

Classification Of Virtual Goods

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The Turkish Industrial Property Code No. 6769 ("IP Code") establishes trademark rules in Turkey. However, it does not specifically define what a trademark is. Instead of providing a specific definition, there are only certain features of trademarks described in Article 4 of the IP Code.

The European Union Intellectual Property Office ("EUIPO"), on the other hand, does define trademarks as: "signs used in trade to identify products." Another way to think about a trademark is as a symbol that distinguishes the trademark holder from its competitors. A trademark is also used by consumers to make buying decisions. Consumers become loyal to brands, and brands are exemplified by their trademarks. It is usually put as follows: "Your trade mark tells customers who you are." As such, a trademark is somewhat of an abstract concept, not tangible, and may be embodied only by usage on goods and/or services.

Trademarks, which are extremely important in the physical world, are also playing an increasingly important role in virtual worlds. In this day and age, in which we experience the virtual world at many touchpoints, from virtual banking to the existence of a virtual universe, each development naturally triggers another. As more time is spent and commerce conducted in virtual worlds, the role of trademarks will continue to grow as well.

As a matter of fact, as recently announced by EUIPO, an increasing number of trademark applications are being made before EUIPO regarding virtual goods and non-fungible tokens ("NFT"). EUIPO, which takes the developments very seriously, has decided to make a regulation on the classification of such trademarks. IEUIPO, which plans to publish a guideline for this purpose in 2023, states that it has adopted the following approach at this stage:

- Virtual goods comply with class 9 - according to the Nice Classification - as they are treated as digital content or images. However, the term virtual goods by itself lacks clarity and precision, so the content to which virtual goods relate must be specified separately (e.g., "downloadable virtual goods. virtual clothing")
- The 12th edition of the Nice Classification will include the term downloadable digital files authenticated by "non-fungible tokens" in class 9. NFTs are treated as unique digital certificates registered on a blockchain that verify digital items but are different from these digital elements. For EUIPO, the term "non-fungible token" alone is not acceptable. The type of digital item authenticated by NFT must be specified.
- Services related to virtual goods and NFTs will be classified in accordance with the classification principles established for services.

Although life in the virtual world has not yet become completely widespread, the presence of trademarks in the virtual world is increasing rapidly and EUIPO, which is aware of the need to catch up with the dynamics of these developments, is also accelerating its work in this area.

However, when we look at the trademark practices in Turkey, although there is no announcement for such guidelines yet, it is clear that there is a very serious demand for the virtual world and in parallel there is an increase in the number of relevant trademark applications.

While the number of trademark applications filed before the Turkish Patent and Trademark Office ("TPTO") containing only the expression "METaverse" is 164, ones containing only the expression "VIRTUAL" is 757. Moreover, since trademarks that will operate in the virtual world (at least according to the current regulations) are not required to include these expressions, it can easily be seen only by reviewing those elements that there is an increase in trademark registration demands for the virtual world.

When the monthly statistics created by TPTO by categorizing trademark applications according to the Nice Classification are examined, it's clear that there is a serious demand for the 9th class, which is widely used for trademark applications related to the virtual world. The statistics show that the number of monthly applications has increased continuously in the category of domestic applicants until May 2022 and in the category of foreign applicants until April 2022. Moreover, not every trademark application related to the virtual world seeks classification under class 9, so it seems likely that applications may have been made in other classes as well.

In light of all this, it would be helpful for businesses and practitioners if the TPTO published an official guide or information/announcement after the publication of the relevant guide of EUIPO.

As the presence of trademarks in virtual worlds increases, the development of many different protection methods is welcome news in the world of intellectual property.

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