



ICLG

The International Comparative Legal Guide to:

Trade Marks 2017

6th Edition

A practical cross-border insight into trade mark work

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Turkey

Uğur Aktekin



Güldeniz Doğan Alkan



Gün + Partners

1 Relevant Authorities and Legislation

1.1 What is the relevant trade mark authority in your jurisdiction?

Trade marks have to be registered with the Turkish Patent and Trade Mark Office (“Turkish Patent”).

1.2 What is the relevant trade mark legislation in your jurisdiction?

Until January 10, 2017, Decree Law No. 556 Pertaining to the Protection of Trade Marks (“Decree Law”) regulated trade mark protection in Turkey. However, after long discussions, the Industrial Property Code (“IPC”), numbered 6769, has been finalised and came into force upon its publication in the Official Gazette on January 10, 2017. Pursuant to Provisional Article 1 of the IPC, whereas trade mark applications filed before January 10, 2017 are subject to the provisions of the Decree Law until the finalisation of their registration procedure, trade mark applications filed after January 10, 2017 are subject to the provisions of the IPC. Accordingly, all responses to the below questions are as per the IPC provisions, which are in force at the time of writing.

2 Application for a Trade Mark

2.1 What can be registered as a trade mark?

According to Article 4 of the IPC, signs such as words including personal names, shapes, colours, letters, numbers, sounds and the form of goods and packaging (if it is of a distinctive character which differentiates its goods or services) can be registered as trade marks.

2.2 What cannot be registered as a trade mark?

If a trade mark does not meet the conditions stated under Article 5 of the IPC (see question 3.1) and the definition stated under Article 4 (see question 2.1), it cannot be registered.

2.3 What information is needed to register a trade mark?

The applicant may apply for registration via the online system of Turkish Patent, and should include the following:

- if the applicant is a real person, the first name and surname, and if he/she is a Turkish citizen, his/her Turkish ID number;
- if the applicant is a legal person, the identification information which includes tax identification number (if Turkish) and the applicant’s address and other contact information;
- if the application is filed by a trade mark agent, the registration number, address and other contact information of the agent;
- information, if any, regarding the request of the right of priority;
- a sample of the trade mark which is suitable for reproduction by printing and publishing;
- if the letters used in the trade mark are not in the Latin alphabet, their equivalent in the Latin alphabet;
- the class numbers of the goods/services covered by the trade mark application according to the Nice Classification and their list in accordance with these numbers;
- the signature of the authorised person(s);
- information regarding payment; and
- information, if any, on additional page numbers and attachments.

In addition to the abovementioned requirements, the following must be submitted with the application:

- information showing that the application fee has been paid;
- information showing that the fee of the additional class(es) has been paid;
- if any, information showing that the fee regarding the request of priority has been paid;
- if it has been requested to take advantage of the right of priority, a certified original document taken from the competent authorities or a notarised copy of the document and the Turkish translation of this document, approved by a sworn translator;
- if the application is filed by an agent, a power of attorney (“PoA”); and
- technical regulation, if filed for a common trade mark or guarantee trade mark.

2.4 What is the general procedure for trade mark registration?

An application is subject to an *ex officio* examination by Turkish Patent. Accordingly, upon examination it is published in the Official Trade Mark Bulletin, pending any third party opposition, for a period of two months. If no opposition is filed, it is granted registration in the Trade Mark Registry and will be published in the Official Trade Mark Gazette. A decision rendered by a Directive of

Turkish Patent's Trade Mark Department upon opposition can be appealed before the Re-examination and Evaluation Board within two months as from the notification date. The decision of the Board can be subject to a cancellation action before the Civil IP Courts of Ankara. The IP Courts' decision can be challenged before the District Court and, if the conditions stated in the Code of Civil Procedure are fulfilled, the decision of the District Court can be further appealed before the Court of Appeal.

