

## Cancellation of the Trademark Due to Non-Use / How Will Practice of the Turkish Patent and Trademark Office Look Like?

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Pursuant to the Article 26 of the Industrial Property Law ("IPL"), it is possible to cancel a trademark on account of non-use if the trademark has not been seriously used without a justifiable reason within five years from the date of registration, or if such use has been discontinued for five years without interruption. Before the IPL came into force in January 2017, the request for the cancellation of a trademark due to non-use could only be made by filing a lawsuit before the IP Courts. The IPL, however, originally granted the power to cancel a trademark for non-use to the Turkish Patent and Trademark Office ("TPTO") upon the request of those who with a legal interest, but envisaged a transition period, too. The reason is this power has been exercised by Turkish courts for years and this important transference of authority requires preliminary preparation. As a matter of fact, it will have taken this amendment seven years to take effect. The transition period granted by the IPL will expire on January 10, 2024, and as of this date, trademark cancellation claims for non-use will be held by the TPTO.

The novelty of this practice in the IPL in Türkiye will certainly lead to some issues especially since no regulation or guideline/information letter has yet been published. Some of the vital issues that this amendment could bring about are as follow:

- a) The fact that trademark cancellation claims for non-use were evaluated and decided by the court made them a part of the judicial system. However, now that the relevant request can be evaluated by the TPTO, it turns into an administrative process. This creates fundamental differences in terms of the procedure to be followed and the assessment of the merits. Three differences are pointed out here:
  - In non-use cancellation cases before the court, the determination of the use or nonuse of the trademark is made by experts appointed by the court. The file is evaluated by multiple experts, both in terms of trademark law and the sector to which the trademark at issue is related. This examination may even take place more than once if the parties object or if the court deems it necessary. In the post-amendment period, however, it has not yet been clarified which unit will carry out the examination and what procedure will be followed in cases where the request is filed before the TPTO.
  - Some of the most crucial documents to provide proof of use of a trademark are invoices, product labels, dated catalogs and trade books. The caveat, however, is that these documents could contain trade secrets, which the trademark holders certainly strive to protect even while submitting them to the court. When the amendment takes effect, it remains to be wondered how the process will be handled before the TPTO and what measures will be taken to ensure the confidentiality of the documents. It is also unclear how documents requiring additional competence to be evaluated will be examined. This is because the examination of commercial books and even the assessing whether the relevant records constitute evidence require special legal knowledge. This could lead to ambiguity when the case at issue requires knowledge other than IP, thus posing the question how the TPTO will address such matters.

- While it is possible to appeal a court decision at a higher court (Regional Court of Appeal / Court of Appeal), a practice already in place during the IPL period, it is not clear whether it will be possible to lodge an appeal at a higher board when the review period of the TPTO begins. Obviously, while it is possible to apply to the superior board even in trademark opposition files, it is expected that there will be a right to apply to the superior board in the examination that will lead to the loss of rights in this way. In the absence of this, it may be possible to file a lawsuit before the Ankara Intellectual and Industrial Rights Law Court to request the annulment of the decision.

b) In the cases before the court, if the defendant - the trademark owner - is not at the address specified, they could be notified in other ways in accordance with the Notification Law. Considering that the trademarks for which cancellation is requested must have been registered for at least 5 years, the address of the trademark owner registered in the TPTO might not be an up-to-date one. In this case, it has not been clarified whether the same practice will be applied by the TPTO.

c) It is obvious that the judicial system in Türkiye is overburdened. Therefore, transferring the duty and authority to examine files such as trademark cancellations to the TPTO could alleviate the burden to some extent.

d) On the other hand, nobody can deny that the workload of the TPTO is high, too. Although the TPTO itself admits that there are opposition files that are concluded quite quickly, there are other opposition cases that might take between 1-10 months. Considering that the examination of a matter that will terminate the trademark right should be carried out meticulously, it remains to be seen how long these processes will last.

e) Another positive outcome will be that, compared to the litigation processes, the modified system will incur lower costs for legal beneficiaries.

As can be seen, this amendment is a significant reform in the Turkish industrial property law. Since no preliminary guidelines have been published yet, and there will not be any precedent in this regard even after its publication, it is not possible to predict how the implementation will take place. The first days of 2024 will undoubtedly be closely monitored by the IP community and it will take some time for the system to settle.

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