

Trademarks

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TURKISH PATENT [] INSTITUTE

“Industrial Property” is a concept, which pertains to the development and protection of human creativeness, inventions and original designs. All such activities are included in industrial property rights. The purpose of the development and protection of the said rights is to encourage the citizens to create their intellectual products in the most free and comfortable manner, to clarify the data for such products and guarantee the protection of the products, innovations, and technologies.

This particular brochure has been prepared to present information for the trademarks and registration of the trademarks at the introduction level. For further information, you may visit the web site of our Institution. There included detailed information on guidance about application forms, legislation, fees etc.

Hiring an attorney is not a requisite for filing applications. You may seek assistance from private trademark attorneys registered to our Institution.

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Trademark is a guiding clue during consumer's decision-taking time to purchase and use any product.



What is Trademark?

Trademarks are the signs of the goods and services provided by any enterprise to make them distinct from those provided by other enterprises. Words, letters, numbers, drawings, pictures, figures, colours, logos, labels and a combination of these used specifically for the purpose of distinction of such goods and services may be accepted as trademark.

Protection of the trademarks

The trademarks are protected mainly through registration. Registration of a trademark makes available a sound protection against particularly disputes arising from similarity or identical aspects, which may lead to confusion.

Many people consider that registration of the commercial title and the commercial company into the trade registration offices mean simultaneous protection of the trademark. This is the most common misperception. It is important to comprehend the differences between the commercial titles and the trademarks. Commercial title is the full name of your company e.g. "Abc Kimya Sanayi Anonim Şirketi" etc and identifies your company. Such titles generally end with "Ltd. Co." or "Corp.", which defines the legal structure of the company. The trademark is the sign, which makes your product/products different than others. Any company may have various trademarks. For example; "Abc Kimya Sanayi Anonim Şirketi" may use different trademarks for the different products marketed by the said company. Such trademarks may not only be similar with the commercial title (e.g. "ABC") but also a totally different wording than the commercial title (e.g. XYZ).

What rights are acquired through registration of the trademark by the trademark holder.

- ▶ Registration of a trademark shall grant the holder of the said trademark the right of sole use of the trademark and protect unauthorised use of such trademark.
- ▶ It grants the right of unauthorised use of any mark which may distort the distinctive character of any registered trademark, provide unfair advantage through the creditability of any registered trademark, or lead to any confusion with respect to the similar or identical goods and services which fall within the scope of the trademark registration.



- ▶ Any registered trademark may be assigned to another, inherited to the successors, licensed for utilisation rights, pledged or denominated as a guarantee.
- ▶ The trademarks not yet registered cannot enjoy the rights and protection through the law pertinent to registration and protection of trademarks.

The basic reasons obstructing the registration of a trademark

It is important to take into account the reasons, which may obstruct the registration of a trademark. The filed applications for registration of a trademark shall be rejected in the following cases, which are named as "Absolute Reasons".

- ▶ The signs with no distinctive feature,
- ▶ The signs similar or identical with the previously registered or already filed trademark falling in the similar or identical scope of the goods or services,
- ▶ The signs indicating type, sort, feature, quality, objective, value, geographical sources for the goods or services for which registration is sought.
- ▶ The signs which allow differentiation of any occupation and members of the artistic or commercial groups or used commonly by any commercial community along with the trademarks which include the names exclusively or principally,
- ▶ The signs figuratively indicating the good or its essential value which is stemming from the natural structure or as a result of the technical processes of the product to be registered,
- ▶ The marks misleading the public in view of the quality, quantity or place of production, geographical source of the goods or services.
- ▶ Country flags, military or dynasty armorial bearings submitted to WIPO International Bureau, seals and emblems of the countries and the international organisations,
- ▶ Words and signs representing religious values and symbols,
- ▶ Signs and words detrimental to public order and general ethical rules,
can not be registered as a trademark.



**Competition today is among the trademarks.
You may protect your trademark from
imitations and unfair competition.**

The companies may register more than one trademark. It is also possible to make use of more than one registered trademark simultaneously.



The signs on the trademarks

It is not a must to use the symbols such as ®, TM, SM or similar symbols and they do not provide additional protection. In addition, use of such symbols may be the proper way to inform the others of the fact that the said sign is a trademark and to warn the violators and the imitators. TM symbol shows any sign that is a trademark while ® is used when the trademark is registered. For service marks, SM symbol is used.

Is registration of a trademark a must?

Although registration of a trademark is not a must, registration is the most significant means of evidence on the trademark and of the hindrance of the trademark violations. Therefore, registration of the trademarks in the countries where commercial activities are established is highly recommended.



Filing an application for the registration of a trademark

A properly completed form should be submitted to the Turkish Patent Institute for the application of registration. No application by fax is acceptable and the applications should be made personally or through post.

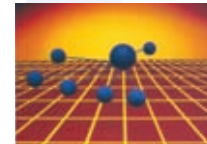
Documents necessary for filing an application

In order to validate an application for registration of a trademark;

- ▶ The form completed on the computer or typed,
- ▶ 5 each sample trademark,
- ▶ Original of the receipt of filing fees.

Should be submitted to the Turkish Patent Institute.

For joint trademarks or guaranteed marks, the technical specification furnished in accordance with the provisions stipulated in the relevant regulations should also be submitted.





Similarity search prior to application



The trademark for which an application for registration is to be made, may be searched at the earlier stage whether it is previously registered in another person's name or any application made therefore. The pre-search may be conducted by the Turkish Patent Institute in return of a fee and it can also be made through the web site of the Turkish Patent Institute free of charge.