2.5 How can a trade mark be adequately graphically represented?

The trade mark should be represented within 7 cm × 7 cm, in JPEG format (300 dpi).

2.6 How are goods and services described?

As per Article 11/3 of the IPC, goods and services are described under the Nice Classification.

2.7 What territories (including dependents, colonies, etc.) are or can be covered by a trade mark in your jurisdiction?

The protection of trade mark registration applies across Turkey.

2.8 Who can own a trade mark in your jurisdiction?

According to Article 3 of the IPC, citizens of the Republic of Turkey, both real and legal persons who are domiciled or who have industrial or commercial establishments within Turkey and persons who have application rights resulting from the terms of the Paris Convention or the Agreement Establishing the World Trade Organization can own a trade mark. Other than these, as per the reciprocity principle, real and legal persons who are entitled to trade mark protection by law or *de facto* within Turkey can own a trade mark.

2.9 Can a trade mark acquire distinctive character through use?

Article 5/2 of the IPC allows the trade mark to acquire distinctive character through its usage before registration.

2.10 How long on average does registration take?

The registration phase takes around six to eight months and it takes 10 months for the applicant to receive the trade mark certificate as of the application date.

2.11 What is the average cost of obtaining a trade mark in your jurisdiction?

The official filing fee is around €60 per class and €175 for the issuance of the registration certificate, regardless of the number of classes. Additionally, attorneys' fees should be considered, and may differ based on the reputation of the agent.

2.12 Is there more than one route to obtaining a registration in your jurisdiction?

The trade mark application can only be filed before Turkish Patent.

2.13 Is a Power of Attorney needed?

If the applicant filed its application via a trade mark agent, a PoA is necessary.

2.14 If so, does a Power of Attorney require notarisation and/or legalisation?

A simple signed PoA is sufficient for applying, thus notarisation and/or legalisation are not necessary.

2.15 How is priority claimed?

Real or legal persons who are entitled to a right of priority can claim priority in Turkey by providing the relevant document showing that they have made a trade mark application in another country or that they have displayed the goods/services at exhibitions. The following documents shall be submitted to Turkish Patent within six months from application or display:

- The relevant document showing the right of priority provided by the competent authority, translated by a sworn translator and notarised.
- A petition with the claim of the right of priority.
- Information regarding payment.

2.16 Does your jurisdiction recognise Collective or Certification marks?

Article 32 of the IPC pertains to collective and certification (guarantee) marks.

3 Absolute Grounds for Refusal

3.1 What are the absolute grounds for refusal of registration?

As per Article 5 of the IPC:

- a. The trade mark must meet the definition of a trade mark (see question 2.1) and contain a distinctive character.
- b. The trade mark cannot be identical or indistinguishably similar to a senior trade mark registration/application covering the same or same kind of goods/services.
- c. Trade marks which include kind, quality, aim, value, quantity, origin or which show the time in which the goods are manufactured or services are provided, or other qualities of the goods/services exclusively as a sign or appellation.
- d. Trade marks connected with and used by an occupation or a trading group cannot be registered. In accordance with this, signs created from the natural structure and technical necessity of the goods cannot be registered.
- e. Trade marks which can mislead the public regarding the quality, legibility or origin, etc. of the goods/services cannot be registered.
- f. Trade marks rejected as per the prohibitions on state emblems, official adjustment stamps and emblems of interstate organisation stated in the Paris Convention cannot be registered. Besides, trade marks containing badges, emblems or escutcheons other than those covered by Article 6*ter* of the Paris Convention which have not been authorised by the competent authorities and are of particular historical and cultural public interest cannot be registered.

- g. Trade marks containing religious values and symbols, and trade marks which are contrary to public order and morality, cannot be registered.

If a trade mark earned a distinctive character before its registration through its usage, the trade mark cannot be rejected on the grounds of the conditions stipulated at (a), (c) and (d).

