

New code of conduct for trademark attorneys enters into force Turkey - Gün + Partners

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The Turkish Patent and Trademark Office recently published the Regulation on the Code of Conduct and Discipline of Patent Attorneys and Trademark Attorneys, with the aim of regulating:

- the rules and procedures applicable to the conduct of patent and trademark attorneys;
- the Disciplinary Board of Patent and Trademark Attorneys;
- the methods to be used to detect acts requiring a disciplinary penalty; and
- other disciplinary issues.

In Turkey, the rules on patent and trademark attorneys were first regulated by the Law on the Establishment and Functions of the Turkish Patent Institute (5000/2003). However, this law regulated only the requirements for operating as a patent or trademark attorney, not the other issues regarding the conduct of attorneys. In practice, this caused problems for rights holders and did not help the progression of the profession.

Article 182 of the new Industrial Property Code (6769), which entered into force on January 10 2017, added to Article 30 of Law 5000/2003 new provisions regarding disciplinary penalties, acts liable to those penalties and the disciplinary board. Following this revision, the Regulation on the Code of Conduct and Discipline of Patent Attorneys and Trademark Attorneys entered into force on May 18 2017, drafted as per Articles 30 and 30A of Law 5000/2003.

Conduct rules

According to Article 5 of the regulation, the following conduct rules apply to patent and trademark attorneys:

- An attorney must refrain from any attitude and behaviour that will harm the reputation of the profession.
- An attorney must serve clients reliably and act as an independent attorney, putting the clients' interests foremost, behaving objectively and not considering his or her personal feelings or interests.
- An attorney cannot accept work if he or she is aware that he or she does not have sufficient time or competency to carry out the work.
- An attorney cannot approach potential clients using aggressive marketing methods with the aim of obtaining work, unless a request comes from the client.
- An attorney cannot provide information that will mislead the public at his or her workplace or any other place, or in any correspondence, advertising material or other material.
- Without prejudice to specific legislative provisions, an attorney can publicise his or her business provided that the publicity is accurate and neutral, and is in harmony with basic principles such as honesty and professional confidentiality. However, an attorney cannot:
 - disclose a client's name without permission;
 - use the title and logo of an institution without permission;
 - purchase, sell or negotiate a client's industrial property rights without instruction; or
 - use internet shortcuts that will direct internet users to his or her own website or to another website from his or her website in a manner which constitutes unfair competition.
- If an attorney finds that he or she is unable to carry out his or her work (even temporarily) or wishes to withdraw his or her services, he or she must inform the client immediately and take precautions to protect the client's interests.
- An attorney must act with confidentiality and must not disclose either the work he or she is doing or information regarding the client obtained through other channels. This obligation continues after termination of his or her representation of the client. In addition to clients, an attorney also owes this obligation to those who provide information, even though they are not clients.
- An attorney cannot provide an opinion on a case where he or she is aware, or should be aware, that another attorney is working on it, unless the client requests an independent opinion or to change attorney.
- If an attorney receives instructions regarding a case which was previously being handled by another attorney, he or she should inform the former attorney in writing. The former attorney will then send to the new attorney the related documents.

All attorneys must be aware of these codes of conduct. An attorney cannot excuse a breach by claiming that he or she was unaware of the codes or that a client's instructions led to the breach. An attorney should also take the necessary precautions to ensure that any employees act in line with the codes of conduct.

Disciplinary penalties

If an attorney does not obey the codes of conduct, he or she will be subject to the following disciplinary penalties set out in Article 6 of the regulation:

- Warning – the attorney receives written notification that he or she should act more carefully while carrying out his or her work as an attorney and should be wary of his or her professional attitude and behaviour.
- Condemnation – the attorney receives written notification that he or she has acted faultily while carrying out his or her work as an attorney and regarding his or her professional attitude and behaviour. The condemnation penalty is imposed in cases where an attorney:
 - has received a warning for certain acts and then repeats those acts within two years;
 - fails to meet the obligations of being an attorney; or
 - represents two conflicting parties in a case.
- Temporary dismissal – the attorney is dismissed from his or her work for between three months and one year. This penalty is imposed where the attorney:
 - has received a condemnation for certain acts and repeats those acts within five years;
 - uses his or her powers through a copy of the power of attorney against the original power of attorney; or
 - uses the Turkish Patent and Trademark Office's title, domain name or other advertising tools in a way that results in confusion.
- Dismissal – the attorney is permanently dismissed from his or her work as an attorney. This penalty is imposed where the attorney has been punished with temporary dismissal for certain acts and repeats those acts within five years. An attorney who has been dismissed from his or her position as a patent or trademark attorney through a final disciplinary decision can no longer be a trademark or patent attorney.

Article 7 states that the members of the disciplinary board are appointed by the Ministry of Science, Industry and Technology for three years and the board will consist of seven members:

- one from the ministry;
- three from the Turkish Patent and Trademark Office; and
- three who are trademark or patent attorneys who have never received any of the penalties set out in Article 30/A(2) of the law.

Complaints against the attorneys under the regulation should be submitted to the Turkish Patent and Trademark Office through a written petition including details of the complainant and the complainee, the grounds for the complaint and evidence.

Although the establishment of an independent professional association for trademark and patent attorneys was expected, the new regulation has still been welcomed as it will supervise attorneys and impose penalties on them in the case of a breach of the codes.

The disciplinary board members are expected to be appointed soon by the ministry so the board can commence its work. As this is the first regulation to govern the conduct of trademark and patent attorneys and it has been expected for a long time, the regulation's implementation is awaited with interest.

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