

TURKISH REPUBLIC
TURKISH PATENT AND TRADEMARK OFFICE
Trademarks Department

**PROTOCOL RELATING TO THE MADRID AGREEMENT CONCERNING
THE INTERNATIONAL REGISTRATION OF MARKS**

**Notification of a refusal of protection based on an opposition pursuant to Rule 17(3) of
the Common Regulations.**

Our Reference : 2019/126592 / ST

E9202202B-632908

I- Name and address of the Office making the notification:

TURKISH PATENT AND TRADEMARK OFFICE
Trademarks Department
Hipodrom Caddesi No: 115
06330 Yenimahalle ANKARA
TURKEY

Telephone:+90 312 3031000

Telefax :+90 312 3031333

II- The international registration which is subject to refusal:

1501102 vivit

III- Name and address of the holder of the international registration which is subject to the refusal:

TEMAX BH D.O.O.

Poduzetni?ka zona, Dusine 17 76270 Ora?je BOSNIA AND HERZEGOVINA

IV- Name and address of the opponent:

HASAN HÜSEYİN YÜCEL

Gimat 13. Blok No:345 Yenimahalle Ankara TURKEY

The opposition has been filed on 24.04.2020

V- Grounds for refusal based on an opposition:

(6/1) An application for trademark registration shall be refused upon opposition if there exists a likelihood of confusion on the part of the public, including the likelihood of association with the earlier trademark, due to identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services covered.

Confusingly similar to the following mark(s) (extract(s) enclosed):

Evrak bilgisine <http://www.turkpatent.gov.tr> adresinden, "joyq51CDDD92" DYS No ve Evrak tarihinden erişebilirsiniz.

"e-imzalıdır"

National Registration Number(s)
2014 93608ivil

VI- Provision of the Industrial Property Code No.6769: **Article 6**
(The relevant provisions to the Turkish Trademarks Act are enclosed.)

VII- (i) ☐ Refusal for all the goods and services.

(ii) ☒ **Refusal for some of the goods and services:**

SINIF KODU : 29Meat, fish, poultry and game; meat extracts; preserved frozen, dried and cooked fruits and vegetables; jellies, jams compotes; eggs; milk, cheese, butter, yoghurt and other milk products; oils and fats for food.

VIII- GENERAL INFORMATION:

Appeals may be lodged against the refusal of the Office.

The holder of the international registration may lodge an appeal against this refusal. The appeal has to be lodged through the intermediary of a representative who must be registered as a trademark agent at TURKPATENT and who is domiciled in Turkey. The appeal must be received by the Turkish Patent and Trademark Office no later than 2 months after the notification date of this refusal by WIPO to the applicant or his representative. If no appeal is received within this time limit, the designation will be considered as refused protection in Turkey accordance with this refusal.

If the designation is accepted subsequent to appeal, the designation will be published in the Turkish Official Trademark Bulletin. This allows – 2 months from the date of publication – a party to file an opposition, which means that the designation may be the subject of a further refusal.

IX- Notification Date of Refusal (dd/mm/yyyy): 27.12.2020

X – Signature by the Office :
TURKISH PATENT AND TRADEMARK OFFICE
TRADEMARKS DEPARTMENT

Sibel TRKMEN
Trademark Examiner

**RELEVANT SECTIONS OF THE
INDUSTRIAL PROPERTY CODE NO: 6769**

**SECTION ONE
Trademark Right and Scope**

Signs that a trademark may consist of

ARTICLE 4- (1) Trademarks may consist of any signs like words, including personal names, figures, colors, letters, numbers, sounds and the shape of goods or their packaging, provided that such signs are capable of distinguishing the goods or services of one undertaking from those of other undertakings and being represented on the register in a manner to determine the clear and precise subject matter of the protection afforded to its proprietor.

