

**THE ACT FOR AMENDMENT
OF DECREE LAW OF THE PROTECTION ON THE TRADEMARK**

Act No. 5833

Acceptance date:21/1/2009

Article 1: Article 9 of Decree law of the protection on the trademark dated 24/6/1995 and no 556 had been changed as follows.

Article 9: The rights which had been provided by a registered trademark exclusively, belongs to the proprietor of the trademark. The proprietor of a trademark shall request to be prevented of acts in following described:

- a) using any sign which is identical with the registered trademark in relation to goods and services which are identical with those for which the trademark is registered,
- b) using of any sign which identity or similarities with the registered trademark and identity or similarity of the goods and services covered by the registered trademark and sign, therefore there exists a likelihood of confusion included likelihood of association by public between the sign and the trademark.
- c) using any sign which is identical or has similarities with the registered trademark and the signs, are not similar with goods and services covered with registered trademark, because of its recognition level, in Turkey will have an unfair advantage from reputation of the registered trademark or will damage the distinctive character of the registered trademark,

The following may be prohibited under the first paragraph,

- a) affixing the design to the goods or to the packaging thereof,
- b) offering the goods, putting them on the market or stocking them for these purposes under that sign, or offering or supplying services thereunder,
- c) entering the goods, under that sign at the customs area, is subjected to a process or a usage, which had been approved by the customs,
- d) using the sign on business, papers and in advertising.
- e) the person who uses the sign ,in the condition of not having the rights of using the sign or a legitimate connection,using identical or similar of the sign, on internet media, to create commercial impact, domain name, router code, keywords or in similar manner.

The rights conferred by a registered trademark shall prevail against the third parties from the date of publication of registration of the trademark. Occured after the publication of the trademark application in bulletin and, in the case of the announcement applying for the registry of trademark due to the prohibition of the said acts, the applicant entitles to file a compensation case. The court can not decide before the publication of the registration as regards validity of the claims which enounced.”

Article 2: Article 61 of Decree law no 556 had been changed as follows.

“Article 61: The following acts shall be considered infringements of a trademark:

- a) using the trademark as stated in the article 9, without any consent of proprietor of the trademark.
- b) the use of an identical or confusingly similar trademark without the consent of the proprietor of the trademark.
- c) the sale, distribution, putting to commercial use or importation, or to place at the customs area, is subjected to a process or a usage, which had been approved by the customs for such purposes, of goods bearing a trademark that is known or should be known to be an unlawful imitation, by using of an identical or confusingly similar trademark.
- d) extending or transferring the rights, which had been granted a licence by the proprietor of the trademark, to the third parties without the consent.”

Article 3 :The article 61/A of Decree Law no. 556, which had been inserted with the act dated 3/11/1995 and numbered 4128 had been changed as follows.

“Criminal Provisions”

Article 61/A: The person, who is producing, carrying or selling goods or services, as infringing with confusion or quoted to someone else’s trademark right, is punished with imprisonment between one and three years and pay criminal fines up to twenty thousand days.

The person who without authority, removes the sign which indicates the trademark protection that had been placed on the goods or packages, shall be imprisoned between one and three years and shall be criminal fined up to five thousand days

The person who make saving by selling, transferring, leasing or pledging, on someone else’s trademark right without authority is punished with imprisonment between two and four years and pay criminal fines up to five thousand days.

In case of the crimes defined in the paragraphs above, are committed under activities of legal persons, also the specific security measures shall be adjudged for them.

To judge the penalty due to the crimes defined in the above paragraphs, the trademark must be registered in Turkey.

Judicial inquiry and prosecution of crimes defined in the above, shall take place on a complaint.

Person who put in a sale or sell the goods by making infringement to the other person's trademark, in case of the notification of the place where the goods are coming from and the expose of the producer or the seizure on the produced goods, shall not be sentenced to any punishment."

ARTICLE 4- This Law shall enter into force on the date of its publication.

ARTICLE 5- This Law shall be executed by the Council of Ministers.

Translated by GUR Intellectual Property 27/01/2009