Acquiring the right to register a trademark.

- ▶ Natural and Legal persons residing within the borders of the Republic of Turkey,
- ▶ Natural and legal persons dealing with commercial activities in the Republic of Turkey or any such persons with commercial attribute,
- ▶ Paris Convention and World Trade Organisation,
- ▶ Natural and legal persons dealing with commercial or industrial activities in the countries who are the parties to the Establishment Contract or residing in such countries and the citizens of the Member Countries,
- ▶ The citizens of the countries who grant the Turkish citizens the right of trademark protection legally or actually,
Shall have the right to register trademarks in the

Period of protection of a trademark

Any registered trademark shall be protected for a period of 10 years starting from the date of filing application. It is also possible to protect the trademark for a limitless time by renewing the same in each 10-years period.

The request for renewal should be made within 6 months prior to expiration of the protection period. Referring to the trademarks for which no request for renewal is made within the stipulated period, such a request may be made within 6 months subsequent to expiration of the 10-years period provided that additional fee is to be paid.



**The only address for trademark registration is
“Turkish Patent Institute,
Department of Trademarks”.**

Pains should be taken to register the trademark prior to utilisation. The risks that shall be encountered after recognition of the trademark at the desired level should be taken into consideration.



Expiration of trademark rights

The rights on any registered trademark arising from registration shall expire in the following cases:

- ▶ No renewal request after 10-years protection period,
- ▶ The trademark holder waives from trademark rights,
- ▶ Nullity of the trademark by the courts

Requirements for utilisation of the trademark

The Judicial Decree in Effect of Law numbered 566 for the Protection of the Trademarks stipulates that if the trademark is not used for a period of 5 years uninterruptedly, then it shall be the reason for cancellation. Consequently, in trademark applications for registration, only the intended production or presentation of the goods and services should be specified. Registration of a trademark, which includes goods and services that are not to be used shall unnecessarily increase the registration costs and lead to cancellation of the trademark.



Nullity of the trademark

- ▶ The trademarks which are not used for a period of 5 years from the date of registration,
- ▶ The trademarks which have become a generic name,
- ▶ The trademarks with misleading nature due to its utilisation,
- ▶ The trademarks registered in spite of an obstruction for registration,

May be nullified by the decision of the courts.




International Registration of the Trademarks



As in the case of all industrial property rights, registration and protection of the trademarks are national rights. So, any registered trademarks may enjoy the rights arising from registration only within the boundaries of the country where it is registered. Therefore, in order to benefit from the rights arising from registration, the trademarks should be separately registered in all of the countries of activity. Since Turkey is a party to Madrid Protocol for the international registration of the trademarks starting from January 01, 1999, the Turkish citizens, those residing in Turkey and those dealing with commercial or industrial activities in Turkey may apply for European Community Trademark (CTM) in 66 countries who are parties to the Madrid Protocol via Turkish Patent Institute. The application for registration to be made within the scope of Madrid Protocol shall be evaluated separately by each country and the decision for or against registration shall be made in accordance with the legislation of the relevant country. Consequently, while some applications are concluded with registration in several countries, they may be rejected in the others.

In order to apply for registration within the scope of Madrid Protocol, there should be a trademark already registered or filed in Turkey and the international application for registration should comply with the said trademark. The international application depends on the national trademark for a period of 5 years and rejection, cancellation or nullification of the national trademark leads to cancellation of the international registration.

Advantages of Madrid System



The major advantage of Madrid System is the filing of an application by the trademark owner and registration of the trademark through single application in all of the countries included in the system in one language, fee and expiration date.

Then, the international registration procedures proceed and are renewed through a single process.

For further information regarding international registration of the trademarks, please visit www.tpe.gov.tr or www.wipo.int/madrid web sites.

Minor changes to the trademarks are considered as imitation unless the principal elements of the trademark are distorted.

The registered trademark is under protection for a period of 10 years and it is possible to extent this period eternally.



Community Trademark

The Community Trademark is a trademark system, which is commonly used in all of the countries that are members of the European Community. The Trademarks and Designs Office of the Community (OHIM) executed the examination and registration procedures. The applications for Community Trademarks can be made directly to the Community's Trademarks and Designs Office, the Trademark-Patent Offices in the member countries or Turkish Patent Institute within the frame of Madrid Protocol. The registered Community Trademark provides equal rights, which are valid in all member countries to the holder of the trademark.

Violations of the Trademarks Rights

The registration of any trademark does not provide any additional protection but solely functions as the determination and registration of a right. So, in case of unfair utilisation of the trademark by the others and violations of the trademarks, the holder of the trademark should monitor such unfair utilisation and prevent the violations based on the rights stemming from the registered trademark through the judicial procedures at the competent courts.

Penalties to be applicable in case of violations on the trademark rights

Depending on the nature of the offence, imprisonment for a period of 1 to 4 years, fine amounting to 15.570 to 51.150 New Turkish Lira (YTL), and closure of the business place not less than 1 year and prohibition from commercial activities are the applicable penalties





What is Turquality?



Turquality, which certifies systematic quality management in all processes from the product designing phase to marketing on the shelves and targeting to establish an upper identification as a guarantor, has been drawn up in the form of a support program, which contributes monetarily and managerially on the value added products of Turkey in order to differentiate such products from the other locally and internationally competitive products. The Turquality project, which is aimed at supporting the quality image of the Turkish trademarks which attained certain standards in the international markets and increasing the reputability of such products is rooted by the Undersecretariat of the Foreign Trade, Turkish Exporters Assembly and the Union of İstanbul Textile and Ready-Made Garment Exporters.