Lastly and most importantly, a trade mark application cannot be rejected on the grounds of a senior trade mark registration and/or application if the notarised permission document is submitted showing that the senior trade mark owner expressly consents to the registration of the application.

3.2 What are the ways to overcome an absolute grounds objection?

If the trade mark is identical or highly similar to the senior registered trade mark, the applicant may obtain a notarised permission document from the owner of the senior trade mark showing that it expressly consents to the registration of the application. Secondly, if the trade mark earned a distinctive character through its usage before its registration, it can be registered without getting rejected based on the conditions stipulated at (a), (c) and (d) of question 3.1.

3.3 What is the right of appeal from a decision of refusal of registration from the Intellectual Property Office?

Anyone affected by the decision can appeal the decision before the Re-Examination and Evaluation Board.

3.4 What is the route of appeal?

As per Article 20 of the IPC, the applicant may appeal the refusal decision of the Trade Mark Department's Directorate within two months as from the notification of the decision before the Board.

4 Relative Grounds for Refusal

4.1 What are the relative grounds for refusal of registration?

The relative grounds for refusal are stipulated in Article 6 of the IPC. Accordingly, the owner of a trade mark registration/application can oppose a trade mark application if:

- The application is identical/similar to and covers same/similar goods/services with the senior mark and causes the likelihood of confusion among consumers.
- The application was filed by the commercial agent without the consent of the trade mark owner or a justified reason.
- The trade mark is well known as per the Paris Convention and the trade marks cover the same/similar goods/services.
- The senior application/registration has a well-known status and use without due cause of the trade mark applied for would take unfair advantage of, or be detrimental to, the distinctive character or well-known status of the senior registration/application, even if the goods/services are different.
- The application consists of another right holder's IP right, name, photograph, copyright, etc.
- The application is identical/similar to a collective or a guarantee mark and filed within three years from the date of expiry of the collective or guarantee mark.

- The application is filed within two years from the expiry date of the registration of a trade mark which is identical/similar.
- The applicant is acting in bad faith by filing its application.

4.2 Are there ways to overcome a relative grounds objection?

Counter-arguments (e.g. that trade marks are not similar; the owner of the trade mark application has an acquired right, etc.) can be claimed against relative grounds objections. Besides that, if the applicant gets in contact with the owner of the senior registration/application and settles in a limitation, the applicant may request for partial withdrawal of the goods/services from the application and inform Turkish Patent in this regard. Additionally, invalidating the senior trade mark is an option.

Lastly, Article 19/2 of the IPC introduced a new defence to overcome the relative grounds of objection: upon a challenge by an applicant regarding a senior trade mark, i.e. one which is at least five years old as of its application, the senior trade mark owner must prove that the trade mark has been effectively used during the last five years in Turkey or submit evidence illustrating that non-use of the trade mark is caused by justifiable reasons. In case of failure to prove the abovementioned grounds, Turkish Patent will not take into account this trade mark when deciding on the opposition. If the senior trade mark owner proves the usage just for a few classes, the remaining classes will not be taken into account by Turkish Patent.

4.3 What is the right of appeal from a decision of refusal of registration from the Intellectual Property Office?

Please refer to question 3.3.

4.4 What is the route of appeal?

Please refer to question 3.4.

5 Opposition

5.1 On what grounds can a trade mark be opposed?

There are two basic grounds while opposing an application: absolute grounds (see question 3.1), which are examined *ex officio* by Turkish Patent, but can be claimed by third parties as well; and relative grounds (see question 4.1), which should be claimed by third parties.

5.2 Who can oppose the registration of a trade mark in your jurisdiction?

Article 17 of the IPC states that anyone can file an opposition to the publication of an application.

5.3 What is the procedure for opposition?

Article 18 of the IPC states that oppositions can be filed within two months as of the publication of an application before Turkish Patent, in writing and with reasons. Paying the fee for opposition in time, and submitting the document which shows the payment, are obligatory. The IPC states that the opposition will not be considered, unless the grounds of opposition are not submitted in time.

