

Absence May Make Bad Faith Applicants Grow Bolder

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According to Turkey's design law, a design application that meets all formal requirements becomes effective from the date of the application. In other words, a design application enjoys protection from the date it is applied for.

Unlike trademark applications, the Turkish Patent Institute (TPI) does not examine a design application on absolute grounds for refusal; it only examines for the correct application format and whether it complies with public policy and morality policies. TPI is not responsible for evaluating a design's novelty or individual character. TPI only examines these issues if a third party files an opposition.

For this reason, designs that are not new or have no individual character can easily obtain registration if no opposition is filed by a third party. Moreover, in opposition cases, the novelty and individual character of a design are evaluated within the scope of documents and allegations filed by a third party. Objective criteria are not really considered during the novelty and individuality evaluations so it cannot be claimed that every design registration is new and has individual character.

Although this system is similar to European practice and was adopted to speed up the registration process, it tends to serve the motives of bad faith applicants in Turkey. Since TPI does not evaluate the novelty and individual character of designs, some bad-faith applicants attempt to register many functional or generic designs and challenge their competitors in the same or similar business areas.

Many functional products with no individual character (such as cups or leggings), generic food presentations and products or patterns that bear well-known trademarks or cartoon characters are registered with TPI.

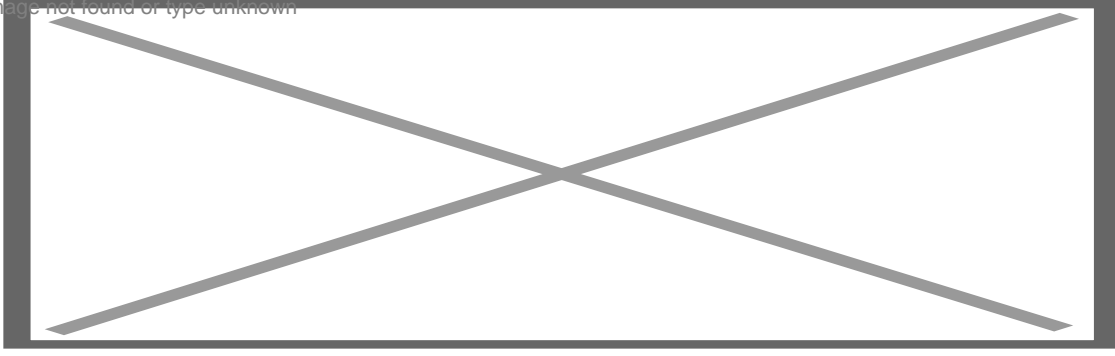
Whether the applicant acts in bad faith or not, once a design is registered, the applicant's use of it will not be considered as a design infringement or unfair competition.

An applicant will enjoy the right to use a design until the design registration is cancelled. As use of a registration is not considered to be design infringement or unfair competition so an applicant will not be responsible for any damages that arise. In practice, even if an applicant's bad faith is obvious, the courts do not generally render a preliminary injunction to prevent the use of a design.

This is because, according to Turkish practice, the rights endowed by a registration certificate cannot be limited or prohibited by a court order until the registration is cancelled. Considering the length of time it takes to conclude cancellation actions (at least four years), the severity of a third-party's/design owner's (who are prohibited from using their designs because of generic or functional design registrations) situation can be understood.

In order to avoid bad faith, unlawful and unfair attacks, it is crucial that design owners and third parties monitor monthly design bulletins and file oppositions to applications within the appropriate time frame (six months).

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