

Intellectual Property Law: Trademarks in Turkey



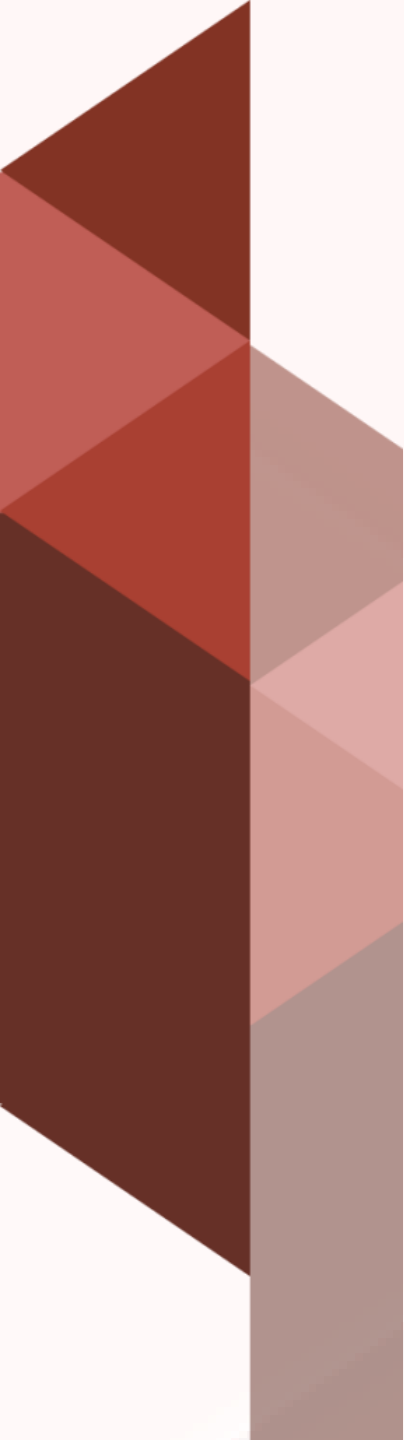
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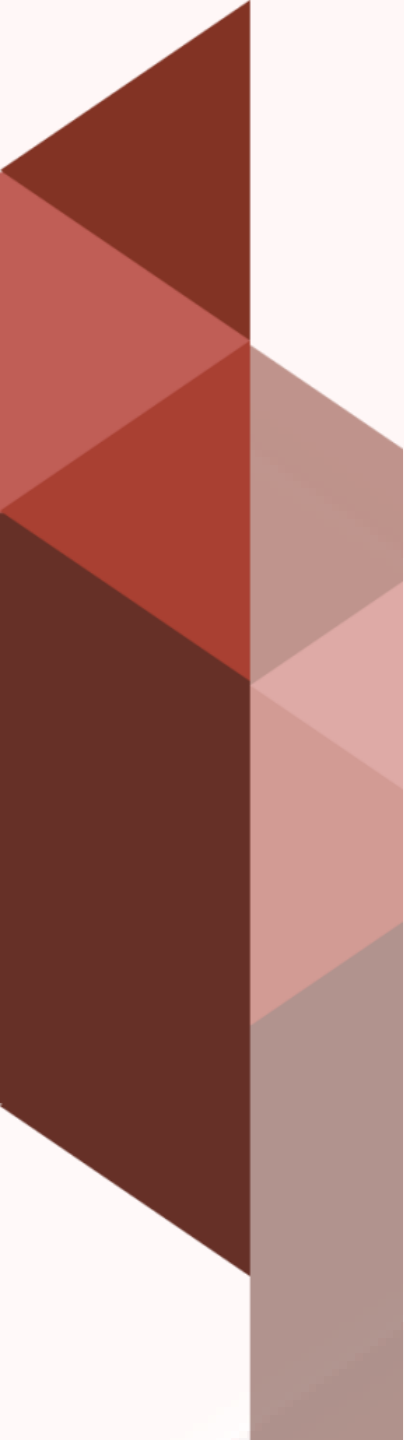
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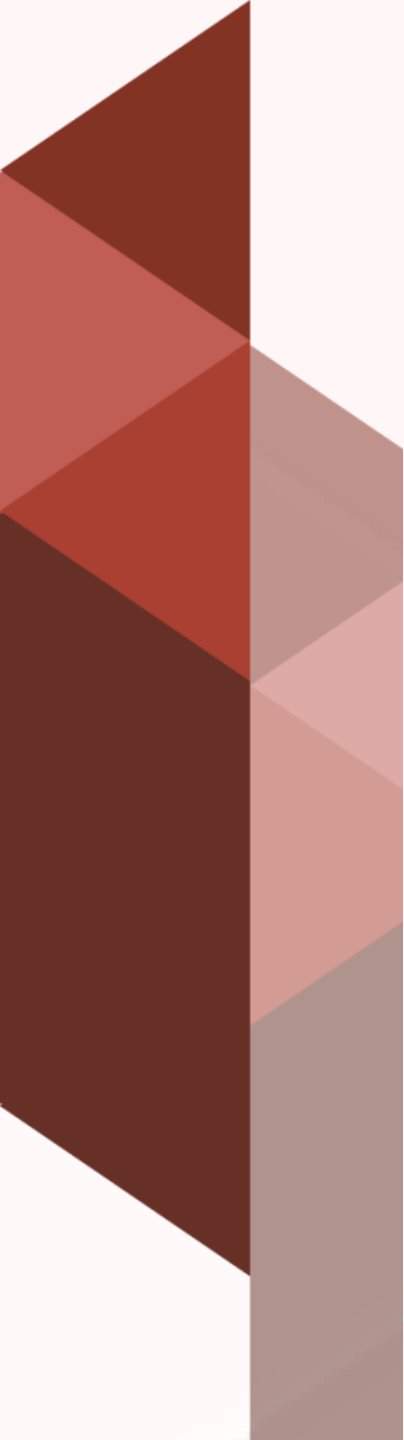
INTRODUCTION

