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TURKEY: Implementing Regulation of the New IP Code Enters into Force—Major Changes for Trademarks

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Following the entry into force of the Turkish Industrial Property Code (the IP Code) on January 10, 2017, a draft of the implementing regulation regarding the IP Code was immediately prepared and views of the stakeholders were collected. The regulation has been finalized and was published in the Official Gazette on April 24, 2017.

The most important provisions in the regulation with respect to trademarks are in relation to co-existence agreements and the use requirement in oppositions.

The procedures and requirements for submission of a letter of consent before filing an application or after filing the application to overcome an *ex officio* refusal decision based on the existence of an identical or indistinguishably similar trademark have been stated. According to Article 10 of the regulation, a letter of consent should be arranged in the form approved by the Turkish Patent and Trademark Office (TPTO) and be notarized. The letter of consent must be unconditional and cannot be retrieved once it has been submitted. Separate letters of consent must be submitted for each trademark application. If the trademark owner providing the consent has granted an exclusive license on the trademark, then the written authorization of that exclusive licensee should be submitted with the letter.

The procedures for demanding proof of use of the trademarks on which the opposition is based and which have been registered for more than five years have been detailed. According to Article 29 of the regulation, the applicant should inform the TPTO of its request for proof of use within the same deadline for submitting its response to the opposition, which is within one month from receipt of the opposition notice. The TPTO will grant the opponent a one-month period to submit evidence of genuine use of its trademark in Turkey. The opponent's evidence could be sent to the applicant if the TPTO deems that it is necessary. In this case, the applicant may submit its opinion on the opponent's evidence within a one-month period. If the opponent fails to prove use of its trademark or the evidence submitted is not related to its use, and if there are no other grounds, the TPTO will refuse the opposition.

A separate guide for proof of use, consisting of the instructions for demanding proof of use and submission of proof forms and the information regarding the acceptable documents for proof, have also been published. According to this, invoices, catalogues, price lists, packaging, labels, photos of the products, advertisement and promotion materials, and market surveys may be produced as evidence.

The new regulation seems to provide sufficient guidance regarding the implementation of the new IP Code, yet there still may be gaps which will be experienced during the implementation of the regulation.

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