6 Registration

6.1 What happens when a trade mark is granted registration?

When a trade mark is granted registration, it is recorded and published in the Official Trademark Gazette.

6.2 From which date following application do an applicant's trade mark rights commence?

Article 23 of the IPC states that the protection of a registered trade mark starts on the application date.

6.3 What is the term of a trade mark?

The IPC determines that the term of a trade mark is 10 years from the date of application.

6.4 How is a trade mark renewed?

Registration can be renewed every 10 years. A trade mark can be renewed upon the request of the owner of the trade mark or the trade mark agent by paying the renewal fee. The renewal request shall be made up to six months before the expiration date and the information regarding the payment of the renewal fee must be deposited. The renewal can be made within six months from the expiration by paying an extra fee.

7 Registrable Transactions

7.1 Can an individual register the assignment of a trade mark?

Individuals, who are entitled to file a request before the office, can also register the assignment of a trade mark.

7.2 Are there different types of assignment?

There are no different types of assignment.

7.3 Can an individual register the licensing of a trade mark?

Individuals, who are entitled to file a request before the office, can also register the licensing of a trade mark.

7.4 Are there different types of licence?

The IPC determines two types of licensing: exclusive licence and non-exclusive licence (Article 24 of the IPC).

7.5 Can a trade mark licensee sue for infringement?

Pursuant to Article 158 of the IPC, exclusive licensees can sue for infringement unless otherwise stated in the agreement. The non-exclusive licensee, unless otherwise stated in the agreement, can sue for infringement as well, but with a notification to the trade mark owner.

7.6 Are quality control clauses necessary in a licence?

The IPC states that the licensor shall take the relevant precautions to guarantee the quality of the goods/services which will be provided by the licensee (Article 24 of the IPC). With reference to this Article, a quality control clause is necessary in a licence.

7.7 Can an individual register a security interest under a trade mark?

Individuals, who are entitled to file a request before the office, can also register a security interest under a trade mark.

7.8 Are there different types of security interest?

Article 148/1 of the IPC stipulates that trade marks can be given as security, pledged as security and distrained.

8 Revocation

8.1 What are the grounds for revocation of a trade mark?

According to Article 26/1 of the IPC, a trade mark can be revoked if:

- without any justifiable reason, it has not been genuinely used for five years after the registration or the use was suspended for an uninterrupted period of five years;
- the sign has become generic in terms of the goods/services covered by the trade mark, by the acts of the owner of the trade mark;
- the sign has become deceptive in the eyes of the relevant public in respect of the goods/services covered by the trade mark; or
- the collective or guarantee mark is disregarded by its owner for its use contrary to the technical regulation and the trade mark owner does not stop such violation within the period determined by Court as a result of an action brought by a party.

8.2 What is the procedure for revocation of a trade mark?

Until the entry into force of Article 26 of the IPC, which has been postponed by Article 192 until January 10, 2024, each revocation action initiated before the January 10, 2024 has to be brought before the Turkish IP Courts. However, upon the entry into force of Article 26, Turkish Patent will have the jurisdiction to hear revocation actions. Additionally, a revocation action based on the non-use of a trade mark can only be commenced five years after the registration of the relevant trade mark.

8.3 Who can commence revocation proceedings?

Pursuant to Article 26/2 of the IPC, any party who has a legitimate interest may initiate the revocation action – not only the aggrieved party but also relevant institutions which have a legitimate interest.

8.4 What grounds of defence can be raised to a revocation action?

The following defences can be raised to a revocation action:

- If an action is initiated on the basis of non-use, the defendant must demonstrate that the trade mark is used during the five-

year period concerned, or that there are justified reasons for non-use. If use is made in order to circumvent a non-use action, such usage three months preceding the filing of the action is disregarded.