Absolute grounds for refusal in trademark registration

ARTICLE 5- (1) The following signs set out below shall not be registered as trademark:

- a) Signs which may not be trademark according to Article 4;
- b) Signs which are devoid of any distinctive character;
- c) Signs which consist exclusively or includes as an essential element of signs or indications which serve in trade to designate the kind, type, characteristics, quality, quantity, intended purpose, value, geographical origin, or the time of production of goods or of rendering of the services or other characteristics of goods or services,
- ç) Signs which are identical to or indistinguishably similar to a trademark, which has been registered or which has been applied for registration, relating to identical goods and services or to goods and services of the identical type,
- d) Signs which consist exclusively or includes as an essential element of signs or indications used by everyone in the trade area or which serves to distinguish members of a particular professional, vocational or commercial group from others.

e) Signs which consist exclusively of the shape or another characteristic which results from the nature of the goods themselves or the shape or other characteristics which is mandatory to obtain a technical result or gives substantial value to the goods;

f) Signs which would deceive the public, for instance, as to the nature, quality or geographical origin of the goods or service;

g) Signs which shall be refused pursuant to Article 6ter of the Paris Convention;

ğ) Signs other than those covered by Article 6ter of the Paris Convention but which are of public interest, and which contain historical, cultural values, and emblems, badges or escutcheons for which the consent of the competent authority has not been given,

h) Signs that contain religious values or symbols;

ı) Signs which are contrary to public policy or to accepted principles of morality;

i) Signs which consist of a registered geographical sign or which contain a registered geographical sign.

(2) If a trademark has been used before the application, and through this use, has acquired distinctive character in respect of the goods and services subject to the application, the registration of this trademark may not be refused in accordance with subparagraphs (b), (c) and (d) of the first paragraph.

(3) A trademark application may not be refused according to subparagraph (ç) of the first paragraph if a notarial document indicating the clear consent of the prior trademark proprietor for the registration of the application is submitted to the Office. Procedures and principles regarding the letter of consent shall be determined by regulation.

Relative grounds for refusal in trademark registration

ARTICLE 6 - (1) An application for trademark registration shall be refused upon opposition if there exists a likelihood of confusion on the part of the public, including the likelihood of association with the earlier trademark, due to identity with, or similarity to, the earlier trademark and the identity or similarity of the goods or services covered.

(2) A trademark application for the registration of an identical or indistinguishably similar trademark filed by a commercial agent or representative in his own name without the trademark proprietor's consent and without any justifiable ground shall be refused upon the trademark proprietor's opposition.

(3) If a right to a non-registered trademark or to another sign used in the course of trade was acquired prior to the date of application or the date of the priority claimed for the application for registration of a trademark, the trademark application shall be refused upon opposition of the proprietor of that prior sign.

(4) Trademark applications which are identical or similar to the well-known marks within the context of Article 6 bis of the Paris Convention, shall be refused upon opposition in respect of the identical and similar goods or services.

(5) A trademark application which is identical with, or similar to, an earlier registered trademark or application irrespective of whether the goods or services for which it is applied or registered are identical with, similar to or not similar to those for which the

latter trademark is applied for, and the use of the latter trademark without due cause would take unfair advantage of, or be detrimental to the distinctive character or the repute of the earlier trade mark due to the reputation the earlier trademark has in Turkey; shall be refused upon opposition of the proprietor of that earlier trademark.

(6) An application for registration of a trademark shall be refused upon the opposition of the right holder if it consists of a person's name, trade name, photography, copyright or any other intellectual property right of another.

(7) An application for registration of a trademark identical to or similar to a collective mark or a guarantee mark with identical or similar goods or services, that is filed within three years following the expiration of the protection of the collective mark or guarantee mark due to non-renewal shall be refused upon opposition of the previous right holder.

(8) An application for registration of a trademark identical to or similar to a registered trademark with identical or similar goods or services, that is filed within two years following the expiration of the protection of the registered trademark due to non-renewal shall be refused upon opposition of previous trademark proprietor provided that the trademark has been used during this period.

(9) Trademark applications filed in bad faith shall be refused upon opposition.

SECTION TWO

Application, Opposition and Appeals

PART ONE

Application, Priority Right and Examination

Application conditions, classification and division

ARTICLE 11- (1) Trademark application consists of;

(3) Goods or services for which application is filed shall be classified in accordance with Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, which was ratified pursuant to the decision of the Council of Ministers dated 12/7/1995 numbered 95/7094. The Office may perform necessary corrections on classes and class numbers belonging to goods and services in the application.

PART TWO

Observations of Third Parties, Oppositions and Appeals, and Examination of Oppositions and Appeals

Observations of third parties

ARTICLE 17- (1) After the publication of the trademark application, everyone may submit to the Office their written and justified observations that the trademark application should not be registered within the scope of the subparagraphs of the Article 5, with the

exception of subparagraph (ç), until the registration of the trademark. However, these persons may not be party to the proceedings before the Office.

