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## TURKEY: TRADE MARK PROSECUTION AND OPPOSITION UNDER THE NEW IP CODE

28 April 2017

The New Turkish Industrial Property Code entered into force on January 10 2017. The IP Code replaces the Decree-laws pertaining to the protection of trade marks, patents, geographical indications and designs by unifying them into a single code.

Among other reforms, the trade mark chapter includes changes relating to prosecution and opposition procedures for trade marks. These are now in greater compliance with the relevant European Union directives.

First, the graphical representation criteria for signs to be registered as a trade mark has changed to "signs capable of being represented on the register in a manner which enables the competent authorities and the public to determine the clear and precise subject matter of the protection afforded to its proprietor". Further, "colours" and "sounds" have been explicitly stated under "signs" that can be registered as a "trade mark" for the first time. In addition, it has been explicitly stated that the signs that are not distinctive and which include geographical indications cannot be registered. Those were already accepted under the former legislation through interpretation but now they are clearly mentioned in the IP Code.

One of the major changes in trade mark prosecution is that the IP Code introduces the principle of co-existence into Turkish trade mark law. Accordingly, letters of consent from the senior trade mark/trade mark application owners will be acceptable in overcoming the citations of earlier senior identical or indistinguishably similar trade marks by the Turkish Patent and Trade Mark Office as an ex officio refusal ground.

The IP Code includes major changes relating to the opposition proceedings as well. First, the term for opposition for trade marks has been shortened to two months from three months. Further, during the opposition proceedings before the Office opponents will have to prove genuine use or produce justified reasons for non-use of their trade marks within the last five years that they cite as grounds for the opposition, if so requested by the applicant. Accordingly, if the opponent cannot prove genuine use or produce justified reasons for non-use, the opposition will be rejected.

There are also changes relating to opposition grounds. The protection of well-known trade marks in the meaning of Paris Convention, which was recently cancelled by the Constitutional Court, has been re-introduced as a relative opposition ground.

Finally, it is worth noting that for trade mark applications that were filed before January 10 2017, the former legislation, namely the Trademark Decree-Law, will still apply until their registration processes complete.



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