- If an action is initiated on the basis that the trade mark is deceptive or generic, the defendant must demonstrate that the necessary steps were taken to prevent the trade mark from becoming deceptive or generic.
- If an action is initiated on the basis that the usage of collective and guarantee trade marks is contrary to technical regulations, the defendant must demonstrate either that the usage is not contrary to technical regulations or that such violation stopped within the period determined by the court.

8.5 What is the route of appeal from a decision of revocation?

A party which is not pleased with the decision of revocation may appeal the decision within two weeks, before the District Court. The District Court has the authority to examine the decision on both procedural grounds and the merits of the case. After the District Court renders its decision, if a party is still not pleased with the decision and if the conditions of the Code of Civil Procedure are fulfilled, this decision may be appealed before the Court of Appeal, which is the third and final judicial authority. The Court of Appeal has the authority to examine the decision merely on procedural grounds.

9 Invalidity

9.1 What are the grounds for invalidity of a trade mark?

According to Article 25 of the IPC, invalidity grounds are absolute and relative grounds for refusal.

9.2 What is the procedure for invalidation of a trade mark?

An invalidation action should be filed before the IP Courts. Pursuant to Article 25/6 of the IPC, an invalidation action can only be commenced within five years from the date on which the use of the trade mark in question is known or should have been known by the applicant. However, if the trade mark registration is made in bad faith, there is no time limit for initiation of the invalidation action.

9.3 Who can commence invalidation proceedings?

Pursuant to Article 26/2 of the IPC, aggrieved persons, public prosecutors and other relevant official authorities have the power to initiate an invalidation action.

9.4 What grounds of defence can be raised to an invalidation action?

If the invalidation action is initiated on the basis of absolute or relative grounds of refusal, the defendant may try to illustrate that arguments and evidence provided by the claimant in order to prove the existence of absolute and/or relative grounds of refusal are insufficient or unfounded.

If the invalidation action is initiated on the basis of bad faith, the defendant may try to illustrate that he was not in bad faith at the

time of the application, or that evidence and arguments provided by the claimant in order to prove the bad faith are insufficient or unfounded.

9.5 What is the route of appeal from a decision of invalidity?

Please refer to question 8.5.

10 Trade Mark Enforcement

10.1 How and before what tribunals can a trade mark be enforced against an infringer?

According to Article 156 of the IPC, for civil law matters Civil IP Courts, and for criminal matters Criminal IP Courts have jurisdiction to hear the dispute. If the proceedings are initiated by the owner of the right against third parties, the competent Court will be:

- where the plaintiff is domiciled;
- where the infringement is committed; or
- where the effects of the infringement are felt.

If the proceedings are initiated by third parties against the owner of the right, the competent Court will be where the defendant is domiciled. If the proceedings are initiated against Turkish Patent, the competent Courts will be the Courts of Ankara.

If the owner of the trade mark does not have a domicile in Turkey, the competent Courts will be at the place of business of the trade mark agent, as registered in Turkish Patent's records for that trade mark. If the record of the trade mark agent has been deleted, the competent Courts will be the Ankara Courts.

10.2 What are the pre-trial procedural stages and how long does it generally take for proceedings to reach trial from commencement?

The legal action is essentially divided into three stages:

- the written stage (during which petitions are presented respectively by the claimant and the respondent, as follows: complaint petition; response petition; rejoinder; and reply to rejoinder);
- the preliminary hearing (the Court hearing at which procedural issues are discussed and the facts at issue are established); and
- the trial (at which the parties, witnesses and experts are heard, and closing statements are given).

The proceedings take around one-and-a-half to two years before the first instance Court and the decision is expected to be followed by an appeal of the losing party and a possible Court of Appeals phase, which may extend the finalisation of the decision for around one-and-a-half to two years more.

10.3 Are (i) preliminary and (ii) final injunctions available and if so on what basis in each case?

Although final injunctions are not available under Turkish law, interim injunctions are available and used quite often under Turkish law. A party is entitled to request an interim measure (either along with the main claim or, if there is urgency and the necessity for a rapid decision, separately) before the Court in order to ensure the effectiveness of the judicial decision.

