

**TURKISH PATENT INSTITUTE
TRADEMARKS DEPARTMENT**

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

**Notification of a refusal of protection not based on an opposition pursuant to Rule
17(2) of the Common Regulations.**

Our Reference : 2016/16197 / MY

E.2016-OE-134862

24.03.2016

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

**TURKISH PATENT INSTITUTE
Trademarks Department
Hipodrom Caddesi No: 115
06330 Yenimahalle ANKARA
TURKEY**

**Telephone:+90 312 3031000
Telefax :+90 312 3031333**

**II- The international registration which is the subject of the refusal:
1285806**

**III- Name and address of the holder of the international registration which is the subject of the refusal:
HENKEL AG & CO. KGAA**

**IV- Provisions of the Decree-Law No:556 pertaining to the Protection of Trademarks:7/1(a) 7/1(c)
(The relevant provisions of the Turkish Trademarks Act are enclosed.)**

V- Grounds for provisional refusal:

7/1(a) Lack of distinctive character.

7/1(c) Trademarks which consist exclusively of signs or or indications which serve in trade to indicate the kind, characteristics, quality, intended purpose, value, geographical origin, or designate the time of production of the goods or of rendering of the service or other characteristics of goods or services.

VI- Provisional refusal for all of goods and services

Evrak bilgisine <http://www.tpe.gov.tr> adresinden "1ghw10028407" DYS No ve Evrak tarihinden erişebilirsiniz.

"e-imza" ile onaylanmıştır

VII- GENERAL INFORMATION:

Appeals may be lodged against the refusals of the Institute.

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

If the designation is accepted subsequent to an appeal, the designation will be published in Turkish Official Trademark Bulletin. This allows -3 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.

VIII- Notification Date of Refusal : 10.04.2016

IV- Signature by the Office:

TURKISH PATENT INSTITUTE
TRADEMARKS DEPARTMENT

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Trademark Examiner

20160410

RELEVANT SECTIONS OF THE
DECREE-LAW NO.556 PERTAINING TO
THE PROTECTION OF TRADEMARKS

SECTION TWO

Sign of Which a Trademark May Consist and Means Whereby a Trademark is Obtained

Signs of Which a Trademark May Consist

Article 5 - A trademark , provided that it is capable of distinguishing the goods and services of one undertaking from the goods and services of other undertakings, may consist of all kinds of signs being represented graphically such as words, including personal names, designs, letters, numerals, *shape of the goods or their packaging* and similarly descriptive means capable of being published and reproduced by printing.

Trademark may be registered along with the product or the packaging. However, the registration of the product or the packaging does not grant exclusive rights.

Means Whereby a Trademark Right is Obtained

Article 6 - Protection for a trademark under this Decree Having the Power of Law is obtained by registration.

Absolute Grounds for Refusal for Registry of a Trademark

Article 7 - Following signs shall not be registered as a trademark:

- a) signs which do not conform with the provisions of Article 5,
- b) *trademarks identical or confusingly similar with a trademark registered earlier or with an earlier date of application for registration in respect of an identical or same type of product or services,*
- c) trademarks which consist exclusively of signs or indications which serve in trade to indicate the kind, *characteristics*, quality, intended purpose, value, geographical origin, or designate the time of production of the goods or of rendering of the service or other characteristics of goods or services,
- d) trademarks which consist exclusively of signs and names used to distinguish specific groups of craftsmen, professionals or tradesmen or have become customary in the current and established practices of the trade,
- e) signs containing the shape of the product which results from the nature of the good, which is necessary to obtain a technical result or which gives substantial value to the good,
- f) trademarks which are of such a nature as to deceive the public, such as to the nature, quality, place of production or geographical origin of the goods and services,
- g) trademarks which have not been authorised by the competent authorities and are to be refused pursuant to Article 6ter of the Paris Convention,
- h) trademarks containing badges, emblems or escutcheons other than those covered by Article 6ter of the Paris Convention which have not been authorised by the competent authorities and are of particular historical and cultural public interest,
- i) trademarks which have not been authorised by their owners, well known marks according to 6bis of the Paris Convention,
- j) trademarks which contain religious symbols,
- k) trademarks which contrary to public policy and to accepted principles of morality.

The provisions of (a), (c) & (d) can not be invoked to refuse the registration of a trademark which has been used before the registration and has acquired through this usage distinctive character in respect of the goods and services for which it is to be registered.