(2) The Office shall evaluate these observations and if it comes to the conclusion that these observations are correct, it shall refuse the trademark application partially or as whole.

Opposition against publication

ARTICLE 18- (1) Oppositions concerning a trademark application that was published in the Bulletin should not be registered in accordance with Articles 5 or 6, shall be filed by relevant persons within two months following the publication of the trademark application.

(2) The opposition shall be made to the Office in written and with justification. If the grounds for opposition are not submitted to the Office within the period set out in the first paragraph, the opposition shall be deemed as not made. In order for the examination of the opposition, it is mandatory that the opposition fee is paid within the period of the opposition and that the information regarding the payment of the fee is submitted to the Office within the same period.

Examination of the opposition against publication

ARTICLE 19- (1) The Office shall request the applicant to submit his observations concerning the oppositions within the prescribed period. The Office, if it considers necessary, may request the parties to submit additional information and documentation. If observations or requested additional information and documents are not submitted to the Office within the prescribed period, the opposition shall be examined in accordance with the existing information and documents.

(2) Regarding oppositions filed in the scope of the first paragraph of Article 6, provided that the trademark, which is the ground for opposition, has been registered for at least five years at the date of application or date of priority of the application for which the opposition is filed, upon the request of the applicant, it shall be requested from the opponent to submit evidence proving that he had genuinely used his trademark on the goods and services relating to the opposition during the five-years period before the date of application or the date of priority of the latter application or whether he has a proper reason for not using his trademark during that period. In case the opponent fails to prove the aforesaid, opposition shall be refused. If it is proven that the trademark, which is the ground for opposition, has been used only for some of the goods or services which are covered by registration, then the opposition shall be examined taking into account the goods or services whose use is proven.

(3) As a result of the examination, if it is concluded that the trademark should not be registered for some or all of the goods or services for which application is filed, the application shall be refused concerning these goods or services. Otherwise, the refusal of the opposition shall be decided.

(4) If the Office considers necessary, it may encourage the parties to make a friendly settlement. For matters related to the friendly settlement, the provisions of Turkish Mediation Act on Civil Disputes dated 7/6/2012 numbered 6325 shall be applied.

(5) Procedures and principles relating to the opposition against publication shall be determined by regulation.

Appeals

ARTICLE 20- (1) Parties adversely affected from decisions taken by the Office within the context of this Book may appeal against the decisions before the Office.

(2) Appeal shall be made in written and with justification to the Office within two months from the notification date of the decision. In case the justification of the appeal is not submitted within this time, the appeal shall be deemed as not made. In order for the examination of the appeal, it is mandatory that the appeal fee is paid within the period of the appeal and that the information regarding the payment of the fee is submitted to the Office within the same period. After the expiration of the appeal period, the grounds for appeal may not be altered and new grounds may not be added.

Examination of appeals

ARTICLE 21- (1) Appeals, which do not have any formal deficiency, shall be examined by the Board.

(2) The Board shall request from the parties to submit their observations concerning the appeals within the prescribed period. If the Office considers necessary, it may request the parties to submit additional information and documentation. If requested additional information and documents or observations are not be submitted to the Office within the prescribed period, the appeal shall be examined in accordance with the existing information and documents.

(3) If the Board considers necessary, it may encourage the parties to make a friendly settlement in accordance with the fourth paragraph of the Article 19 for appeals against decisions based on the third paragraph of the Article 19.

(4) The Board shall give the final decision of the Office as a result of the examination and evaluation it shall conduct.

SECTION SEVEN

Collective and Guarantee Mark

Guarantee mark and collective mark

ARTICLE 31- (1) A guarantee mark is a sign that serves for guaranteeing the common characteristics of the undertakings, production methods, geographical origin and quality of those undertakings, under the control of the proprietor of the mark.

(2) The use of a guarantee mark for goods or services of the trademark proprietor or undertakings economically linked to proprietor is prohibited.

(3) Collective mark is a sign used by a group of undertakings of producers or traders or providers of services.

(4) Collective mark serves the purpose of distinguishing the goods and services of the undertakings from those of other undertakings.