10.4 Can a party be compelled to provide disclosure of relevant documents or materials to its adversary and if so how?

As per Articles 219 and 220 of the Civil Code of Procedure, upon the request for the disclosure of the relevant documents, if the Court determines that the document production request is legal and the document is in the counterparty's possession, the Court grants peremptory time for the counterparty to present the relevant documents. If the counterparty does not present the documents without any reasonable excuse, the Court – depending on the case – may draw adverse inferences against the counterparty because of non-production of the document.

10.5 Are submissions or evidence presented in writing or orally and is there any potential for cross-examination of witnesses?

In both civil and criminal proceedings, submissions and evidence are generally presented in writing. Although cross-examination of witnesses is theoretically possible under the Turkish law, considering that the procedure is predominantly carried out via documents rather than oral hearings, it is very rare for the Court to decide to hear witnesses and conduct cross-examination.

10.6 Can infringement proceedings be stayed pending resolution of validity in another court or the Intellectual Property Office?

The Court before which the infringement action is brought has authority to decide whether to stay the proceedings until the other Court renders its decision regarding the validity of the trade mark. However, it should be stated that higher Courts almost never wait for the decisions of the first instance Courts regarding the invalidation. Finally, since Turkish Courts are not bound by the decisions of foreign Courts, they do not stay the proceedings even if a foreign Court has ruled that the trade mark is invalid.

10.7 After what period is a claim for trade mark infringement time-barred?

As per Article 72 of the Law of Obligations, a civil claim emanating from trade mark infringement must be time-barred two years from the day on which the action constituting infringement is learnt, in any event 10 years after the date on which the infringing action took place.

10.8 Are there criminal liabilities for trade mark infringement?

Pursuant to Article 30 of the IPC, any person who:

- manufactures, supplies, sells, offers for sale, exports, imports or purchases commercially, goods or services which infringe trade mark rights;
- removes a trade mark on any object subject to trade mark protection; or
- assigns, transfers or provides security on a trade mark without authorisation,

has criminal liability under the Turkish Law. If these actions are committed by legal persons, security measures specific to the legal entities will apply.

10.9 If so, who can pursue a criminal prosecution?

Criminal offences can only be prosecuted on a complaint by the owner of the trade mark or its exclusive licensee, within six months of becoming aware of the act and its perpetrator.

10.10 What, if any, are the provisions for unauthorised threats of trade mark infringement?

There is no provision relating to unauthorised threats of trade mark infringement under Turkish law.

11 Defences to Infringement

11.1 What grounds of defence can be raised by way of non-infringement to a claim of trade mark infringement?

Unless the trade marks in question are identical, a defendant may argue that there is no likelihood of confusion between the senior trade mark and the allegedly infringing sign. In addition, the existence of the below circumstances allows the defendant to claim no infringement:

- Reproduction of the trade mark in a dictionary, encyclopaedia or similar reference work.
- Use of the trade mark in accordance with honest practices in industrial or commercial matters.
- Exhaustion of the rights conferred by the trade mark.
- Genuine right of ownership.

11.2 What grounds of defence can be raised in addition to non-infringement?

In addition to the procedural defences such as lack of legal interest or lack of jurisdiction, the defendant may also argue the invalidity of the trade mark in question as a counterclaim in the infringement case (Article 25 of the IPC). Furthermore, Article 25 explicitly provides that unless the subsequent registration is filed in bad faith, a party who is aware or should be aware of the usage of the trade mark and remained silent for five years, cannot argue the invalidity of the subsequent trade mark.

