



Patent and Trademark Office rejects applications based on interdependence principle

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Legal updates: case law analysis and intelligence

- The 'interdependence principle' was clearly established by the CJEU in *Canon*
- In two recent cases, the Patent and Trademark Office explicitly mentioned and set out the conditions for the application of the interdependence principle
- In one of the cases, the office also found that an application including the dominant element 'camelbak' could not have been filed in good faith

The interdependence principle

For an application to be rejected under Article 6/1 of the [Turkish Intellectual Property Code](#) (IP Code), the following conditions must be met:

- the trademarks must be similar;
- the goods and/or services must be similar; and
- there must be a likelihood of confusion among the public, including a likelihood of association.

In the assessment of the likelihood of confusion, the 'interdependence principle' - which was clearly set out in the Court of Justice of the European Union (CJEU)'s *Canon* decision ([Case C-39/97](#)) - has been adopted internationally. The CJEU established the interdependence of the similarity factors by stating that a "lesser degree of similarity between the goods or services may be offset by a higher degree of similarity between the marks, and vice versa" (*Canon*, Paragraph 17).

Recent Patent and Trademark Office decisions

In two recent decisions, the Turkish Patent and Trademark Office explicitly mentioned and set out the conditions for the application of the interdependence principle.

In the first case, an opposition was filed against a trademark application which consisted of the opponent's trademark in its entirety and the additional non-distinctive element 'com.tr'. Although the trademarks did not cover identical services, the office held that a low level of similarity between the signs could be offset by a high degree of similarity between the goods/services, and vice versa. Therefore, the high degree of similarity between the contested application and the earlier trademark was sufficient to create a likelihood of confusion or association in respect of the remaining services covered by the application.

In the second case, an opposition was filed by Camelbak Products LLC, relying on its CAMELBAK trademarks, against an application for the mark depicted below, covering different classes:



The office evaluated that the visual and phonetic similarity between the application, which included the word 'camelbak' as its main element, and the earlier CAMELBAK trademark was quite high. The office further found that the degree of similarity between the trademarks - on the grounds provided above with regard to the similarity of trademarks - and high distinctiveness of the earlier trademark could compensate the comparatively low degree of similarity between the goods/services. The office, after indicating that a low level of similarity between signs can be offset by a high degree of similarity between the goods/services, and vice versa, concluded that there would be likelihood of confusion, including a likelihood of association, between the trademarks in terms of all of the goods/services covered.

Further to the evaluation of the interdependence principle, the office also assessed the bad-faith claim raised by Camelbak in its opposition. The office stated that the application consisted of a word which has been used by Camelbak in many countries for many years and which is highly distinctive, as well as Camelbak's domain name, and covered goods which are closely related to Camelbak's field of activity. Accordingly, the applicant could not have been unaware of Camelbak's original CAMELBAK trademark, which originated in the United States and is used globally. The office concluded that the application could not have been filed by coincidence and, therefore, could not be regarded as an attempt made in good faith.

The decision is significant for companies which operate globally when it comes to the protection of their trademarks.

In order to apply the interdependence principle, the existence of a high degree of similarity between the trademarks, or between the goods/services, is required. However, the office's usual practice is to reject a bad-faith claim when it relies simply on the high degree of similarity/identity between the trademarks. In the present case, despite the additional phrase 'maximum air control systems', the application included Camelbak's mark in its entirety, as well as Camelbak's domain name with the addition of the '.tr' country-code top-level domain - which gave the impression that this was Camelbak's Turkish website. Overall, based on Camelbak's registrations abroad, its business activities and the high level of similarity between the marks, the office concluded that there was a likelihood of confusion for all the goods and services covered, and that the application could not have been filed in good faith.

Takeaways

In these two decisions, the office upheld the following principles:

- As stated in Article 11/4 of the IP Code, "goods or services shall not be presumed as being similar on the ground that they are in the same class, and goods or services shall not be regarded as being dissimilar on the ground that they are in different classes";
- The interdependence principle is not regulated in the IP Code, but has been adopted in the Trademark Law; and
- The criteria used to uphold a bad-faith claim.

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