



DESIGN PROTECTION IN TURKEY

As soon as Turkey started to take an active role in international trade, intellectual property rights have recently increased in importance. Due to the effects of European Union harmonization process, Turkey has made and is still continuing to make several amendments on its national legislation for the purpose of protecting the intellectual property rights more extensively.

Industrial designs were being protected by unfair competition rules until 1995 when Turkey has adopted several intellectual property laws including the Decree Law No. 554 on the Protection of Industrial Designs ("the Decree Law No. 554") within the European Customs Union ("ECU") membership process.

The Decree Law No. 554, has failed to satisfy the needs in the course of time and the Draft Law on Protection of Designs ("the Draft Law") has been regulated, but has not become a law yet.

The Decree Law No. 554 regulates the provisions for the protection of registered designs. According to the Decree Law No. 554, unregistered designs shall be protected within the scope of general provisions.

Registered Designs

Registered Designs which are protected within the scope of the Decree Law No. 554 grant exclusive authority to their proprietors. In this regard, the proprietor has the authority and right to produce, launch to the market, sell, form a contract, import, commercialize and hold for trading the product which the registered design was applied upon. The proprietor, who has such broad authorizations, has a further right to prevent use of the aforesaid rights and authorities by third parties.

According to the Decree Law No. 554, a design must possess the criteria of novelty and individual character. However, for the reason that the system without examination is accepted under Turkish legislation, examination for checking the novelty and individual character would be conducted if an opposition and/or invalidation action is filed against the design application.

Unregistered Designs

Especially for the sectors in which the products/designs have limited commercial life, unregistered designs should be protected in order to avoid time loss during the registration process and high cost arising from the numerous designs.



According to the current Turkish legislation, unregistered designs, which are not regulated with special provisions like in British and European Union Law, shall be protected within the scope of general provisions, namely unfair competition provisions of the Turkish Commercial Code. Accordingly, unregistered designs are protected in the context of against causing confusion with someone else's property, commercial activity or business corporation. Moreover, unregistered designs may be protected within the scope of Law of Intellectual and Artistic Works ("Turkish Copyright Law") in case of meeting the conditions.

The Draft Law which was prepared in line with the European Union legislation, regulates individually the unregistered design rights. According to the Draft Law, unregistered designs shall also be protected within the scope of the rights granted to registered designs in case of possessing the novelty and individual character which are regulated in the Draft Law.

Comparison of Registered and Unregistered Designs

The design proprietor has a monopoly right on his registered design. Thus, the similarity with the registered design would cause design infringement even though the registered design is not counterfeited completely. Furthermore, negligence is not a requirement for liability in registered design infringement. Therefore, the existence of design infringement is accepted in case of determination of the similarity. However, unregistered designs do not provide monopoly right to its proprietor. Thus, the unregistered designs are only protected against copying. Moreover, the unregistered design proprietor must prove the negligence of the infringer.

The registered designs are protected for 25 years. Although the registered designs have broader protection in comparison with the unregistered designs; it is thought that the unregistered designs are protected longer than the registered designs. However, this confusion will be eliminated with the enactment of the Draft Law. According to the Draft Law, the unregistered designs will be protected for three years beginning from the unregistered design has been made available to the public.

The design registration is onerous for the reason of protracted and expensive registration process. However, the unregistered designs which are free of cost and formality provide convenience to its proprietor.

Conclusion

As a result, the registered designs have more advantages comparing to the unregistered designs. However, the unregistered designs should be protected at least for the sectors in which the products/designs have limited commercial life. Unfortunately, the current Turkish legislation is not sufficient to protect the unregistered designs. The Decree Law in force stipulates the registration for protection and delimitate the protection time. However, there is not any formal requirement or protection time for the unregistered designs protected under the unfair competition rules of the Turkish Commercial Code. This provides an unlimited protection to unregistered designs. Consequently, the enactment of the Draft Law which



complies with the European Union legislation would eliminate the problems regarding unregistered designs.