



Shining light on Turkey's new IP code

Uğur Aktekin and Güldeniz Doğan Alkan discuss the protection of traditional product names under new legislation

Turkey's Industrial Property Code No 6769 ("the IPC") was published in the *Official Gazette* and came into force on 10 January 2017. The IPC abolished the Decree Laws on the protection of trademarks, patents, geographical indications ("GIs") and designs by unifying them into a single code.

One of the main aims of the IPC is providing compliance with developments in EU IP law. At this point, in addition to unifying and harmonising the existing provisions on IP rights, the IPC introduced the protection of traditional product names ("TPNs") to Turkish law in line with EU Regulation No 1151/2012 on quality schemes for agricultural products and foodstuffs.

First of all, the "industrial property right" is defined as "trademark, geographical indication, design, patent and utility model" in Article 2(i) of the IPC and TPNs is clearly excluded from the definition of IP rights. In line with this, Article 45/4 stated that registered TPNs shall not grant any exclusive right to the registrant and further, that protection provided to TPNs under the IPC shall not harm the rights arising from other IP rights, especially trademarks and GIs.

According to Article 33, any type of product among agricultural products, foodstuff, metals, handicrafts and industrial products, composed with the combination of natural and human elements can benefit from the protection of TPNs. The EU Regulation provides traditional speciality guaranteed (TSG) protection for only a limited number of products such as beer, chocolate, pastry and pasta, but the IPC foresees TPN protection for a wider variety of products.

Article 34/3 defines TPNs as: "Names not included within the scope of designation of origin or geographic indication, which express the traditional characteristic and production method of the product, proven to be used for at least thirty years in the relevant product market and where either they originate from a traditional production or processing method or traditional composition or they are produced from traditional raw materials or ingredients." The main difference between a GI and a TPN is that while a GI has a connection with a specific geographical area, a TPN does not. Article 35/2 regulates the names which cannot be registered as a TPN accordingly/those names:

- Which do not fulfill the conditions given in Article 34/3.
- Refer to the general characteristic of the product.

- Which may mislead the public with regards to the qualification of the product.
- Which are against public order or morality.
- Which are not protected in their own country, whose protection has expired or is not used even though filed by a beneficiary given in Article 3 of the IPC.

According to Article 36, producer groups, public agencies, institutions and professional organisations qualified as public institutions related to a product or, to the geographic area from which the product originates and associations, is entitled to file an application for the registration of a TPN. Foundations and cooperatives which work for public interest in relation to the product or which are authorised to protect the economic interests of its members, and in cases where the product has only one producer, the relevant producer (provided that this is proven), is also entitled to file an application for the registration of a TPN.

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According to Article 39, the conditions below will also be sought in the applications for registration of a TPN which are of foreign origin:

- The subject TPN constituting the application is protected by the source country or the international community into which it is included.
- The inspection conditions given in Article 49 are fulfilled in the source country.
- The source country provides an equal level of protection to the registration applications for GIs or TPNs to be filed in Turkey.

Further, Article 39/2 states that if an application for the registration of a TPN of foreign origin is the same as a GI or TPN protected in Turkey, the examination shall be performed upon taking into account the regional

and traditional use, and the risk of similar names to be confused with each other by the consumers. Permission shall be granted for the use of such GIs and TPNs only if the source country is clearly and visibly indicated on the label.

The Turkish Patent and Trademark Office (“the office”) reviews the TPN applications based on the conditions set out previously. The office publishes TPN applications regarded as suitable upon being reviewed within the scope of the IPC in the bulletin as per Article 38/5. Before the IPC comes into force, applications for GIs had been published in the *Official Gazette*, and local and national newspapers. The office declared that GIs and TPNs will now be published in the *Official Geographical Indication and Traditional Product Name Bulletin*. The office has so far published two official GI and TPN bulletins on 15 March 2017 and 17 April 2017. However, both bulletins do not include any TPN application.

An opposition can be filed to the applications for the registration of a TPN within three months starting from its publication date in the official bulletin by any third party. This is based on the claim that the application does not comply with Articles 33, 37 and 39 or any previous rightsholder based on Article 48.¹ Upon examination of the opposition, the office can either decide to refuse the application or its amendment. In cases of amendment to the format or scope of the application, the final version of the application shall be published in the bulletin and no opposition can be filed after publication.

Registered GIs and TPNs shall be used by those involved in the production or marketing of the products that fulfil the conditions indicated in the register and they shall use the referred indication or name on the product or package along with the emblem. Article 46/5 states that use of a TPN without an emblem shall not be subject to the provisions of the IPC.

The IPC is separate from the EU legislation in the obligation of using an emblem. According to Article 23 of the EU Regulation, a union symbol shall be established in order to publicise the TSGs and this symbol shall appear on the label of the products originating in the EU and marketed under a TSG.

Article 45 regulates the scope of rights arising from the registration of TPNs. Accordingly; the registrant of a TPN is entitled to request prevention of:

- The use of the emblem in a manner that may provide benefit based on the reputation of the product although it does not meet the product characteristics guaranteed by the TPN, and use of the emblem for commercial purposes in relation with products that resemble the products within the scope of registration.
- Use of the emblem of a registered TPN in a way that misleads the consumers.
- Inclusion of any misleading explanation or sign stating that the product bears the characteristics given in the registration on inner or outer package of the product, its promotion and advertisement or any written document related with the product even though it does not bear the product characteristics given in the registration and the emblem envisaged to be used for the registered TPN.

Article 49 regulates the inspection of the use of TPNs. This comprises all activities related with the inspection of the conformity to the characteristics indicated in the registration during the production of registered TPNs, at the market placement or distribution phases or when the product is on the market. The inspection is carried out by the inspection authority indicated in the application and whose competence is approved by the office.

According to Article 50, an invalidation action can be filed against the registrant of a TPN by the beneficiaries before the competent IP court. The court may decide invalidation of the registered TPN provided that the:

- Registration does not fulfil the conditions given in Articles 33, 34, 35, 37 and 39.
- Application is not filed by those who hold the right for the application.
- Inspection process has not been performed in line with Article 49.

The invalidation of a TPN registration has retrospective effect and the invalidated TPN shall be deemed as never valid at all.

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The use of the registered TPNs given in Article 45 which the registrant is entitled to request the prevention of, shall also be regarded as violation of the rights of the TPNs as per Article 54. Further, in case those who hold the right of use, a TPN where the rights have been violated, they can notify the registrant via a notary public and request filing a lawsuit. In case the registrant does not accept the request or does not file a lawsuit within three months as of the notification date, those who hold the right of use may file a lawsuit along with this notification. However, when faced with a danger of a serious loss, those who hold the right of use may request the court to decide for an injunction without being bound to this specific period.

To sum up, the protection of TPNs has just been recently introduced to Turkish IP law and it is a welcome novelty brought by the IPC. It establishes compliance with EU Law and provides even broader protection for TPNs than the EU does. Even though there is no application for a registration of a TPN before the office yet, considering the rich history, culture and product range of Turkey, such applications will multiply when awareness of TPN protection increases.

Footnote

1. Article 48/3 regulates the relationship between TPNs and trademarks and states that “Registration of names which may harm the existence of the trademark or may be misleading on its real origin due to being identical with or similar to the trademark, upon considering the reputation, prestige and period of use of a registered trademark, as a GI or TPN shall not be permitted upon the objection of the beneficiary of the previous date.”

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