12 Relief

12.1 What remedies are available for trade mark infringement?

A party whose trade marks have been infringed may ask for civil Courts to order:

- Cessation of the acts of infringement and prohibition of the infringer from continuing the infringing acts.
- Compensation for monetary damages, for spiritual damages or for reputational damages,
- Securing of evidence.
- Determination of the infringing activities.
- Confiscation of infringing goods or means for their production, to the benefit of the trade mark owner.
- Transfer of the ownership of the goods.

- Deletion of the infringing trade mark of the goods or, if that is not possible, destruction of the goods.
- Publication of the decision (in whole or in part) at the infringer's expense in newspapers and magazines.

A party whose trade marks have been infringed may ask for criminal Courts to order, in particular:

- Against individuals:
 - Imprisonment.
 - Punitive damages.
- Against legal entities:
 - Security measures for legal entities.

12.2 Are costs recoverable from the losing party and if so what proportion of the actual expense can be recovered?

Courts order the losing party to bear the legal expenses and to reimburse the winning party's official minimum attorneys' fees set by the Bar.

13 Appeal

13.1 What is the right of appeal from a first instance judgment and is it only on a point of law?

A party not pleased with the decision of revocation may appeal the decision within two weeks before the District Court. The District Court has the authority to examine the decision on both procedural grounds and the merits of the case. After the District Court renders its decision, if a party is still not pleased with the decision and if the conditions of the Code of Civil Procedure are fulfilled, this decision may be appealed at the Court of Appeal which is the third and final judicial authority in the new ternary system of civil procedure. The Court of Appeal has the authority to examine the decision merely on procedural grounds.

13.2 In what circumstances can new evidence be added at the appeal stage?

As a general rule, it is forbidden to present new evidence at the appeal stage. However, there are two exceptions to this rule: presentation of the evidence at a later stage is not aimed at delaying the proceedings; and failure of assertion of the evidence in due time is not caused by the party's fault.

14 Border Control Measures

14.1 What is the mechanism for seizing or preventing the importation of infringing goods or services and if so how quickly are such measures resolved?

As per Article 159/2(b) of the IPC, custom authorities, upon the request of the owner of the trade mark right, withhold the infringing products as an interim measure during exportation and importation. Furthermore, Article 57 of the Customs Law restates that infringing goods/services can be withheld by the customs authorities upon request and adds that these goods/services can also be withheld for three days and held up at customs by the relevant authorities on their own initiative if there is clear evidence regarding the violation of IP rights.

15 Other Related Rights

15.1 To what extent are unregistered trade mark rights enforceable in your jurisdiction?

Turkish law provides limited protection for unregistered trade marks. Pursuant to Article 6/3 of the IPC, if the owner of the unregistered trade mark can prove that the trade mark in question is genuinely owned by him before the priority or application date of the trade mark application in question, the trade mark application cannot be registered.

15.2 To what extent does a company name offer protection from use by a third party?

As per Article 6/6 of the IPC, if there is an application involving someone else's company name, upon opposition this trade mark application must be rejected.

15.3 Are there any other rights that confer IP protection, for instance book title and film title rights?

Book titles, film titles and any other related rights may enjoy copyright if they fulfil the necessary requirements stated in the law.

16 Domain Names

16.1 Who can own a domain name?

Any real or legal person or partnership with a legal capacity can own domain names.

16.2 How is a domain name registered?

Country code top-level domain names ("ccTLD") have to be registered before the Nic.tr ("tr" Domain Names) Administration at <https://www.nic.tr>. Accordingly, applications for registration of a domain name can be made online. There are two main restrictions on the registration of the domain name:

- Technical restriction:
 - The application must comply with the Articles of the Domain Name Regulation.
 - The requested domain name must not be owned by others.
- Legal restriction:
 - The requested domain name must not be listed in the non-delegable list (Article 6/1-e of the Domain Name Regulation).
 - A trade mark application or trade name is required.

16.3 What protection does a domain name afford *per se*?

Although there is no special provision for the protection of domain names under Turkish law, they can be protected under: tort law, unfair competition rules and protection of the name (Article 26 of the Civil Code), depending on the identification and distinctiveness of the domain name; protection of the business name (Articles 52 and 53 of the Turkish Civil Code); and by the IPC if the domain name is registered as a trade mark.

