



Authors

**Ekin Dericioğlu Kurt, E Zeynep Yarkin and  
Gözde Sezgin**

## 1. Legal framework

The following national and international laws apply to trademarks in Turkey:

- Decree Law 556 on the Protection of Trademarks;
- the Paris Convention (implemented through a decree law);
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs);
- the Nice Agreement; and
- the Vienna Agreement.

## 2. Unregistered marks

Trademark rights arise from actual use of the

mark. Thus, if a product is sold or manufactured under a brand name, common law trademark rights are created automatically. In principle, the proprietor of an unregistered trademark can defend its trademark rights in accordance with the unfair competition provisions of the Commercial Code.

That said, in order to benefit from the protection provided by Decree Law 556, trademark registration in Turkey is required. However, the law provides two exceptions to this principle by allowing an opposition to a mark to be based on an unregistered identical or similar trademark on the following grounds:

- The owner of the unregistered trademark may request the refusal of the subsequent mark before the Turkish Patent Institute (TPI) or the IP courts, provided that its rights in the mark were acquired before the date of registration.
- The owner of a well-known trademark in

---

the sense of Article *6bis* of the Paris Convention may ask the TPI or the IP courts to reject the application before it reaches registration stage.

The party which uses an unregistered trademark first will be entitled to benefit from this protection, but there is no specific time or use limit for establishing unregistered rights. However, both the TPI and the IP courts require serious use and clear evidence of such use.

---

### 3. Registered marks

In accordance with Turkish trademark law, the following natural and legal persons are entitled to file applications for trademarks and service marks:

- natural and legal persons domiciled or with industrial or commercial undertakings in Turkey;
- persons that are entitled to file an application by virtue of the Paris Convention or TRIPs; and
- nationals of states which provide legal or *de facto* protection to Turkish nationals, in accordance with the principle of reciprocity.

A representative requires a power of attorney before filing. Such power of attorney need not be notarised or legalised. For natural persons, a power of attorney must simply be signed; while for legal persons, a power of attorney must be sealed and signed by the authorised representative.

The restrictions on what may be registered were relaxed by Decree Law 556, allowing almost any sign that distinguishes one undertaking from another and which the public recognises as distinctive of the business to be registered if such sign is capable of graphical representation.

By virtue of this provision, the Turkish legal system appears to leave open the possibility that any sign may be registered provided that it is distinctive and capable of graphical representation. Therefore, the following may constitute a registrable trademark or service mark:

- words (including personal names);

- letter/numeral combinations;
- logos and business names;
- slogans;
- designs;
- the shape of the goods or their packaging;
- colours;
- smells; and
- sounds.

However, TPI examiners and the IP courts are reluctant to register non-traditional trademarks (eg. sounds, smells, colours and three-dimensional signs), as they are inclined to deem such signs to be devoid of distinctiveness. Therefore, such registrations may face major hurdles during the application phase.

Article 7 of the decree law sets out the absolute grounds for refusal of a trademark registration:

- non-distinctive signs;
- identical marks for identical goods;
- descriptive signs;
- customary signs;
- shapes which result from the nature of goods themselves;
- shape which are necessary to obtain a technical result or to give substantial value to the goods;
- signs of such nature as to deceive the public;
- signs that conflict with well-known trademarks in the sense of Article *6bis* of the Paris Convention;
- signs that are prohibited by law in the sense of Article *6ter* of the Paris Convention;
- signs of historical and cultural public interest;
- signs that contain religious symbols; and
- signs that are contrary to public policy and morality.

---

### 4. Procedures

#### Examination

Once the trademark application has officially been filed before the TPI, the application receives an official reference number. Then, in the *ex officio* examination phase by the TPI, the application is examined in terms of absolute grounds before publication.

Trademarks which comply with the absolute

grounds for refusal will be published in the relevant *Official Trademark Bulletin*. A trademark which displays one of the absolute grounds for refusal will be provisionally refused by the TPI. The applicant has the right to file an opposition against the provisional refusal before the Re-examination and Evaluation Board within two months of notification of the decision to refuse; if the opposition is rejected, the applicant can appeal this decision to the board within two months of notification of the concerned administrative decision.

### Opposition

Third parties may submit oppositions upon publication of a trademark application in the *Official Trademark Bulletin* within a non-extendible period of three months from the date of the bulletin. All arguments and relevant documents must be presented to the TPI within this time.

