

Neither the IPC nor its preamble includes further explanations regarding the concept of justified reason. As it is explained in the Proof of Use Guideline ("the Guideline") published by the Turkish Patent and Trademark Office ("the Office"), justified reason is any de facto or legal obstacle that does not result

from the defective behaviour of the trademark holder and that occurs for reasons other than the trademark owners' will and which makes the use of the trademark impossible during the relevant period. The important point is that the obstacle should be serious and be caused by reasons beyond the will and control of the trademark holder. War, economic crisis, embargo, lack of necessary licenses, natural disasters are provided as examples of justified reasons in the Guideline. Also, from the perspective of the Court of Appeal, justified reason must be objective and be applicable for anyone.

In order to discuss whether the Covid-19 pandemic can be accepted as a justified reason for non-use, it is important to provide an outline of the precautions taken in Turkey for this period.

Precautions Taken against Covid-19 Pandemic in Turkey

After the Covid-19 pandemic in early 2020, several precautions were taken in Turkey similarly to the rest of the world[1]. The most related one to our area is that the legal and administrative terms are suspended for the period between March 13, 2020 and June 15, 2020. Within the scope of this suspension decision, the terms relating to administrative actions including oppositions before the Office as well as the court actions to be filed against the Office's decisions are preserved as they were on March 13, 2020 and will continue to be counted as from June 16, 2020 from where it left off.

Also, with the influence of the recommendations of Science Committee (which is constituted by the Ministry of Health), Turkey has been experiencing lockdowns in metropolitans not for more than four days and weekends until now. During these lockdowns, several sectors were still active such as logistics, bakeries, pharmacies, cargo deliveries, etc.

Further, all beauty salons, hairdressers, restaurants (except for take away services), wedding ceremony saloons, theatre saloons, sports centres, etc. were closed by the Ministry of Internal Affairs' instructions[2]. Although several sectors were opened in different phases, there are still serious restrictions decreasing the volume of their activities. Considering lockdowns and such restrictions, online shopping is in great demand and this results in increased workload of cargo deliveries, as expected.

Also, the nature of the goods/services at the stake is important. To illustrate, it is a known fact that sanitary preparations such as disinfectants and protective masks have been consumed more than usual nowadays. Therefore, Covid-19 pandemic may not be accepted as a justified reason for non-use of such goods for the period of 2020. However, effects of the restrictions/decisions of government on trademark use should be taken into account, as well. For example, since the sport centres were closed between March 16, 2020 and June 01, 2020, it may be justified defence that it became impossible to use a trademark on "sport services" within this period and Covid-19 pandemic may be accepted as justified reason for non-use for this period.

However, we should note that there are controversial opinions in IP community on effects of the suspension on use obligation and no official declaration has been published by the relevant authorities until now. Accordingly, we will presumably need to wait a case with such an allegation in order to see how the Office and the IP Courts will react to such defences.