

### Constitutional Court abolishes Article 7/1-i of Decree Law No 556 Turkey - Kenaroglu Intellectual Property

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Following an appeal by the Third Chamber of the Ankara Civil IP Court, the Turkish Constitutional Court has abolished Article 7/1-i of [Decree-Law No 556 on the Protection of Trademarks](#) on the ground that it was contrary to Articles 2, 5, 13, 35, 48 and 91 of the Turkish Constitution, effective as of May 27 2015.

Article 7/1-i set forth an absolute ground for refusal of unauthorised applications for the registration of well-known trademarks, in conformity with the principles of Article 6*bis* of the [Paris Convention](#).

A trademark did not need to be in use, registered or even well known in Turkey to enjoy the protection granted by Article 7/1-i. Any trademark that met the requirements set forth by Article 6*bis* of the Paris Convention and was well known in at least "one of the member states" was protected under Article 7/1-i, and the [Turkish Patent Institute](#) (TPI) was expected to reject *ex officio* all unauthorised applications filed by third parties for the registration of well-known trademarks for the same and/or similar goods/services.

The reason for the abolition of Article 7/1-i 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". The Constitutional Court abolished Article 7/1-i, in parallel with the [abolition of several other articles](#) of Decree-Law No 556, on the ground that the article was regulated within the scope of a decree-law - ie, not a law, but a governmental order - and that applications seeking to protect industrial property rights can be refused only on the basis of an existing "law".

Until a new law enters into force to replace Article 7/1-i, there is no legal instrument providing the same protection to well-known trademarks which are not registered (or subject to a pending application) and/or used (or even known) in Turkey.

Although Article 8/4 of Decree-Law No 556 also protects well-known trademarks, it cannot be used as a remedy in the absence of Article 7/1-i, as it protects "famous marks" which are registered, or are at least subject to a pending application in Turkey. Moreover, in contrast to Article 7/1-i, Article 8/4 is a relative ground for refusal which can be considered only upon opposition by the genuine owner of the famous mark. In other words, trademarks which happen to be "well known", but are not "famous" and are not registered (or subject to a pending application) in Turkey, cannot be protected by Article 8/4 against unauthorised applications by third parties.

The most reasonable legal ground to fill the gap created by the abolition of Article 7/1-i would be Article 35 of Decree-Law No 556, which provides for the refusal of trademark applications filed in bad faith, upon opposition. Article 35 has been the main legal ground for many TPI decisions, and thousands of applications have been partially or totally refused, upon opposition, based on the applicant's "obvious" or "suspected" bad faith. In the majority of such cases, applications rejected under Article 35 due to the applicant's bad faith concerned well-known trademarks.

As Article 35 provides only a relative ground for refusal of bad-faith applications, it would not cover and resolve every aspect of the problem. Nevertheless, bad faith will be the most reasonable basis for oppositions against unauthorised applications for well-known trademarks which are not registered or used in Turkey.

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