

## Turkish Constitutional Court Strikes out Provision on Well-known Trademarks as Unconstitutional

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The Turkish Constitutional Court ("Constitutional Court") has struck out Article 7(1)(i) of the Trademark Decree Law numbered 556 ("Trademark Decree Law"), on the basis that it is unconstitutional. In light of this, holders of well-known trademarks should better monitor the Official Trademark Bulletin since more applications may now pass the TPI's examination on absolute grounds than have done so in the past. The ruling closely follows the Constitutional Court striking out Article 16(5) of the Trademark Decree Law in May on similar grounds.

Article 7(1)(i) of the Trademark Decree Law established a legal basis in 1995 for the Turkish Patent Institute ("TPI") to refuse trademark applications on the basis that an application is similar to a well-known marks, according to 6bis of the Paris Convention. Within this context, the TPI has rejected trademark registration applications which are identical to an earlier trademark, regardless of the goods and services covered by the later applications. The TPI has also established the well-known trademark registry, aiming to record and make information about well-known trademarks publicly accessible.

A recent lawsuit which Moroğlu Arseven was involved in included a trademark application which the TPI ex-officio rejected on the basis of an existing well-known trademark registration. The Ankara 3rd Intellectual and Industrial Rights Civil Court of Ankara ("Ankara Court"), which heard the lawsuit, applied to the Constitutional Court, seeking cancellation of Article 7(1)(i) of the Trademark Decree Law. The Ankara Court based its arguments among others on the fact that in a liberal free market economy, an earlier right holder's right to oppose an application is already assured with the grounds for relevant refusal. Therefore, the Ankara Court argued that the TPI shouldn't take the role of the well-known trademark holder, since they have a right and mechanisms to protect themselves.

As in earlier decisions, the Constitutional Court ruled to strike out Article 7(1)(i) of the Trademark Decree Law on the basis that the article conflicts with Article 91 of the Turkish Constitution. The Constitution states that (with limited exceptions) decree laws may not regulate fundamental rights, nor may they regulate individual or political rights and duties.

Now that the Article 7(1)(i) has been struck out, applications which are identical or similar with an earlier well-known trademark will pass the TPI's examination on absolute grounds. The TPI will publish these applications provided they do not cover the same goods and services as the well-known trademarks. Holders of well-known trademarks should closely monitor the Official Trademark Bulletin since more applications may now pass the TPI's examination on absolute grounds than have done so in the past.

The Constitutional Court has struck out many articles through the years on the basis that regulating fundamental rights through decree laws is unconstitutional. Recently the Constitutional Court cancelled the Articles 42(c) and 16(5) of the Trademark Decree Law on the same grounds. Considering the basis of the Constitutional Court's reasoning, we expect that Article 7(1)(b) of the Trademark Decree Law may also be held

to be unconstitutional on the basis that it restricts property rights. Accordingly, this article may be the next one to be struck out.

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