

Turkish Patent and Trademark Office Published the New Trademark Examination Guideline

Turkish Patent and Trademark Office (“the Office”) published The New Trademark Examination Guideline (“Guideline”) on September 30, 2019. The guideline defines the criteria regarding the examination of trademark applications on absolute grounds within the scope of Industrial Property Code (“the IP Code”) that came into force in 2017.

The Guideline aims to update the previous guideline which was in force since 2011, clarify the principles of absolute grounds for refusal that are explained in the IP Code and provide consistency of the Office’s decisions.

The Guideline consists of 379 pages and includes a great number of examples which include the decisions of the Office and the Courts and also the recent developments in EU. Especially, Article 5/1(c) regarding descriptiveness and Article 5/1(ç) regarding indistinguishable similarity to a senior trademark or trademark application are discussed in detail providing various examples.

The highlighted points of the guideline can be summarized as follows;

- Since the graphical representation is not required, it is enough to upload the videos and the voice recordings for the applications of the sound marks. For the color mark applications, the section for the color example must be filled fully and the “Pantone” color code must be indicated.
- While evaluation of the trademark applications on “distinctiveness” and “descriptiveness” i) the trademark to be registered should be evaluated together with goods and services that are subject of the application, ii) the application should be evaluated as a whole, iii) the perception of the target consumers should be taken into consideration.
- While the ex officio similarity evaluation is conducted by the Office for the same or indistinguishable trademarks i) if there are two composite marks under evaluation, the overall impression that the marks leave should be taken into consideration, ii) if there are one composite and one non-composite mark under evaluation, the evaluation should be made upon the distinctive elements, iii) the distinctiveness level of the trademarks such as low-middle-high should be taken into consideration while the protection scope is determined.

The Office in its announcement stated that this is a living document and should be updated occasionally according the changes in practice and evaluation. We believe that this detailed work will clarify the principles of absolute grounds for refusal and provide consistency of the Office’s decisions.

The hyperlink of the guideline is as follows:

<https://www.turkpatent.gov.tr/TURKPATENT/allAnouncement/announcementDetail?newsId=1134>