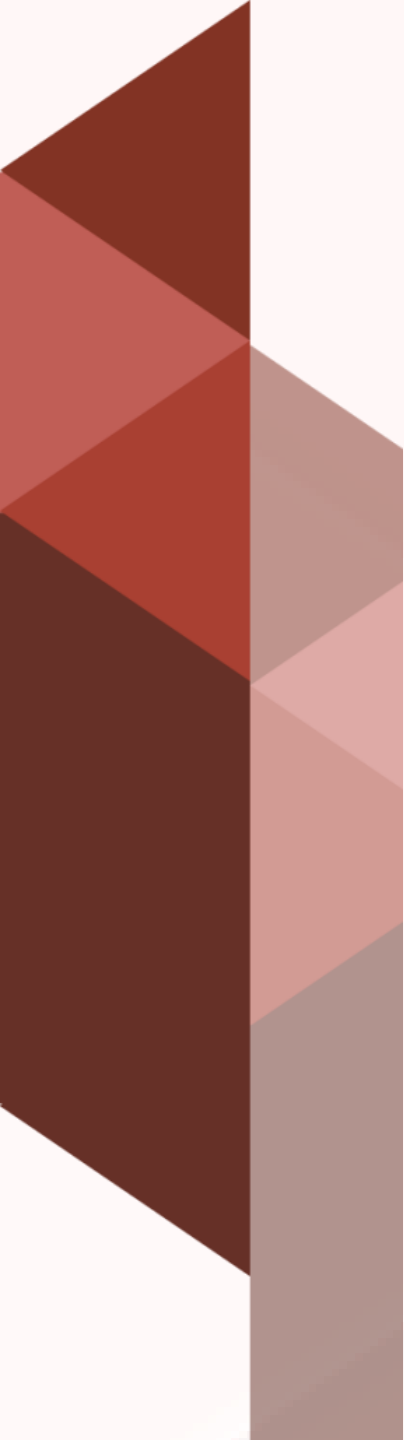
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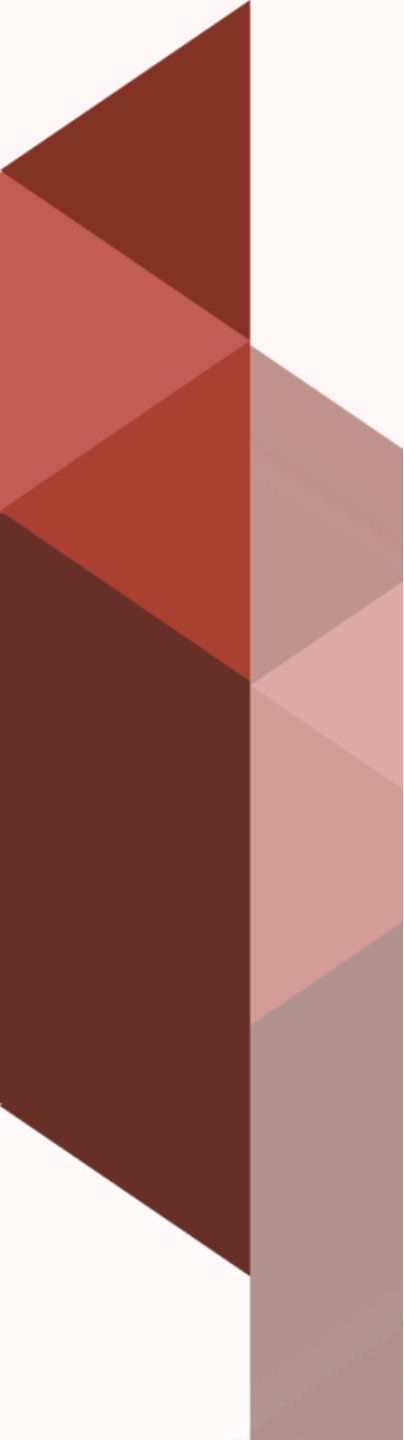
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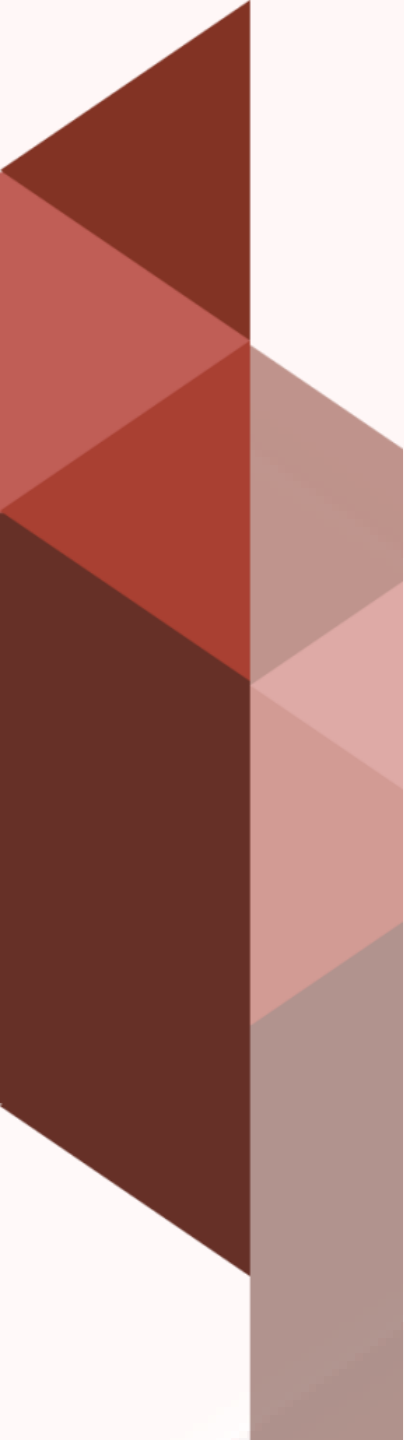
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- The procedures and principles regarding trademarks have been regulated in the Decree Law Regarding the Protection of the Trademarks (No. 556) (the “**Decree Law**”) and the Regulation on the Implementation of the Decree Law Regarding the Protection of Trademarks (the “**Regulation**”).
 - Further to the Decree Law, a trademark may comprise any kind of signs that shall be capable of being represented graphically or in a similar manner or being published and reproduced by printing such as words, designs, letters and numerals, the shape of the goods or their packaging provided that it is capable of distinguishing the goods and services of one enterprise from the goods and services of another.

