

MOROĞLU ARSEVEN

# TRADEMARK REGISTRATION IN TURKEY



## Trademarks in Turkey: Do I Have to Register My Mark to Make it Enforceable?



In Turkey, and in other countries around the world, there is a fairly common misconception that if a trademark is not registered then it's not enforceable. The truth is that even an unregistered trademark is enforceable in Turkey, although those who do register have more and stronger rights.

In this article, we will describe the process of registering a trademark in Turkey, as well as the implications of not registering a mark.



### Why Register a Trademark in Turkey?

Turkey is an important country in global economic trade. It is one of the world's 20 largest economies and has a population of over 80 million. Albeit not officially part of the European Union, Turkey is one of the EU's main partners and both are the parts of the European Union–Turkey Customs Union. Because of the economic opportunities it boasts, many foreign companies do business in Turkey. For example, according to the U.S. International Trade Association, **“more than 1,000 U.S. firms, including some of the United States’ largest and most recognized brands, are active in Turkey; many have been in the market for decades.”**

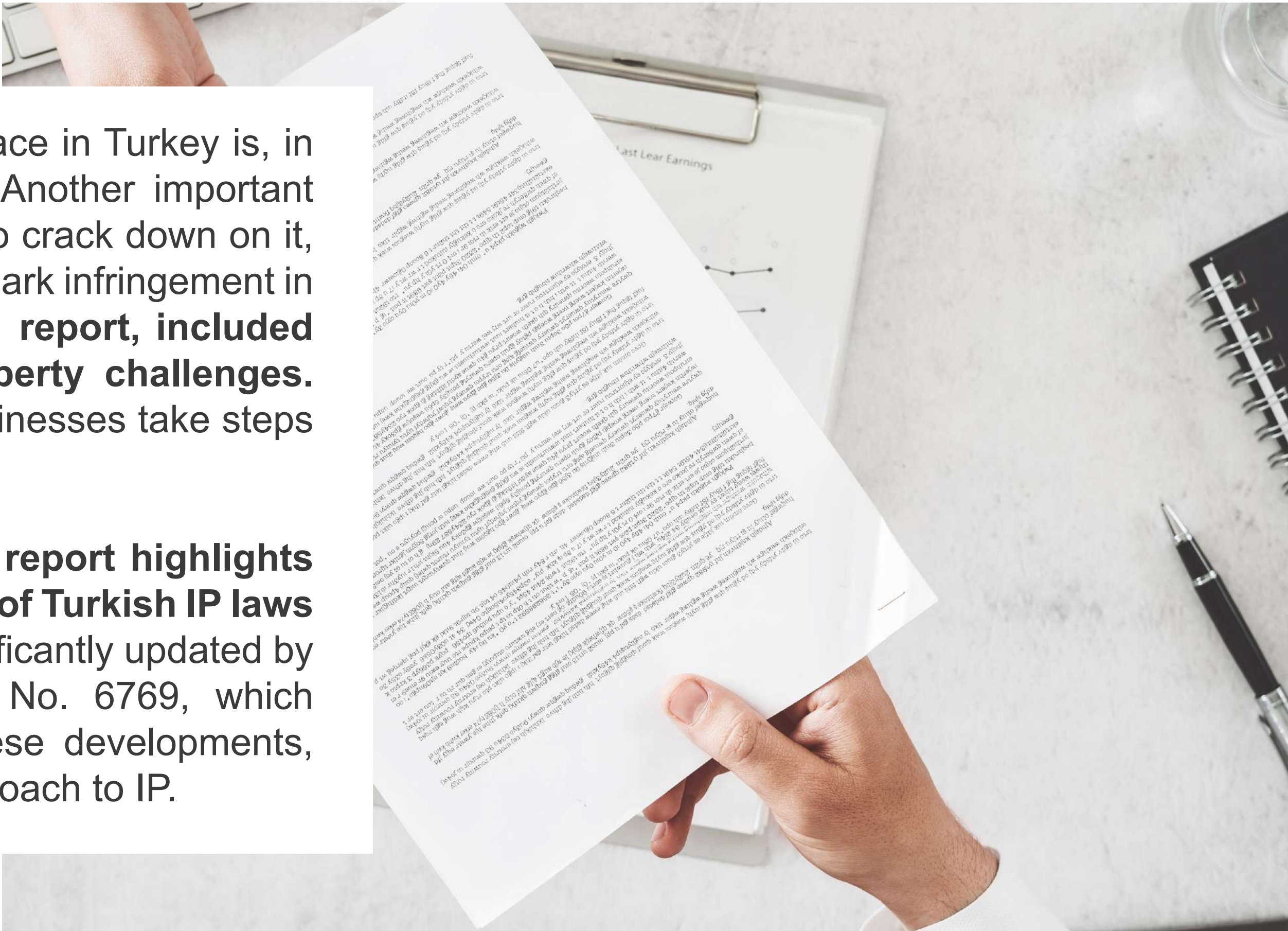






The fact that so much economic activity is taking place in Turkey is, in itself, a reason to register a trademark in Turkey. Another important reason is that, while Turkey is going to great pains to crack down on it, there are problems with counterfeit goods and trademark infringement in Turkey. **The U.S. Trade Representative**, in a 2021 report, included Turkey on its “**Watch List**” for intellectual property challenges. Because of these challenges, it is important that businesses take steps to register their trademarks in Turkey.

However, it should be noted that the “**Watch List**” report highlights various “**positive developments**” in the evolution of Turkish IP laws and practices. In particular, Turkish IP law was significantly updated by the introduction of the Industrial Property Code No. 6769, which supplanted a series of old laws and decrees. These developments, among others, have helped modernize Turkey’s approach to IP.





## How to Apply for Trademark Protection in Turkey ?

As alluded to above, in Turkey, trademark protection is granted pursuant to the provisions of **the Turkish Industrial Property Code 6769** (the “Industrial Property Code”).

There are two ways to apply for trademark protection in Turkey:



1. By direct application to Turkish Patent and Trademark Office; or

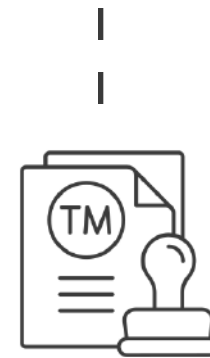


2. Via international applications through the Madrid System