Classification

Article 24 - The goods and services in the respect of the trademark to be registered shall be classified in conformity with the international classification of goods and services. The principles of classification shall be specified in the Implementing Regulation.

PART SIX
Appeals Against the Decisions of the Institute

Appeals

Article 47 - Appeals may be placed against the decisions of the Institute.

Where an appeal is made for an interim decision, a separate appeal shall be allowed upon decision becoming final.

Persons Entitled to Appeal

Article 48 - Any party adversely affected by a decision of the Institute may appeal. Any other parties to the proceedings shall be parties to the appeal as of right.

Form of Appeal

Article 49 - Notice of appeal must be filed in writing at the Institute within two months after the date of notification of the decision. The fee for appeal has to be paid when filing of the notice for the appeal to be examined. The grounds for appeal must be filed in a written statement within two months of the notification of the decision. Where the statement of grounds for appeal has not been submitted within this period the appeal shall be deemed not to have been filed.

Rectifying a Decision

Article 50 - The related department of the Institute upon deciding that the appeal is true and right may rectify its decision. This shall not apply where the appellant is opposed by another party to the proceedings.

If the appeal is not found acceptable by the related department, the appeal shall be forwarded to the Re-examination and Evaluation Board by the department without comment as to its merits.

Examination of Appeals

Article 51 - The Re-examination and Evaluation Board shall consider the appeal if the appeal is admissible.

The Re-examination and Evaluation Board shall invite the parties to submit their observations within the period prescribed by the Implementing Regulation, on the observations of the other parties or those of itself.

Decision in Respect of Appeal

Article 52 - After the examination, the Re-examination and Evaluation Board shall deliver its decision.

PART SEVEN
GUARANTEE MARKS AND COLLECTIVE MARKS

Guarantee Marks

Article 54 - A guarantee mark, under the control of the proprietor of the mark, serves the purpose of the guaranteeing the common characteristics of the undertakings, production methods, geographical sign and quality of those undertakings.

Collective Mark

Article 55 - Collective mark is a mark used by a group of undertakings of producers or traders or providers of services.

Collective mark serves the purpose of distinguishing the goods and services of the undertakings belonging to the group from the goods and services of the other undertakings.

Technical Regulations of the Guarantee and Collective Marks

Article 56 - When filing an application for registration of a guarantee or a collective mark, a regulation specifying the ways and means of using the mark must be filed.

The guarantee mark regulation shall contain provisions regarding the common characteristics of the goods and services under guarantee and supervision procedures as to the use of the mark and the penalties to be administered when necessary.

The collective mark regulation shall specify the undertakings authorised to use the mark. Proprietors of a collective mark shall act collectively for the registration of a collective mark.

Application by one of the parties shall be sufficient for the renewal of a collective mark.

Amending the Technical Regulations

Article 57 - Technical regulations cannot be altered unless approved by the Institute.

Any changes to be made in the technical regulations where they are in violation of the second and third paragraphs of Article 56 or contrary to public policy and principles of morality shall be rejected by the Institute.

Regulations in Violation of the Decree Having the Power of Law

Article 58 - Where a technical regulation does not conform to the requirements of Article 56, Institute shall notify the proprietor of the mark to undertake the necessary alterations. Where the proprietor of the mark does not make the changes requested and alter the regulation accordingly the request for the registration of the collective mark or the guarantee mark shall be rejected.

Use in Violation of the Technical Regulation

Article 59 - Where the proprietor of a mark disregards a use of a collective or a guarantee mark which constitutes a violation of the technical regulation, and neglects to remedy the infraction within the time determined by the court in respect of an action brought by one of the parties, the mark shall be repealed by the court.

Transfer and Licensing

Article 60 - The transfer or licensing of a guarantee mark or a collective mark shall become valid only after entry in the Trademark Register.

PART NINE Representation and Agents

Representation before the Institute

Article 80 - Representation before the Turkish Patent Institute for matters of trademarks may only be undertaken by the following:

- a) natural or legal persons who have filed an application. Legal persons may only be represented by those duly powered by their respectively authorised bodies.
- b) trademark agents.

Those who are domiciled outside the country can only be represented by trademark agents.

Where an agent has been appointed, all procedures are executed through the agent. All notices made to the agent shall be considered to have been made to the assignee.

Similar Trademark(s)