

Recent Developments in Fashion Law and Problems in Practice

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In our country, Fashion Law has begun to become an up-to-date and rapidly developing fashion discipline in countries such as the United States, France and the United Kingdom, where it is realized that fashion is an important commercial area, even though it is a newly started legal entity.

Fashion Law is closely related to the law of intellectual property, in the case of the protected right. If we take into account the fact that laws are born in the light of the needs of the societies, this will lead us to the question of why there is no specific legal regulation on fashion law to this day. Indeed, in recent years, the fact that fashion has become an important industry has pointed to the needs of designers and textile companies and has begun to work on the reflection of these needs in the law.

The actors of the fashion industry in our country are confronted as textile companies, designers, designer companies, design offices or design associations or associations. Especially the number of design companies and offices is increasing day by day. Besides, Turkish fashion designers are organized in professional sense. The fashion designers who worked hard for the Turkish fashion design industry to become a decisive "school" in the formation of the world fashion trends came together and founded the Fashion Designers Association in 2006. ¹ The association designers are conducting meetings to seek solutions to their common needs and act together to communicate the concerns of fashion designers to the administrative authorities from time to time.

Another point that should be emphasized after the basic subjects of fashion law is the issue of which right of design right is covered and in which law it is positioned. The way in which a design is defined by the right, the method of birth, the duration of protection, or the legal means to be followed in the event of violation will vary accordingly.

Regarding the current practice, it is observed that fashion designs are registered in the framework of the Decree Law No. 554 on the Protection of Industrial Designs ("Decree Law No. 554"). This road is a way that is more actively followed by fashion houses or textile firms than fashion designers.

Designs with "innovation" and "distinctiveness" according to Decree Law No. 554 will gain protection under the mentioned legislation. The Turkish Patent Institute does not automatically investigate whether the design carries innovation and distinctiveness in a design that comes before it. In order to examine these matters, the person who is the actual designee must appeal to the Turkish Patent Institute within 6 months from the date of publication of the design. Otherwise, the application is finalized and the design is registered. Another point to be emphasized here is the right to postpone publication at the application stage, which is recognized by the designee and which will correspond to a maximum of 30 months after the date of application. This right is important for design rights holders whose product is not yet on the market.² With it, it is a common practice to register all of the designs, not the individual designs, as a multi-design in general.

On the other hand, it is difficult to mention that the registration system of the Decree Law No. 554 is a protection system which fully responds to the needs arising from fashion designs. *Cheney Bros v. Doris Silk Corp.* As I pointed out in the case, fashion collections are generally prepared seasonally and it is not possible to predict which designs are successful and which are good selling designs. ³ For this reason, the designs of that season may not include the same value in the next year or the expected success may not be achieved. Therefore, the field registration process

for about 9-10 months can make the registration of the design which is important only for 6-7 months in that season no longer in terms of the length of the staff. As a result, designers are also embracing the design of their testers to protect their designs because of their lengthy and often costly registration procedures. No doubt, the peculiar dynamics of fashion designs require a more flexible arrangement. While this flexibility shows itself as a 3-year protection period in EU Law, the unregistered designs can be registered within 12 months. 4 Although the 26 / last article of Decree Law No. 554 stipulates that products relating to fashion-changing industries should be regulated by regulations giving simpler application possibilities, the issue has not been addressed yet.

According to FSEK 4 / I, b.4, fashion designs with aesthetic value have been accepted as a fine artwork when we consider the issue in terms of the regulations within the scope of the Law on Intellectual and Artistic Works ("FSEK") No 5846. With this amendment made by Law No. 4110, it is seen that fashion designs are clearly accepted as works. However, from this point of view, every fashion design should not reach the conclusion to be accepted as "work" status. In our opinion, in order for a fashion design to be accepted as a work of fine art, it must have the qualities of aesthetics and carrying the characteristics of its owner. Hirsch, as a rule, does not have an aesthetic element as a rule, but if there are elements bearing the characteristics of the owner of the fashion work, like the plans and maps of the philosophy under the Mülga Hakk- in short, that a beautiful ethereal can not be described as a solitary work, but that this beautiful ethereal can be described as a scientific work if it is published as a dress model in a magazine. It is observed here that Hirsch accepts fashion design not in the form of fine art but in the status of artistic work.⁵

According to the Regulation on the Registration and Registration of Intellectual and Artistic Works, the registration of the owner of the work is divided into mandatory and discretionary registration, and the registration of fashion designs is not included in the categories of works which are accepted as mandatory. As it is perceived wrongly by the society in general, even in the compulsory registration system, registration rights can not be realized with the aim of establishing the right of ownership. It is only to facilitate the determination of the rightful possession and / or the ability of the powers of enjoying material rights.