The method that is utilized is dependent on a number of factors, including **who the applicant is, where they are located/domiciled, to name a few**. To the extent that a direct applicant is domiciled outside of Turkey, such applicant must be represented by a trademark attorney, such as those from **Moroğlu Arseven, who is authorized to act before the Turkish Patent and Trademark Office**.



## What Rights Does the Owner of a Registered Trademark Have vs. an Unregistered One?



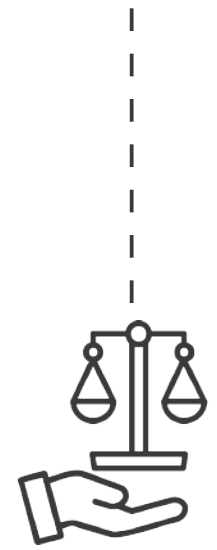
As a principle, trademarks are established through creation and use—not registration. However, in order to enjoy comprehensive trademark protection regulated under the Industrial Property Code, excluding the strict exceptional protection granted to unregistered trademarks, **a trademark must be registered with the Patent and Trademark Office.**



It's important to note that parties who **do not register their trademark in Turkey are not without rights.** The owners of unregistered trademarks have the right to file an opposition against third party trademark application before the Turkish Patent and Trademark Office or initiate **an invalidation action** against later trademark registrations on the basis of their genuine ownership **by proving their prior use in Turkey.**



Moreover, protection against third parties' bad faith actions is another commonality of registered and unregistered trademarks. Registering a trademark that is identical or confusingly similar to an existing registered or unregistered trademark may be deemed bad faith action by the Turkish Patent and Trademark Office and the courts. Such “**bad faith**” **allegations** must be **proven through strong evidence**, generally. However, if the chosen word or logo is very unique and its resemblance to an **existing trademark is beyond mere coincidence**, the legitimate rights holder **may not need to provide evidence** to support its bad faith argument.



On the other hand, parties who do register in Turkey have more explicit rights to protect their trademark. For example, a party who **registers a trademark under the Industrial Property Code has the right to seek both civil and criminal remedies** against alleged infringers. Unregistered trademark owners can only **seek enforcement** through civil proceedings against the infringers **based on unfair competition rules**.



A registered trademark owner may also register its trademark before the Customs Directorate and protect its trademark right at **Customs against import or export of the counterfeit products**. Unregistered trademark owners do not have such a right.

## Be Proactive and Register Your Trademark in Turkey



The benefits of registering a trademark described above are just a few of the many benefits available to trademark owners in Turkey. If your company does business, or plans to, in Turkey, then it's important to be proactive and register your trademark(s).

**Please contact Moroğlu Arseven with any questions and/or for assistance.**

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