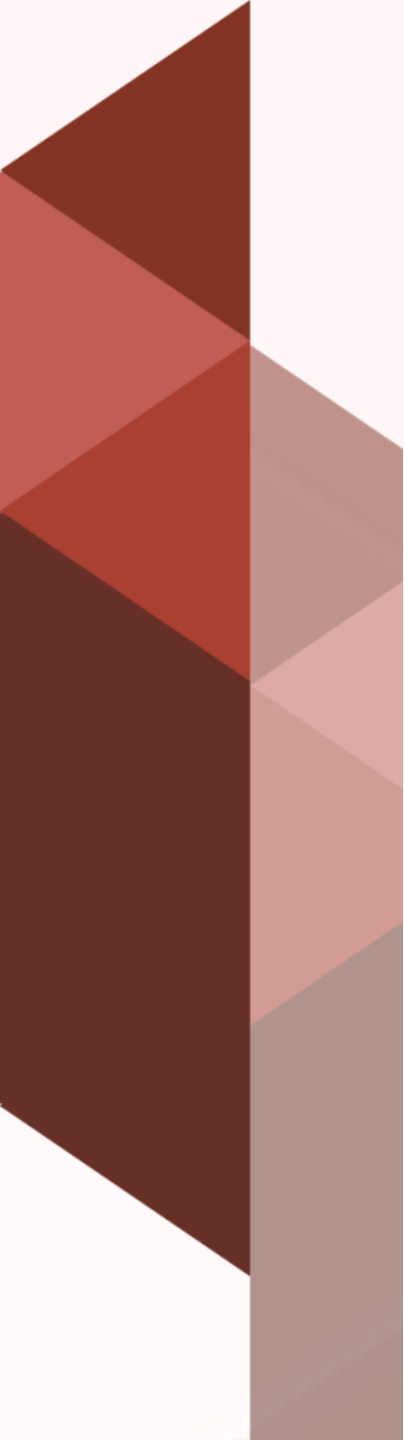
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- A trademark may be registered together with the product or its packaging. However, in such a case the registration of a product or packaging does not grant an exclusive right to the trademark owner for the product or packaging.
 - A protection for a trademark provided by the Decree Law is obtained by the registration at the Turkish Patent Institute (the “**TPI**”).
 - According to Article 6 of the Regulation the real or legal persons shall apply to the TPI in order to apply for a trademark. The application date is the date, hour and minute that the application petition and the relevant documents are received by the TPI.