Another method of registration, which is different from the registration system within the scope of the Regulation on the Registration and Registration of Works of Intellectual and Artistic Works, is the registration performed by the notary public. However, this practice does not provide any further protection than the above registration system.

FSEK m. 4 can be used as a fashion design industrial design, which is regarded as a beautiful sanata work under the scope. Their use in this way does not remove the quality of these works as the work of art and idea. 6 As a matter of fact, FSEK Article 4/2 explicitly states that the use of a group of beautiful works of art, including designs, as industrial models or paintings, will not affect their adjectives as thoughts and works of art. This is a typical example of cumulative protection policy. However, this protection principle may in practice cause some dilemmas and problems. For example, if a fashion design is registered as an industrial design, this is no longer a registered design right, with a total protection period of 25 years, which is renewed every 5 years. However, if a design is accepted as a fine work of art in accordance with the Law on Intellectual and Artistic Works, the duration of protection of the design is 70 years after the life of the owner and after his death. When these general protection periods are combined with the right to fashion design, there is a sense of disagreement between them. When you look at the internal dynamics of the fashion industry, the sector is a rapidly developing sector that varies not only on a yearly basis but also on a seasonal basis. While this is the case, the length of the protection provided or provided to the craft may be too long to harm the fashion industry's development. On the other hand, legal entities may not have a title because they can not have the ability to create legal entities in accordance with FSEK. the duration of protection provided or provided to the design may be too long to harm the fashion industry's development. On the other hand, legal entities may not have a title because they can not have the ability to create legal entities in accordance with FSEK. the duration of protection provided or provided to the design may be too long to harm the fashion industry's development. On the other hand, legal entities may not have a title because they can not have the ability to create legal entities in accordance with FSEK.⁷ Of course, the most important difference lies in the need to register for protection in the framework of design legislation, and the protection begins automatically when the works arrive. In fact, the basis of all these differences lies in the differences in the nature of intellectual and industrial rights and in

protection.

When the situation is evaluated in terms of trademark law, it emerges from the protection of fashion law designs and forms at the point of protection of designers' names and brands. In terms of trademark law, the biggest problem that fashion designers or textile firms experience in practice is the imitation brand issue. Unfortunately, Turkey imitation in the top 10 markets in the world, although the country is located in the upper row, also poses a big slice of the fashion products mimic the market. Malicious companies and people who want to benefit from the name of the designer or from the reputation and reputation of the leading brands in the fashion industry can go on the way of imitation of the brand. Just as these counterfeit products are identified and the necessary legal process is initiated, as well as providing unfair advantage to anyone who uses them,

If the fashion designs can not be protected by the provisions of the Patent Law, if they can not be protected by the Decree Law No. 551 on the Protection of Patent Rights, Under the heading "Patentable Subjects and Inventions" under Article 6, "artworks" and "creatures with aesthetic qualities".

If a fashion design is registered with the Turkish Patent Institute as an industrial design, it is possible to apply to the legal remedies arranged in the Decree Law No. 554 in case of infringement of the design right. In this framework, 49 et seq., The right to demand pecuniary and non-pecuniary damages in the event of detection, suspension, prevention and conditions of rape. In addition, under the Customs Code, customs formalities for the infringement of industrial design may be suspended or forfeited on the request of the rights holder or in the customs administrations. If fashion design has aesthetic value, it will be protected according to the provisions of FSEK. In this frame, the court may ask the court to determine that the copyrighted works are owned by the owner of the works, ie, the design of the works which is infringed, men and refs have the right to demand pecuniary and non-pecuniary damages. A special arrangement for FSEK, m. 68 may claim compensation up to three times the amount he / she would like in the event of a breach of financial rights. If the fashion design is entitled, based on the provisions of FSEK, Decree Law 554 or other industrial property legislation, it may be based on the provisions of unfair competition at any time.⁸ It is the principle of unfair competition law, contrary to the principle of honesty, and the principle of labor against the principles of honesty, while the intellectual and artistic works law, trademark law, industrial design and patent law are subject to the rights of works, brands, designs and patents respectively and their owners. is the protection of labor, including operational effort, accumulation and investment. ⁹

