

TURKEY

Letters of consent under the Turkish Industrial Property Code

Gün + Partners

Istanbul



Uğur Aktekin and Pinar Arıkan

Unlike many countries, Turkish trade mark law has had a rule since 1995 that a senior trade mark registration or application identical or indistinguishably similar to a junior trade mark application can be raised as an absolute ground for refusal if the goods/services are also identical or of the same type. The Turkish Industrial Property Code (the IP Code), which entered into force on January 10 2017, softened this rule, and in cases where an applicant submits a notarised document to the Trademark Office indicating that the owner of the prior registration agrees to the registration of the trade mark application that is identical or indistinguishably similar to a senior trade mark or trade mark application, then the junior application cannot be rejected on this ground.

This provision has widely been considered as a positive development for applicants seeking registration for new trade marks, whose applications were rejected due to the existence of senior trade marks that were registered for a long time but not in use.

In practice, in some instances, where the owners of senior trade marks are serious and legitimate businesses, this new provision has helped and the letter of consent mechanism has worked well. However, some opportunistic senior trade mark owners have started to use this provision as a tool for asking for unreasonable amounts of money from the applicants for giving the letter of consent, even if they do not use the trade marks. The only alternative to putting pressure on the owners of unused trade marks is filing a revocation action due to non-use before the IP courts. However, this does not really answer the needs of businesses who want to obtain the trade mark registration in a smooth and quick way, since

court actions are usually lengthy and expensive. The solution to this problem lies in the IP Code. Pursuant to Articles 26 and 192, the Turkish Patent and Trademark Office (the office) will have the authority to process the application demanding revocation of trade marks due to non-use starting from January 2024.

We think that the positive effect of this new provision will be seen once the revocation demands due to non-use begin to be heard by the office. Until then, businesses may continue to have a hard time registering their trade marks due to unused trade marks blocking registration.