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Turkey

Determining similarity of goods and services in trademark opposition proceedings



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This article aims to discuss similarity of goods and services in case of an opposition against a trademark application before the Turkish Patent and Trademark Office (the office).

Article 6/1-b of the IP Code sets forth that* “the trademark applied for shall be rejected in circumstances where it is identical or similar to an earlier application/registration, covers the same/similar goods or services therewith and creates a likelihood of confusion on the part of the public in the nature of being associated with the earlier application/registration.”

The likelihood of confusion may be evaluated depending on diverse factors, such as identity or similarity of trademarks, identity or similarity of goods and services, distinctive feature of the elements covered by the trademarks, conditions specific to the related sector and the level of attention from average consumers. To evaluate the likelihood of confusion, all these factors must be considered collectively and in combination with each other, while one or the other may become more prominent depending on the authority handling the case.

For determining whether there is a similarity – which will lead to a likelihood of confusion – between goods and/or services covered by trademarks subject to a conflict, the Nice Classification or the classification system of the countries or regions should not be considered as these systems serve only for the registration of the trademarks.

In order to decide on the similarity between goods and/or services, a much more comprehensive analysis should be made. There are globally accepted factors for this analysis, namely market perception, target consumers, satisfying similar needs, possibilities of replacing and competing with each other, purpose of use, complementing each other, common distribution channels and methods of use, and overlap of some of these factors might constitute similarity in goods and/or services that will lead to likelihood of confusion.

There are decisions of the Turkish Trademark and Patent Office where goods or services under different classes are found similar. As per the office's approach, even if there is no guideline yet as to which class of goods or services might be considered similar to which ones, and it is stated in decisions that each case is evaluated under its own specific conditions, the similarity of goods or services in some classes is generally accepted, such as Classes 18 and 25, Classes 3 and 5, 29 and 43, if the trademarks subject to the opposition are similar to some degree.

The Court of Appeals and first instance IP courts in Turkey generally consider whether there will be an actual likelihood of confusion between the trademarks for the relevant goods/services, rather than their classes, in the actions that they handle following the conclusion of opposition proceedings before the office. However, the office sometimes still takes into account the subgroups of classes for the evaluation of similarity of goods and/or services in the case of oppositions, especially during the first phase of examination of the oppositions. On the other hand, the Higher Board of the Office, namely the Re-examination and Evaluation Board does a much more exhaustive examination. It has especially done so in recent years. It is encouraging to encounter decisions where the above factors are considered while assessing similarity of goods and services.

*This Article was regulated identically under 7/1(b) of the cancelled Decree Law numbered 556 Pertaining to the Protection of Trademarks and it has been preserved in the IP Code.

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