Successful branding and outward expansion process, especially in fashion and textile sector in Turkey, gives direction to the development of successful state policy together. The TURQUALITY® Project, which emerged as a necessity for the state to support Turkish brands, was launched in 2004 with five companies from the textile and ready-to-wear sectors. It can be assumed that the main objective is to play an accelerating role in branding and to create Global Turkish brands by providing financial resources to become a global brand with a brand potential. ¹⁰ TURQUALITY® Project has been prepared in accordance with the Decree of the Money, Credit and Coordination Committee dated 11/05/2006 and numbered 2006/7 prepared on the basis of the present Law on State Aid for Inward Exports, and the Turkish Branding of Foreign Products which is already in force, The Placement of the Image and the Support of Turquality ® . The purpose of your communication is generally TURQUALITY ®The company that is included in the program is to be supported by the state in the domestic and foreign branding process. TURQUALITY® is the state-sponsored first and only branding program of the world, and is an important state support to create strong brands especially for textile companies and fashion design companies and to ensure the development of the Turkish fashion sector in the international arena.

One of the other applications in Turkey, No. 2008/2 "Communique on Design Support" is. The aim of the communique, the creation of design culture in Turkey and disseminate provide the designer companies, associations and design offices, publicity will perform design associations-associations, advertising, marketing, employment relation to the expenses related to the units opener abroad with consultancy expenditure of state support is provided.

The process of applying for state subsidies, which has been mentioned in two of the most important above, requires the presentation of seriously prepared and even archived interests and documents within the institutional

structure. The Undersecretariat of Foreign Trade performs very detailed reviews during the application and audit phases and seeks to see the strategic planning and objectives of the design office, designer companies, etc. organizations. Often the preparation of application files can also be carried out by receiving professional project support from the outside. It is inevitable that this preparation period is supported from the legal point of view.

As a result, it is clear that fashion law has its own requirements and parameters. For this reason, no existing legal arrangements are sufficient to meet the dynamic needs of the fashion industry. Because the legal regulations taken into account above are not regulations that provide appropriate protection and speed to the variable structure of fashion law. On the other hand, the fact that legal protection has not been shaped within the framework of the main legislation has caused some contradictions and problems in practice. For this reason, the success of state support, which has undergone major developments in recent years, must also be reflected in the legal arrangements necessary for the effective protection of design right.

[1] For more information, see: (Online) <http://www.mtd.org.tr/en/> , 10.03.2011.

[2] See Karahan, Sami / Suluk, Cahit / Saraç, Tahit / Nal, Temel, Fikti Fundamentals of Property Law, Ankara, 2007, p.230.

[3] See also Ginsburg, Jane C. / Litman, Jessica / Goldberg, David / Greenbaum, Arthur J, Trademark and Unfair Competition Law: Cases and Materials, Virginia, 1996, p. 33.

[4] See also Karahan, Suluk, Saraç, Nal, p.219.

[5] Hirsch, E, Idea and Industrial Rights, Ankara, 1948, p. 151. Uslu, Ramadan, The Concept of the Work in Turkish Intellectual and Art Law, Ankara, 2003, p. 136.

[6] See also K?l?ço?lu, Ahmet, Comparative Comparative Intellectual Rights, Ankara, 2006, p. 134.

[7] The only right to be given to the designer is the right to be named. (EndTasCHR article 18). The legal entity does not have such a right because it can not be a designer. See. Karahan,, Suluk, Saraç, Nal, p.228.

[8] "... However, as a matter of fact in the cause of the lawsuit, unfair competition-related actions have been explained and the prevention of the infringement of the design rights of the defendants is mainly desired. It is clear that this is based on rights based on specific and general provisions. In this respect, there is always the right to rely on the provisions of the Decree Law no. 554 on the original claimant's claim to prevent unfair competition based on general provisions, and it is clearly based on this claim. Separately, in the 4th and 4th article of the Decree Law No. 5846, the written decision regarding the existence of textile and fashion designs was based on the petition dated 15.04.2002. In this way, the actual claimant is endured with the provisions of general and special law together again. In fact, the 83rd article of the Law No. 5846 also referred to the unfair competition provisions. On the other hand, in the second article of Decree no. 554, it is envisaged that unregistered designs will be protected according to general provisions.

In the doctrine, the subject has been discussed and the following conclusion has been reached. Unfair competition provisions are applied cumulatively in line with intellectual property law. unfair competition provisions may be applied directly and in first instance if and when necessary, not intellectual property law, such as design or trademark, patent law, but in the second instance. "(See the Court of Cassation 11th HD, 14.12.2005 T, 2004/14760 E , 2005/12302 K).

[9] See also Tekinalp, Ünal, Intellectual Property Law, Istanbul, 1999, p. 33.

[10] For more information, see (Online) <http://www.turquality.com/15.aspx>.

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