

Intellectual Property Rights Under the New Commercial Code in Turkey

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The Grand National Assembly of Turkey enacted the draft Commercial Code on January 12, 2011. The new TCC (Turkish Commercial Code) will enter into force on July 12, 2012, and outlines possible commercial proceedings and actions in 1,535 articles.

The TCC creates new arrangements regarding commercial enterprises and equity corporations and also amends the unfair competition provisions to protect consumers as well as commercial establishments. On the other hand, the TCC brings brand new arrangements for online transactions and the Internet in general.

As in other countries, unregistered trademarks, patents, industrial designs and trade secrets are protected by unfair competition provisions. The new unfair competition provisions in the TCC do not amend the description of unfair competition, but expand its scope. According to the current Turkish Commercial Code there must be an abuse of economic competition for an action to be considered unfair competition.

However, under the new law, an action that constitutes an abuse in principle will be considered unfair competition without considering the abuse of economic competition. Also, with the new law, the description of unfair competition is expanded in a manner that will not only affect competitors.

According to the existing commercial code, unfair competition provisions are effective for competitors and protect fair competition. However, in the new law, in addition to protecting competitors and ensuring fair competition, the purchasers/consumers are protected in a comprehensive way.

Adding to the existing code, the new TCC also provides a more detailed non-restrictive list of examples of acts that constitute unfair competition. Under the old code, the infringement of a name, title, sign or trademark right, whether registered or not, is also defined as a crime of unfair competition. As there are decree laws that protect registered trademarks and industrial designs, the new TCC rearranges the relevant article as "taking actions which will cause confusion with others' signs, work products or acts".

According to the new TCC, confusion will be determined by considering just the external appearance and pronunciation of the mark. In other words, similarity of content (such as similarity of electric circuits) will not be considered in an unfair competition assessment.

The new TCC does not bring completely new rules for civil and criminal liability arising from an act that causes unfair competition. However, according to the principle of legality in crime and punishment, acts of unfair competition that are not provided for in the relevant article of the new TCC will not constitute a crime, but of course can be subject to a civil lawsuit. The new TCC also obliges companies to launch an official website.

Under the new law, companies will be obliged to share necessary information (such as official announcements, details of accounts, statements and the necessary information within the scope of an information society and the principle of transparency) and will be responsible for the accuracy of this information.

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