

**Trademark applications still subject to *ex officio* examination for similarity
Turkey - Kenaroglu Intellectual Property**

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In January 2015 the Third Chamber of the Ankara Intellectual Property Court applied to the Constitutional Court seeking abolition of Article 7(b) of the Trademark Decree-Law.

Article 7(b) sets forth absolute grounds for refusal of a trademark application where the mark for which registration is sought is identical or indistinguishably similar to an earlier mark and covers the same or similar goods or services. Cancellation of this article, without the enactment of a new provision to replace it, would have rendered the role of the Turkish Patent Institute (TPI) almost redundant, as it would have no longer been required to conduct *ex officio* examinations of applications to determine whether they fell under the scope of this provision.

Had Article 7(b) been abolished, trademark owners would have been able to protect their trademarks against identical or indistinguishably similar applications only by filing an opposition during the publication period. Failure to do so could have resulted in registration of the conflicting trademark.

The lower court sought the abolition of Article 7(b) on the grounds that it was contrary to Articles 2, 5, 13, 35, 48 and 91 of the Constitution. This argument can be explained simply by a general principle in law: property rights – including intellectual and industrial property rights – can be granted, limited or cancelled only by a law, not a decree-law. Article 7(i) of the decree-law was previously abrogated by the Constitutional Court in May 2015 at the request of the same court on the same grounds.

By contrast, however, on January 7 2016 the Constitutional Court rejected the request to abolish Article 7 (b), on the grounds that it was brought into force by Article 13 of Law 5194 on June 22 2004.

As a result of this decision, trademark applications will remain subject to *ex officio* examination for similarity by the TPI pursuant to Article 7(b) of the Trademark Decree-Law. As the onus of preventing the registration of conflicting trademarks remains with the TPI, trademark owners will have no new obligations in this respect.

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