

## Impact of Suspended Deadlines due to COVID-19 Pandemic on Grace Periods in the Turkish Trademark Law

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The COVID-19 pandemic, which is having a devastating impact worldwide, has affected our daily lives deeply, and slowed down and almost stopped the functioning of state institutions and organizations including courts. In order to mitigate these effects, a number of precautions have been taken in Turkey as in many countries. One of these is the suspension of all deadlines regarding creation, exercise or termination of a right as per the Provisional Article 1 of the Law Amending Certain Laws numbered 7226 (**"The Law"**). The impact of this measure on the grace periods set in the Industrial Property Law (**"IPL"**) numbered 6769 has been a matter of debate. Some argue that this measure is likely to affect the calculation of grace periods for the next five years.

### Suspension of Deadlines Due to the COVID-19 Pandemic and Precautions Taken

In accordance with Provision A1 of the Law numbered 7226, *"all deadlines with respect to creation, exercise or termination of a right including foreclosure terms and mandatory administrative application terms"* were suspended as of 13 March 2020 until 15 June 2020, for 95 days, *"in order to prevent any loss of rights in judicial process"*.

### Grace Periods as per the IPL

There are certain types of grace periods laid down in the IPL:

- As per Article 9 of the IPL, if a trademark has not been put to genuine use in Turkey by the trademark owner in connection with the goods or services that it is registered for (or if such use has been suspended) for an uninterrupted period of five years, that trademark shall be revoked upon request, unless there is a valid reason for non-use.
- As per Article 19 of the IPL, in opposition proceedings before the Turkish Patent and Trademark Office, if the opponent's trademark has been registered for five years as of the date of the application or the priority date of the application, the applicant may raise a non-use defense.
- As per Article 25/7 of the IPL, in invalidation actions, if the plaintiff's trademark has been registered for more than five years as of the application date or priority date of the trademark for which the invalidation is requested, the defendant may raise a non-use defense.
- As per Article 29/2 of the IPL, in infringement actions, if the plaintiff's trademark has been registered for more than five years at the filing date of the action, the defendant may raise a non-use defense.

### Impact of the Suspension of Deadlines on Grace Periods

The lawmaker chose to suspend the deadlines instead of extending them. Accordingly, the impact of the 95-day suspension period on the grace periods has caused a divergence of opinion among the Turkish IP community.

The Law does not include a clear regulation as to whether the suspension term of 95 days regarding creation, exercise or termination of a right in order to prevent loss of rights in a judicial process shall be added to the 5-year grace period.

On one side, the 95 days of the suspension period is claimed to be added to the grace period and thus the grace period should be calculated as 5 years + 95 days. According to this interpretation, all grace periods should be calculated by adding 95 days to the 5-year grace period until 15 June 2020.

The contrary opinion argues that the grace periods are not directly related to "*creation, exercise or termination of a right*"; and therefore, the 95-day suspension period does not have any impact on the grace periods. This means that the grace periods shall not be extended.

Another counterargument is that the 95 days of the suspension period shall be added to the grace period if the "*creation, exercise or termination of a right*" falls during the suspension period, that is from 13 March 2020 to 15 June 2020. We are of the opinion that this interpretation is more accurate considering the spirit and wording of the Law.

The concrete situation regarding the calculation of grace periods has become complicated, and it is anticipated that discussions and disagreements will continue until a Court of final decision sheds light on the issue.

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