The primary base of such challenges may include either absolute or relative grounds for refusal. Relative grounds are as follows:

- an identical trademark applied for identical goods or services;
- an identical trademark applied for similar goods or services;
- a similar trademark applied for similar goods or services where there is likelihood of confusion;
- an unauthorised application filed without the consent of the trademark owner by an agent or a representative of the trademark owner;
- an identical or similar trademark applied for different goods or services, where the registration will be detrimental or harmful to the prior trademark and the applicant will obtain unfair advantage;
- the right to the mark was acquired before the trademark application date (prior use of the owner of non-registered trademark);
- the trademark includes the personal name, photograph, copyright or any industrial property rights of a third party;
- an identical or similar trademark to a collective or guarantee mark, within three years of the date of expiry of the collective or guarantee mark;
- an identical or similar trademark to an earlier mark covering identical or similar

goods or services, within two years of the date of expiry of registration due to non-renewal; and

- bad faith of the applicant under Article 35.

The TPI evaluates oppositions within eight to nine months. Within this time, the TPI will notify the applicant of the third party's opposition and the applicant may then submit counterstatements against the third party's allegations (these are neither required nor binding). The applicant may submit counterstatements within one month of notification by the TPI.

If the opposition is fully or partially accepted and the application is fully or partially refused, the applicant can appeal that decision to the Re-examination and Evaluation Board within two months of it being issued. Similarly, the opponent may also oppose the refusal or partial acceptance of an opposition within a non-extendible two-month period. Counterstatements can also be filed at this stage.

### Registration

Once an application has been deemed acceptable and any opposition has been rectified, it will be registered. The registration fee should be paid within two months of notification of the TPI's decision to register. Once a trademark has been registered, the applicant will receive a registration certificate.

### Removal from register

A registered trademark shall be declared invalid by the courts if it is not used without justification within a period of five years following the registration date, or if use has been suspended for an uninterrupted period of five years. Invalidation must be requested by a third party in an invalidation action; the TPI and the IP courts do not examine the use of a trademark *ex officio*.

### Timeframes

The following timeframes apply:

- unopposed registration – 11 to 12 months;
- opposition procedures – eight to nine months;
- renewal – one to two months;
- merger – one to two months; and
- change of name – one to two months.

---

## Searches

Official searches are available as follows:

- identical trademark search (free of charge online);
- similar trademark search (paper-based search costs TRY30 for one class and TRY20 for each additional class; free of charge online);
- search per class (free of charge online);
- search of all classes (free of charge online);
- search includes trade names and slogans (free of charge online);
- search of traditional graphical marks; and
- search of non-traditional graphical marks.

---

## 5. Enforcement

It is possible to enforce rights in a trademark against the registration of a later mark through an invalidation action, and against infringement through an infringement action in civil and criminal proceedings or customs seizures.

As mentioned above, as a rule, unregistered trademarks are protected in accordance with the unfair competition provisions of the Commercial Code. However, unregistered trademarks will also be protected under the decree law based on 'real' ownership against the later registered trademark if the real ownership or well-known character of the trademark is strongly proven with serious evidence.

According to the decree law, an invalidation action against a later trademark registration can be filed within five years based on the similarity of the trademarks. In regard to well-known trademarks, this time limit is set out in the decree law; in regard to other marks, it has been detailed in appeal court decisions. However, if there is bad faith, the time limit shall not apply.

On the other hand, an infringement action can be based only on a registered trademark. In the infringement action the trademark owner has the right to prevent unlawful use of the mark by third parties without obtaining their consent.

Available remedies against infringement include:

- suspension of the infringing acts;
- confiscation of the infringing products and the equipment used to produce these products; and

- precautionary measures for the prevention of continued infringement of rights (eg, removing the brand from the products, destruction of the products and publication of the court decision in a daily newspaper).

The plaintiff has the right to request appropriate compensation from the infringer in consideration of its moral and monetary damages. The decree law provides that monetary damages are taken into account according to three criteria:

- the potential income of the owner, if no infringement had occurred;
- the income of the infringer gained from use of the trademark; and
- the licence fee which would have been paid if the trademark has been used lawfully under a licence agreement.

In case of a criminal prosecution, depending on the nature of the infringement and the circumstances of the case, the infringer may be sentenced to imprisonment of one to four years and to pay a maximum fine of TRY500,000 (approximately €200,000).

Specialised courts for IP matters are established in Ankara, Istanbul and Izmir. In other cities, nominated civil and criminal courts deal with IP matters.

Customs can act *ex officio* against trademark infringement involving the import or export of counterfeit goods. In addition, the trademark owner can ask Customs to take such action – if it receives such a request, Customs will inform the trademark owner when infringement occurs. The owner may request a preliminary injunction from the court within three to seven days of customs notification, and subsequently may initiate a civil or criminal action. However, failure to request a preliminary injunction or initiate a court action will result in the release of the counterfeit goods.