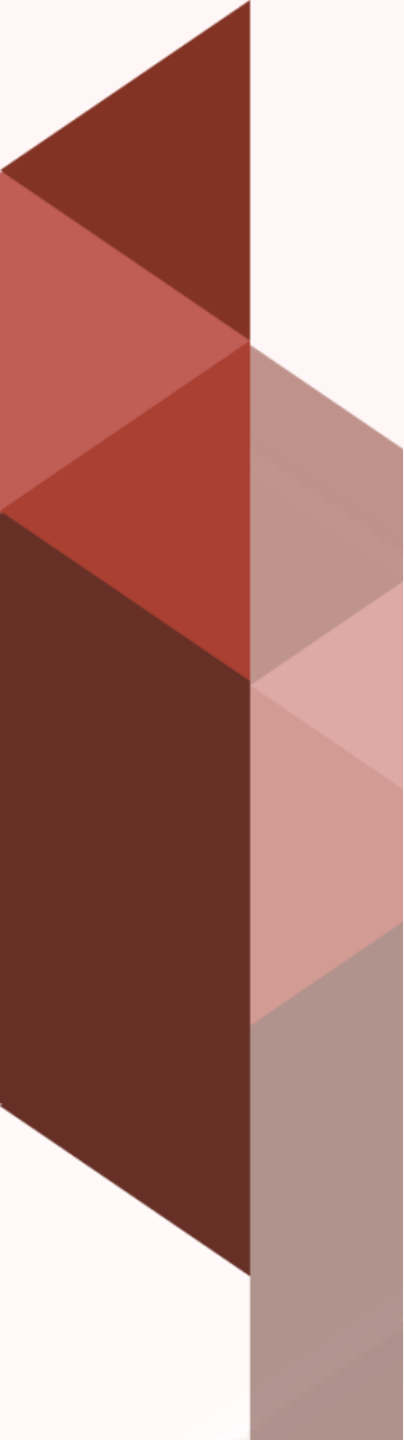
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- Real or legal persons who are nationals of any state party to the Paris Convention or who are legally reside or have an active business in these states although they are not nationals, shall benefit from the priority right for the period of six months in order to file an application for registration of the trademark in Turkey as of the date on which a valid application for registration of the same trademark has been filed before the competent authorities of one of these states. Priority rights which are not exercised within that period shall be deemed void.

