



Similarity of short trademarks: Patent and Trademark Office deviates from practice in groundbreaking decision

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11 April 2022



TURKEY

Legal updates: case law analysis and intelligence

- Minor alterations were previously considered sufficient for consumers to distinguish between short marks
- The PTO recently held that the word mark M + PLUS was similar to the opponent's series of earlier M marks
- The office diverged from standard practice in a decision that focused on the overall impression made by the marks on consumers

Background

When the Turkish Patent and Trademark Office assesses whether two signs are confusingly similar under Article 6/1 of the Industrial Property Code, it is generally accepted that the length of the signs is one of the factors affecting the perception of the trademarks by the average consumer. In this context, it is generally agreed that the average consumer can easily perceive differences between short marks compared with longer ones (see the Trademark Examination Guide on the Patent and Trademark Office's [official website](#)).

It is assumed that minor alterations, such as slight differences in spelling or styling, may be sufficient to distinguish between marks; yet, this is not always the case. When comparing marks, the position of the common letters, the writing styles, the colour elements or the way in which they are formed in general may affect the outcome of an assessment of similarity.

Decision

In a recent decision (Case 2021-M-9972, 26 November 2021), the Re-examination and Evaluation Board of the Patent and Trademark Office examined the similarity of a challenged mark (consisting of a short phrase) with the opponent's marks, consisting of one letter, and a numeral or word. The office assessed the similarity of the marks, taking into account their general

appearance, the possible impressions the marks could give to consumers, and the likelihood that consumers would perceive the marks to be part of a series due to their similar styling.

The office held that the trademark application M + PLUS (a word mark) was similar to the opponent's earlier marks:

- M;
- M1;
- M SPORT;
- M PERFORMANCE;
- M MOTORSPORT;
- M (figurative); and
- M SERIES.

It reasoned that this was because:

- the trademarks all incorporated the letter 'M';
- the style and overall appearance of the marks were similar; and
- the trademark application created the impression of being part of the opponent's series of earlier marks.

Based on this comprehensive and multi-dimensional assessment, the office accepted the opposition and refused the trademark application on grounds of likelihood of confusion under Article 6/1 of the IP Code.

Comment

The decision is remarkable for its comprehensive evaluation of the similarity of short trademarks. The office diverged from its standard approach of presuming that minor differences between short trademarks eliminate similarity and has adopted a much broader approach. The examination focused on the style of the earlier marks and the possibility of creating a perception that the marks were part of a series. The overall impression made by the trademarks on consumers was considered to be a key factor.

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