

The Turkish Trademark System: The Essentials

1 Sep 2013

Even though Turkey is a party to international conventions and has harmonised its trademark laws with those of the EU, there are certain aspects and practices distinctive to Turkish trademark law.

Existence of an Earlier Trademark is an Absolute Ground for Refusal

Contrary to many other jurisdictions, trademark similarity is considered to be an absolute ground for provisional refusal in Turkey. The Turkish Patent Institute (TPI) oversees the trademark application process. The TPI's role is to maintain public order and protect the public from confusion between marks. The TPI also prevents registrations of inherently unprotectable marks.

When the TPI receives a trademark application it conducts a search of registered trademarks to determine whether there are any prior trademarks that are identical to the application or confusingly similar. If the TPI finds an identical or confusingly similar mark it will reject the application and cite the mark(s) that form the basis of the rejection. Even if the cited mark's owner consents to the later mark being registered it is not possible to overcome the TPI's provisional refusal decision.

Consequently, some trademarks cannot obtain registration in Turkey because they do not pass the TPI's examination on absolute grounds. This is despite the fact that the trademark would not meet oppositions if published.

Use in Commerce or Intent to Use are not a Requirement at Application Stage

Contrary to some jurisdictions, trademark applicants in Turkey are not required to prove their use of the mark in commerce at the application stage and are not asked to show their intention to use the mark in this way. Similarly, opponents are not required to demonstrate their use of the mark which they are opposing, even if the five-year grace period has expired.

Similar to many other jurisdictions Turkish law requires "use in commerce" in order to keep a trademark's registration alive after an initial five-year grace period. However, the trademark holder is required to prove its use in commerce only when a third party initiates a non-use action before the first instance court.

This legal arrangement means that the TPI does not oversee the use of the trademark before or after the non-use grace period. The arrangement also means that a registered trademark will effectively remain alive unless a third party successfully initiates a lawsuit for the trademark's cancellation based on non use.

Consent Letters or Sister Company Arguments are not Acceptable

In many jurisdictions, consent letters, co-existence agreements and sister company arrangements are possible avenues to overcome a local authority's provisional refusal decision based on earlier registration.

As a result, applicants whose trademarks are provisionally refused by the TPI based on a prior registration in Turkey will often explore the acceptability of such an arrangement. However, in Turkey, consent letters, co-existence

agreements and sister company arrangements are not capable of overcoming a provisional refusal by the TPI. Even if the prior registration holder consents to the trademark, the TPI will not cancel its provisional refusal decision.

One possible solution for applicants when the TPI has provisionally refused their trademark application is to consider buying the registered mark or obtaining a licence from the trademark holder.

All the TPI's Deadlines are Strict and Cannot be Extended

Turkish trademark law is regulated by a Decree Law and its regulation. All the relevant deadlines in this legislation are strict, with no processes available for the parties to extend them. These deadlines include oppositions, appeals, responses and all types of office action. Failing to meet official deadlines often results in parties experiencing significant losses of rights. Therefore, it is very important for parties to pay close attention to the TPI's deadlines.

Compensation of the Costs and the Expenses

Contrary to some jurisdictions, when a trademark application or an opposition is rejected in Turkey, the applicant or opponent is not required to pay the other party's fees. When the TPI rejects a trademark application or opposition the party's only monetary loss will be the amount it paid for the application.

Related Practices

- [Trademarks](#)

Related Attorneys

- [İ?İK ÖZDO?AN, LL.M.](#)
- [EZG? BAKLACI GÜLKOKAR, LL.M.](#)