

## Turkey Rejects Trademark Application Involving the European Union Emblem

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The Appeal Board ("**Board**") of the Turkish Patent and Trademark Office ("**TPTO**") recently upheld an appeal by the European Commission against a local trademark application involving the EU Emblem. The Board ultimately found the Emblem cannot be registered as a trademark, recognizing the European Commission's genuine ownership right. Notably, the Board did not limit its examination to registerability in terms of Article 7(1)(g). Rather, it also considered bad faith and the likelihood of confusion. The Board also referred to the Emblem's commercial value.

In principle, using the European emblem or any of its elements is permitted, so long as such use is within rules set by the Council of Europe. Therefore, third parties can use a circle of twelve gold stars against a blue background, representing the union of the people of Europe, without obtaining any specific written consent.

Third parties can use a circle of twelve gold stars against a blue background without obtaining any specific written consent, provided, the emblem or its elements do not:

- Create an incorrect impression or assumption that there is a connection between the user and any of the institutions, bodies, offices, agencies, and organs of the European Union or the Council of Europe.
- Lead the public to believe erroneously that the user benefits from the support, sponsorship, approval or consent of any of the institutions, bodies, offices, agencies, and organs of the European Union or the Council of Europe.
- Get used in connection with any object or activity which is incompatible with the aims and principles of the European Union or of the Council of Europe, or which would be otherwise unlawful.

However, the Council of Europe's rules prohibits third parties from registering the Emblem as a trademark.

According to the ex officio refusal grounds under Turkish law, applications concerning state emblems, official hallmarks and emblems of intergovernmental organizations cannot be registered in Turkey, in accordance of Article 6ter of the Paris Convention (Article 7(1)(g) of Turkish Trademark Decree Law; Article 5(1)(g) of Industrial Property Law numbered 6769).

In the case at hand, the European Commission filed an opposition against a trademark application filed with the TPTO, referring to its registered community trademarks.

In its first examination, the TPTO rejected the European Commission's opposition, stating that there was no likelihood of confusion between the trademarks, so Article 7(1)(g) would not be applied. The European Commission appealed the TPTO's refusal.

In December 2016, the Board rejected the trademark application, recognizing the European Commission's genuine right ownership over the Emblem. The Board noted the applicant's conscious choice and obvious intention to take advantage of the Emblem's reputation also referring to the likelihood of confusion. The decision also cites the European Commission's community trademark registrations.

However, in this case, the Board did not limit its examination to registerability in terms of Article 7(1)(g). Rather, it also extended its evaluation to consider the bad faith and the likelihood of confusion. The dispute emphasized that as

well as being a sign protected by specific rules, the EU Emblem also enjoys trademark protection.

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