

## TURKEY

## What are the rules around the non-use defence in oppositions?

Gün + Partners

Istanbul



Mutlu Yıldırım Köse

The new IP Code came into force on January 10 2017 in Turkey. One of the major changes in the new IP Code is a non-use defence in opposition proceedings.

According to the IP Code, if the ground trade mark was registered more than five years from the application date (or priority date) of the opposed trade mark application, upon request by the owner of the trade mark application, the Office is obliged to ask the opponent to prove effective use of the ground trade mark(s) on the relevant goods and/or services in Turkey.

The Office prepared Proof of Use Guidelines and published them on April 28 2017. In relation to these, the Office stated that the effective use of ground trade marks can be proved with, in particular, invoices, price lists, catalogues, product codes, products, packaging, signboard visuals, advertisements, promotions and their invoices, marketing surveys, opinion research, information about commercial activity and any additional documents/statements regarding Turkey. Furthermore, the submitted evidence must contain sufficient information on the nature, location, time, scope and use of the trade mark in relation to the goods and services within its scope of registration.

In a recent decision, an opposition filed against a trade mark application covering goods in Class 9 relying on a trade mark which was registered for more than five years for goods in Classes 7 and 9 was rejected by the Office. The Office stated that “on the submitted invoices it was written ‘disassembled cereal dressing machines’ and the components and parts of these machines are listed under this explanation. Since the goods were intended to form parts of another product in prin-

iple classified in the same class as that product only in cases where the same type of goods cannot normally be used for another purpose, the parts and components mentioned in the invoices should be considered in class 7. Considering the goods in class 7 and 9 are not the same or similar, the opposition should be rejected.”

Although the policy around evaluation of submitted evidence has not been sufficiently established yet, it seems that the most important documents for proving use of a trade mark will particularly be invoices. Moreover, if the opponents fail to prove use of their trade mark or the evidence submitted is unrelated to the relevant goods, and if there are not any other claims i.e. a well-known status argument, the Office will refuse the oppositions.