

## Turkish Trademark and Patent Office Publishes New Guideline for Absolute Grounds Examination

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The Turkish Trademark and Patent Office ("**TPTO**") has published the new Trademark Examination Guideline regarding the examination of the absolute grounds based on article 5 of Industrial Property Law numbered 6769 ("**IPL**"). The new guideline updates the previous one in accordance with the IPL.

While the guideline published in 2011 covered both absolute and relevant grounds examination, the new one only includes the examination regarding absolute grounds. The question remains whether an updated guideline on relevant grounds will follow.

The new guideline makes a detailed explanation of the criteria as well as necessary information and documents for non-traditional trademark registration, such as voice, motion, position, smell, and taste trademark applications which were explicitly regulated for the first time under the IPL. Notable matters explained under the new guideline include:

- Either an electronic record showing the motion, or a numbered/ordered sequence of images showing the motion should be submitted for the motion trademark applications.
- In position trademarks applications, the position should be clearly identified on the selected goods, by depicting the non-claimed in dashed lines. In case a trademark application depicts a position mark on a shoe, the application will only be accepted for the footwear and rejected for the rest—clothing, for example.
- The current technology does not allow the taste and smell marks to be shown on the trademark registry. Within this context, one might come to the conclusion that TPTO does not allow the registration of such types of trademarks.

The distinctiveness of a trademark, which is a requirement for registration, has also been explained in great detail. As per the guideline, during the examination, the applied goods and services and the perception of the targeted public should be taken into account and the trademark should be examined as a whole.

Both the number of headings and the examples have been increased in the new guideline. A number of problematic issues regarding the registrability and distinctiveness of trademark is discussed, particularly below:

- The distinctiveness of trademarks consisted of a single color or a combination of colors.
- The distinctiveness of trademarks consisted of a single letter or number.
- Registrability of trademarks consisted of a descriptive word in a foreign language.
- The distinctiveness of the phrases containing the same word's variations in different languages.
- Registrability of trademarks including some specific words, which are not highly distinctive, such as "MY", "WORLD", "EASY", "PLUS", "SMART".
- Distinctiveness that the words such as "Multi", "Ulti", "Super" adds to a trademark application.
- Registrability of trademarks consisted of a geographical place name solely or in combination with other words.

The guideline also underlines that the claim of acquired rights based on earlier registration will not eliminate the absolute ground for refusal, except for the ground-based on another indistinguishably similar trademark. For example, if a trademark owner registered a non-distinctive sign re-applies for the same sign, that trademark application will be refused without taking the earlier identical registration into account.

The precedent court and TPTO decisions and the decisions of European Union institutions such as the European Union Trademark Office and European Court of Justice are among those examples.

Stating that the guideline was prepared with the contribution of the partners, TPTO also announced its aim of updating the guideline regularly in line with general principles and new assessments regarding specific cases.

Please see this [link](#) for the full text of the announcement (only available in Turkish).

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