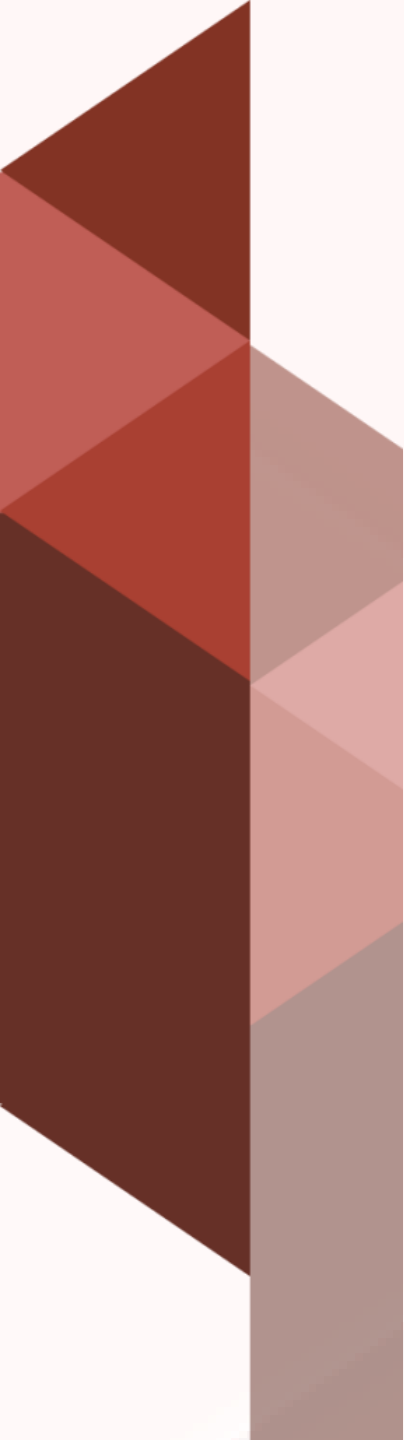
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- The goods and services for which the trademark is to be registered shall be classified with respect to the International Classification of Goods and Services. Turkey is a party to the Nice Agreement Concerning the International Classification of Goods and Services for Purposes of Registration of Marks, therefore the classification of goods and services under the Decree Law is prepared with respect to the Nice Classification and published at the Official Gazette each year.

