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EBAY recorded as a well-known trademark in Turkey

Turkey - [Gün + Partners](#)

- **The Re-examination and Evaluation Board of TURKPATENT has acknowledged that EBAY should be recorded as a well-known trademark in Turkey**
- **The board took into account the status of the mark around the world and in Turkey, with a focus on the realities of the Turkish marketplace**
- **It is important to appeal unfavourable first-instance decisions to take advantage of the REEB examiners' experience and broad understanding of trademarks**

Background

Well-known status provides extensive protection to trademarks in almost all jurisdictions. In Turkey, well-known trademarks are protected more extensively than ordinary trademarks under various provisions of the Industrial Property Code No 6769: well-known status is taken into consideration in the evaluation of the likelihood of confusion and/or association; it is also a separate ground for refusal and invalidation of a later mark, in conjunction with other conditions.

Beyond assessing the well-known status of the cited trademarks during the examination of oppositions, the Turkish Patent and Trademark Office (TURKPATENT) is also entitled to identify and record trademarks as well-known trademarks based on Decision No 120 of TURKPATENT's board of directors, which was issued pursuant to Presidential Decree No 4 on the Organisation of Affiliated, Related and Associated Institutions and Organisations with Ministries and Other Institutions and Organisations.

Upon application by the trademark owner, TURKPATENT reviews the evidence submitted, assesses it in light of criteria which are also applied by WIPO, and then decides whether the subject trademark can be recorded as a well-known trademark. If TURKPATENT issues a refusal decision, the owner is entitled to file an appeal which will be examined by the Re-examination and Evaluation Board (REEB). If the REEB also refuses to recognise the well-known status of the mark, a cancellation action can be initiated before the IP Courts, where the experts appointed by the court will evaluate the matter.

It should be noted that the recordal of a mark as a well-known trademark in the relevant TURKPATENT registry does not necessarily mean that the courts will not apply other conditions in certain cases. TURKPATENT itself may request that other conditions be met in order to provide extensive protection to a well-known trademark, such as the likelihood of deriving an unfair benefit and likelihood of diluting the trademark. However, in general, the recordal as a well-known trademark would be regarded as a pre-admission or strong evidence by the courts.

Facts of the case

On 22 February 2017 eBay Inc filed an application requesting that TURKPATENT recognise and record its EBAY mark as a well-known trademark.

After examining the case for over two years, the Trademarks Department rejected eBay's application. The Trademarks Department opined that the EBAY trademark did not automatically bring certain services to mind and did not refer to a certain quality or status. In light of the evidence submitted by eBay and the investigations carried out by the Trademarks Department, it was found that the recognition of the mark had not reached a sufficient level in Turkey.

eBay appealed the decision, providing further arguments and voluminous evidence highlighting the Turkish public's familiarity with eBay and its close relationship with its subsidiary Gittigidiyor. In a departure from its typical practice, and in contrast to the Trademarks Department's lengthy examination period, the REEB notified eBay of its favourable decision within a month.

REEB decision

The REEB stated that EBAY is the brand name of one of the biggest and most widely used online buy-and-sell platforms in the world, including in Turkey. The REEB noted that eBay has established important business partnerships under the trademark EBAY in Turkey, including with Gittigidiyor, one of Turkey's top buy-and-sell platforms. The Gittigidiyor logo always appears in combination with the EBAY logo and, therefore, the recognition of the EBAY trademark has further increased among Turkish consumers. Given the popularity of the eBay online platform in Turkey, as well as its close relationship with Turkish subsidiary Gittigidiyor, the REEB confirmed that the EBAY trademark is well known.

As a result, EBAY is now recorded as a well-known trademark (No T/03119) in the TURKPATENT registry for well-known trademarks.

Comment

The REEB's decision is significant because it recognises the investment made by eBay in its mark, both worldwide and in Turkey.

Further, the decision demonstrates the importance of appealing unfavourable first-instance decisions so that the REEB's experienced examiners may review an application. These examiners closely review all aspects of the evidence, taking into account the status of the mark around the world and in Turkey, with a focus on the realities of the Turkish marketplace. Here, the Turkish public was highly familiar not only with the EBAY mark on its own, but also in association with its Turkish subsidiary Gittigidiyor.

Finally, one may argue that such favourable decisions foster an atmosphere that encourages companies to invest and do more business in Turkey.

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