

New Turkish IP Code now in Force: Here's How it Affects Marks

Mutlu Yıldırım Köse, 13.01.2017

The New Turkish Industrial Property Code (“the IP 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, all of which date back to 1995, by bringing all those rights together within the ambit of a single Code.

Among other reforms, the trademark chapter includes changes which achieve greater compliance with the relevant European Union directives. The major changes relate to the trade marks as follows:

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”.

So the terminology has been aligned to that of the EU Trade Mark Directive.

The terminology for distinctiveness criteria has been changed to resemble EU trade mark legislation.

The “co-existence principle” has been introduced into Turkish Trade Mark Law. Accordingly, co-existence agreements and letters of consent will be accepted in overcoming senior identical or indistinguishably similar trade marks from being an absolute ground of refusal by the Turkish Patent and Trade Mark Institute ex-officio.

The opposition term has been shortened to 2 months (from 3 months).

During the opposition proceedings before the TPI, opponents have to prove genuine use or provide justified reasons for non-use of their trade marks that are the basis for opposition and registered at least for duration of five years, if requested by the applicant.

The opposition shall be rejected if such use or justified reason for non-use cannot be proven. This request can also be used as a defence in an infringement action.

Bad faith has been added into the code as a separate ground for opposition and cancellation.

Signs that contain geographical indications cannot be registered as a trade mark.

The cancellation actions due to non-use will be dealt by Turkish Patent and Trade Mark Institute. However, the enforcement date of this provision has been postponed for 7 years with an additional provision. So until 2023, the cancellation actions need to be filed before the IP Courts.

The new IP Code entered into force on January 10, 2017 except some of the provisions of which the enforcement has been delayed, for the trade mark applications which were filed before the enforcement date of the new IP Code, the earlier legislation, the Decree-Laws pertaining to the protection of Trade Marks, will still apply until their registration process will be completed.