Technical specifications for the guarantee mark or collective mark

ARTICLE 32- (1) It is mandatory to submit a technical specification indicating the procedures and principles for use of the mark when filing an application for registration of a guarantee or a collective mark.

(2) The technical specification of the guarantee mark shall indicate the common characteristics of the goods and services under guarantee, methods of using the mark, how and how often the inspections shall be made after the right concerning the use of the mark is granted and the sanctions to be imposed in case of use contrary to the technical specification.

(3) The technical specification of the collective mark shall specify the undertakings authorized to use the collective mark and the membership conditions for the community composed of these undertakings, terms of using the mark and, if available, the sanctions. All undertakings in the group shall act collectively for the registration of collective mark and the surrender from the collective mark right.

(4) Each undertaking in the group shall be authorized to file legal proceeding by itself.

(5) Amendments to be made in the technical specification shall not be applicable until they are approved by the Office.

(6) In case the technical specification does not contain the requirements set out in second and third paragraphs or it is contrary to public order or accepted principles of morality, the owner of the mark shall be notified by the Office to make required amendments in technical specification. If the owner of the mark does not make the required amendments and correct the technical regulation within six months following the notification, the request for the registration of the guarantee mark or the collective mark shall be rejected

(7) In case of application of relevant persons, public prosecutors or the relevant public institutions on the grounds that the owner does not take necessary measures in order to prevent the continuous use of the collective mark or the guarantee mark contrary to the technical specification, the mark shall be revoked unless the said contrary use is corrected within the prescribed period.

(8) Procedures and principles regarding the technical specification are specified with a regulation.

BOOK FIVE

Common and Other Provisions

SECTION ONE

Common Provisions

Authorized representatives and notification

ARTICLE 160- (1) Natural or legal entities and the registered trademark or patent attorneys authorized by those persons may perform an operation before the Office.

(3) The persons whose domiciles are situated abroad shall only be represented by trademark or patent attorneys. Any operations conducted by such legal entity without being represented by an attorney shall be deemed void.

(4) When a trademark or patent attorney is assigned; all operations shall be performed by the attorney. The notification made to the attorney shall be deemed as made to the principal.

(5) When deemed necessary, the Office may request the submission of the original or certified copy of the power of attorney evidencing the authority of the attorney.

(6) The notifications to be made in the implementation of this Code shall be delivered in electronic environment by placing at the electronic mailbox allocated for the natural person or legal entity by the Office without being bound to the procedures related to electronic notification regulated in Article 7/a of the Notification Law no. 7201 of 11/2/1959, provided that the approval of the addressee is taken. The notifications made in this manner shall be deemed as delivered on the first date the addressee logs into the mailbox after the document to be notified is placed at the inbox and in any case, by the end of the tenth day following the placement of the document at the inbox.

(7) The notifications to be made in the scope of the implementation of this Code shall be made through the related Bulletin without being bound to the provisions of Article 29 of the Law no. 7201 related to the form of notification by publication. The notifications made in this manner shall be deemed as delivered seven days after the publication date of the Bulletin.

(8) The Office is authorized to establish any kind of technical infrastructure related to applications and notification in electronic environment, or use the already established ones, stipulate the applications and notifications be made electronically and determine other procedure and principles related to the items to be notified electronically and the electronic applications and notifications.

Similar Trademark(s)

App./Reg. No	2014 93608	Protection Date	17.11.2014
Int. Reg. No			
Mark	vivil		
Nice	29 /		
Classification			
Holder(s)	HASAN HÜSEYİN YÜCEL (Gimat 13. Blok No:345 Yenimahalle Ankara)		

VİVİL

Et, balık, kümes ve av hayvanlarının etleri ile her nevi işlenmiş et ürünleri.

Kuru bakliyat.

Hazır çorbalar, bulyonlar.

Zeytin, zeytin ezmeleri.

Süt ve süt ürünleri (tereyağı dahil).

Yenilebilir bitkisel yağlar.

Kurutulmuş, konservelenmiş, dondurulmuş, pişirilmiş, tütsülenmiş,

salamura edilmiş her türlü meyve ve sebzeler, salçalar.
Kuru yemişler.
Fındık ve fıstık ezmeleri, tahin.
Yumurtalar, yumurta tozları.
Patates cipsleri.