17 Current Developments

17.1 What have been the significant developments in relation to trade marks in the last year?

The adoption of a comprehensive single law to replace the decree laws governing intellectual property issues has long been discussed. As expected, the IPC was presented to the Parliament in 2016 and the process has been accelerated. Thereupon the IPC, numbered 6769, was voted for by the Parliament on December 22, 2016 and came into force upon its publication in the Official Gazette on January 10, 2017. Pursuant to Provisional Article 1 of the IPC, whereas trade mark applications filed before January 10, 2017 are subject to the provisions of the Decree Law, trade mark applications filed after January 10, 2017 are subject to the provisions of the IPC. In other words, both the IPC and the Decree Law will be applicable to disputes for a certain period of time, but after this period trade mark issues will be governed mainly by the IPC.

17.2 Please list three important judgments in the trade marks and brands sphere that have issued within the last 18 months.

Decision of the General Assembly of Civil Chambers of the Turkish Court of Appeal (January 29, 2016)

The General Assembly of Civil Chambers of the Turkish Court of Appeal cancelled its previous decision and upheld the first instance Court's decision that rejected the request for the cancellation of the "Crocodile" (text) trade mark, which the company requested to be registered in classes 11, 20 and 21, based on Lacoste's crocodile (pictorial representation) trade mark in different classes. With this decision, the Court of Appeal did not automatically apply Article 8/4 of the Decree Law as a refusal ground based on well-known trade marks; but rather required examination and proof of whether the three conditions set forth in this provision exist in a given case; namely, taking unfair advantage, or being detrimental to the reputation or to the distinctive character, of a well-known trade mark. The decision is very important in this regard, as the Highest Assembly of the Civil Courts rendered it, and it would therefore constitute a very concrete example for similar cases.

Decision of the General Assembly of Civil Chambers of Turkish Court of Appeal (June 8, 2016)

Both the General Assembly of Civil Chambers of the Turkish Court of Appeal and the Court of Appeal decided that the evaluation and examination regarding whether there is a likelihood of confusion

or not, must be made by the Court, since the evaluation of the likelihood of confusion in terms of Article 8/1(b) of the Decree Law is not a technical evaluation but a legal evaluation. Accordingly, giving the authority to evaluate a legal dispute to the commission of experts was in conflict with the Code of Civil Procedure and the Constitution. Therefore, both Courts ruled that the Courts are not bound by the decision of the expert commission when evaluating the issue of similarity in terms of Article 8/1(b) of the Decree Law, and can render a decision in compliance with the expert report without requesting a new report from another expert panel.

Decision of Turkish Constitutional Court (December 14, 2016)

The Second Istanbul IP Court of First Instance filed a request with the Turkish Constitutional Court asking for the cancellation of Article 14 of the Decree Law, claiming that a trade mark right is a property right and cannot be regulated based on a decree regulating a non-use revocation action. The Constitutional Court upheld the reasoning of the Court and cancelled Article 14. This cancellation decision was published and entered into force on January 6, 2017 and, considering that the Decree Law was the governing regulation for trade mark issues until January 10, 2017, non-use actions lost their legal basis until the IPC came into force.

17.3 Are there any significant developments expected in the next year?

After the entry into force of the IPC, regulations of the IPC will be enacted. Therefore, with the provisions of the regulations, ambiguous expressions of the IPC will possibly be clarified and the regulations will possibly involve more detailed provisions regarding some issues. In addition to this, interpretation of the Articles of the IPC will be made by both District Courts and Courts of Appeal, and differentiation and similarities between these new provisions will come to light in more detail.

17.4 Are there any general practice or enforcement trends that have become apparent in your jurisdiction over the last year or so?

There have been no trends of particular note in recent months.

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