A court action is initiated by the plaintiff filing a writ of claims through a petition. After filing the action, the judge may seek an expert examination to clarify particularly technical matters or witness testimony during the proceedings.

Parties which are adversely affected by the first instance decision can appeal before the Supreme Court.

The same procedure applies in criminal proceedings; however, unlike in civil proceedings, the complainant is not a party to the criminal action, but is involved in the procedure as an intervener.

For both registered and unregistered rights, a trial takes approximately two to three years, including any appeal.

A court decision on a preliminary injunction takes approximately one to three months, depending on the type of request. It is possible to request a preliminary injunction alongside the lawsuit or separately.

At trial level, it takes between 18 months and two years to obtain a first instance decision. The parties have the right to appeal within 15 days of notification; a Supreme Court decision on the appeal will be issued within one year to 18 months. A revision of the Supreme Court decision may be requested within 15 days of notification; such decision takes around one year.

## 6. Ownership changes and right transfers

The following documents are required for an assignment:

- the assignment petition;
- a document showing that the assignment fee was paid;
- the original deed of assignment or its notarised copy; and
- if the process is carried out by a representative, a signed power of attorney.

The following documents are required for a licence:

- the licence petition;
- a document showing that the licence fee was paid;
- the original licence agreement or its notarised copy; and
- if the process is carried out by a representative, a signed power of attorney.

If the licensee's use is based on an exclusive licence agreement and the trademark owner's right of use is not specifically mentioned in the

agreement, use by the licensee is attributed to the mark owner.

## 7. Related rights

There are overlap areas between trademark rights and other rights in Turkish law (eg, copyright, industrial designs and unfair competition). For example, a logo can be protected by both copyright and trademark law, or the shape of a product can be protected as both an industrial design and copyright, as well as a trademark.

## 8. Online issues

The use of registered trademark rights online is protected under Article 9 of the decree law. This article governs crimes committed through the Internet. Accordance with the unfair competition regulations is provided to cover unregistered trademark rights. Dispute resolution proceedings are available for '.tr' domain names, but at the time of writing these do not work effectively.

Examination/registration		
Representative requires a power of attorney when filing? Legalised/notarised?	Examination for relative grounds for refusal based on earlier rights?	Non-traditional marks registrable?
 / 		Sounds, smells, colours 
Unregistered rights		Opposition
Protection for unregistered rights?	Specific/increased protection for well-known marks?	Opposition procedure available? Term from publication?
		3 months 
Removal from register		
Can a registration be removed for non-use? Term and start date?	Are proceedings available to remove a mark that has become generic?	Are proceedings available to remove a mark that was incorrectly registered?
5 years' consecutive non-use from registration 		
Enforcement		
Specialist IP/trademark court?	Punitive damages available?	Interim injunctions available? Time limit?
		No limit 
Ownership changes	Online issues	
Mandatory registration for assignment/licensing documents?	National anti-cybersquatting provisions?	National alternative dispute resolution policy for local ccTLD available?
		

**Ankara Patent Bureau Limited**

Bestekar Sokak 10, 06680 Kavaklıdere

Ankara, Turkey

**Tel** +90 312 417 2323

**Fax** +90 312 425 5804

**Web** [www.ankarapatent.com](http://www.ankarapatent.com)



**Ekin Dericioğlu Kurt**

Vice president

[ekin.dericioğlu@ankarapatent.com](mailto:ekin.dericioğlu@ankarapatent.com)

Ekin Dericioğlu Kurt graduated from the Department of International Relations at Bilkent University in 1997. She is a chartered Turkish trademark and patent attorney and a European patent attorney. She is the secretary of the Turkish National Group of the International Association for the Protection of Intellectual Property (AIPPI) and vice president of Ankara Patent. She is specialises in all trademark matters, as well as managing operational and procedural processes in the Ankara office.



**E Zeynep Yarkin**

Manager of trademark oppositions team

[zeynep.yarkin@ankarapatent.com](mailto:zeynep.yarkin@ankarapatent.com)

Zeynep Yarkin graduated from Baskent University Law Faculty in 2004 and was admitted to the Ankara Bar Association in 2005. She is an attorney at law and a chartered trademark and patent attorney. She joined Ankara Patent in 2007 and is manager of the trademark oppositions team. She is also a founder member of the AIPPI's Turkish National Group and works in various AIPPI committees.



**Gözde Sezgin**

Marketing specialist

[gozde.sezgin@ankarapatent.com](mailto:gozde.sezgin@ankarapatent.com)

Gözde Sezgin graduated from the Department of Political Science and International Relations at Marmara University in 2008. She is a chartered Turkish trademark attorney and joined Ankara Patent in 2011 as a marketing specialist.