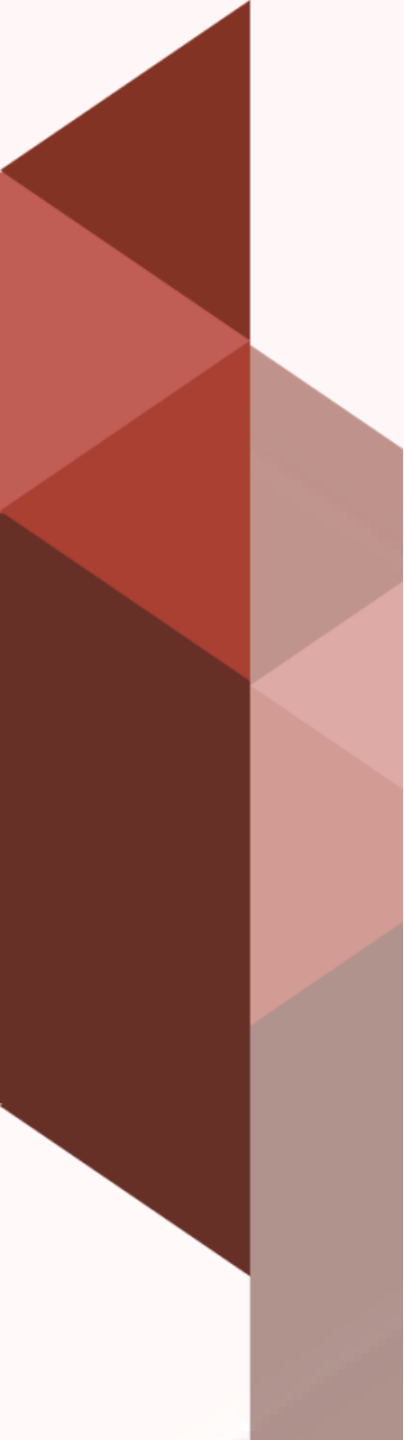
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- During the trademark application, the required documents stated under the Decree Law and the Regulation such as the application form including information identifying the applicant, power of attorney to be granted to the representative and documents evidencing the relevant payments shall be provided to the TPI.
 - In case the applicant decides to exercise its priority rights, the original priority documents for the trademark application obtained from the competent authority in relevant country shall also be provided to the TPI.

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- The Decree Law specifies the “absolute reasons” and “relative reasons” for the refusal of a trademark application.
 - In the event that the TPI determines one of the conditions stated under Article 7 of Decree Law exists then the TPI will refuse the relevant trademark application due to the “absolute reasons” such as below:
 1. signs which do not comply with the definition of a trademark as explained above;
 2. trademarks which are identical or confusingly similar to a trademark which has been registered or filed with an earlier date for the same or similar type of product or services;
 3. trademarks which are in well-known status as per Article 6bis of the Paris Convention and which have not been permitted by their owners.

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- Moreover, as per Article 8 of the Decree Law in the event of an objection of the owner of the registered trademark or trademark application, the TPI may refuse the relevant trademark application due to the “relative reasons” such as if the applied trademark is identical to a registered trademark or to a trademark application with an earlier filing date and covers the identical goods or services.
 - A trademark application that is identical or similar to a registered trademark or a trademark application with an earlier date may be used for different goods and services. However, even if the applied trademark will be used in different goods and services such application may be rejected by the TPI upon the objection of the owner of the registered trademark or application with an earlier date, due to the fact that the applied trademark would take unfair advantage of their distinctive character or reputation.

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- Upon the objection of the third parties, the applicant may also submit its opposing view against such objection. The TPI will evaluate the objections and the reasons stated therein and decide whether to accept or refuse the objection. If the objection is deemed valid by the TPI for some of the goods or services for which the trademark application has been filed, the opposition shall be accepted with respect to these goods or services.
 - As a further stage, any party adversely affected by a decision of the TPI may submit an objection to the decisions of the TPI. In the event the TPI does not accept such an objection, then Re-Examination Board of the TPI shall assess the objection.

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- In the event that all the required documents and information are fully provided to the TPI the trademark shall be registered by the TPI provided that there has not been any objection made to the application within the required period or the objection has been definitely rejected.
 - Further to Article 9 of the Decree Law the rights arisen from the trademark registration shall exclusively belong to the trademark owner. The trademark owner may demand the prevention of certain actions stated under Article 9 of the Decree Law such as;
 1. use of any sign that is identical to the registered trademark with respect to goods and/or services that are identical to those for which the trademark is registered,
 2. the acts of infringement,
 3. import of the goods bearing the relevant sign,
 4. use of the sign on business documents and in advertising.

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- A registered trademark may be transferred or licensed to a third party and may be pledged. All of the transactions regarding a registered trademark shall be made in writing.
 - Trademarks which have not been registered by the TPI are protected by the general provisions of the Turkish Commercial Code provided that certain conditions are met.
 - A registered trademark may only be cancelled and removed from the records of the TPI by way of a court decision.

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