Turkey.

Intellectual Property and Trademark Registration in Turkey

Intellectual Property refers to creations of the mind and the protection of Intellectual Property by law is aimed to motivate people to utilize their ability to invent, produce, initiate, innovate and improve. Intellectual property, just as physical property, should and can indeed be protected. Legally protected Intellectual Property is divided into two categories: Industrial Property, which includes trademarks, industrial designs, patents and utility models, semi conductors, etc.; and Copyright, which includes literary and artistic works. Decree-Law

556/1995 on the protection of trademarks, which entered into force on June 27 1995, is the main legislation governing trademarks and it includes a registered trademark protection system for goods and services, guarantee marks and collective marks.

Non registered trademarks are protected under the provisions of the Turkish Commercial Code concerning unfair competition. Responsibilities and authorities of The Turkish Patent Institute, which the authority in charge of protection of trademarks and relevant applications was updated in 2003 by a law, numbered 5000. .

A- Trademark Categories in Turkey

In Turkey, the followings categories of IP product are recognized for trademark registration by regulations.

- *Any sign capable of graphical representation, including words or slogans including names of people
- *Graphic designs
- *Series of letters or numbers
- *The shape of the product or its packaging
- *Any combination of the above mentioned items

Trademarks are available to protect any certification mark which is certified as to quality, country of origin, method of manufacture and ingredients.

B- Trademark Registration

a- Application for Trademark

Any real person or a corporation can apply for trademark registration, but only via an attorney registered within the Turkish Patent Institute.

An appropriate application requires the following documents and information to be submitted:

- An Authorization of Agent form signed by the client, authorizing the lawyer to act on his behalf. Where the applicant is a legal entity, the Authorization of Agent form must also bear the company's seal.

- Full details of the applicant's name, address and nationality. Nature of business is also required in case the applicant is a corporation.
- A clear reproduction and/or description of the goods (or services) which will include colors, forms and dimensional figures if relevant. The category/class of the application shall also be specified.
- Certified document by the relevant authority to confirm priority right if available, under the Paris Convention, with certified translation in Turkish.

b- Assessment of the Application

Upon the submission of a complete application to the Registrar, the Registrar first appoints a filing date, then issues a registration number to the mark and conducts a search in order to establish its eligibility for registration.

c- Acceptance

If the Trademark is accepted conditionally, by imposing some modifications, then the applicant may request in writing the reasons behind the Registrar's decision to impose conditions and have a right to be heard before the Registrar via his lawyer against such imposition by setting out the respective reasons.

If the Registrar accepts the Trademark unconditionally, and or the applicant accepts the trademark conditionally, then the trademark is published in the Official Bulletin of the Turkish Patent Institute, upon the payment of the relevant publication fee.

If there is an objection by third parties within the prescribed time frame to the trademark then the applicant has the right to reply to such third party objections. If there is no such objection the trademark is registered and the Certificate of Registration is due for issuance.

d- Rejection

A Trademark will be rejected on absolute grounds as provided by the Law such as lack of distinctive character and/or use of a geographical name and or reflecting a national emblem.

A Trademark will also be rejected based on similarity to an “earlier” registered trademark or “earlier” application.

Upon rejection by the Registrar the applicant may appeal to the Re-examination and Evaluation Board. If, after this step, the Registrar maintains the rejection of the mark, then the applicant, via his lawyer, may request for judicial review of the Board’s decision under article 53 of the Decree Law No. 556.

C- Duration of Trademark

A successfully registered trademark is protected from the date of filing rather than the date of its eventual registration. A trademark is initially registered for 10 years. Thereafter it must be renewed every 10 years in order to remain valid, with an applicable renewal fee. A reminder is usually sent to the owner of the trademark by the Turkish Patent Office. Failure to renew a trademark will result in its removal from the Turkish trademark register.

D- Scope of Trademark Protection

a- Registered Trademarks

Use of registered Trademarks by third parties can be restrained. Failure or refusal to stop infringement is dealt with by bringing an action for an injunction and/or damages. The Court may grant other reliefs according to its discretion such as requesting submission of accounts evidencing any profits made by the infringing party as a result of the infringement.

The registered owner needs only to show that his trademark is used without authority and s/he does not have to prove any actual damage to his business.

b- Unregistered Trademarks

Unregistered Trademarks are not protected under the Decree Law (reference). However, use of unregistered Trademarks by another party may be brought before the Court under the provisions of Unfair Competition Law.

To conclude;

As part of Turkey's efforts of compliance with EU IP rights legislation, and of fulfillment its commitments under the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights, Turkey has introduced numerous new laws, decrees and regulations since 1994 that have established a stable, reliable IP system that can support a fairly competitive business environment and it seems that Turkey is dedicated to maintain an efficient IP system by incorporating new technologies and necessary legislations in its IP regime.