

The fashion industry and new provisions of Turkish Industrial Property Code regarding protection of unregistered design rights

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The fashion industry, nourished by an infinite source – that is, human creativity – is constantly changing, yet the manufacturing process changes even faster. As the duration of the process in which a product is manufactured and offered to consumers became much shorter, the copying of designs also became more convenient and common.

The rules pertaining to the protection of unregistered designs, one of the novelties introduced with the Industrial Property Code No 6769 (the 'IP Code') entered into force in Turkey on 10 January 2017, are expected to have a positive effect on the fashion industry. The former legislation, Decree Law No 554 Pertaining to the Protection of Industrial Designs ('Decree Law No 554'), did not foresee any protection for unregistered designs, and their protection was only possible under the general provisions of unfair competition as per the Turkish Commercial Act No 6102, and copyright provisions as per the Law on Intellectual and Artistic Works No 5846,[1] if the conditions exist. However, these laws did not provide the desired protection in practice.

Pursuant to Article 55/4 of the IP Code: 'In case the design... is presented to the public for the first time in Turkey, it shall be protected as an unregistered design'. Therefore, in order for an unregistered design to be protected as per the IP Code, first the design has to be presented to the public for the first time, and second, the presentation act should be in Turkey. The presentation to the public for the first time is the 'novelty' requirement itself that is also a requirement to be satisfied with regard to registered designs as well, and therefore, the concept is not new. The latter requirement is based on the principle of territoriality.

Indeed, European Union Regulations already include separate provisions that envisage the protection of unregistered designs, and similar provisions have been adopted in the IP Code.

To expand on the scope of protection, as per Article 69/2, '[t]he protection period of unregistered designs shall be three years as of the date on which the design for which protection is requested is first presented to the public'. Another, and perhaps the most important, distinction within the scope of protection lies in Article 59/2 of the IP Code, which states that the owner of the unregistered design may exercise its rights 'only in case the same version of the protected design or its similar version which is indistinguishably similar as a general impression is taken upon being copied'. Thus, the owner of the unregistered design may only take an action as per the IP Code against identical or indistinguishably similar designs, that is, copies.

The biggest influence of the new provisions is expected to be on the fashion industry because, also stated in the preamble of the IP Code, one of the industries that will be positively affected by this new rule is the fashion industry.

In concurrence with the acceleration of everything else facilitated by advancements in technology, such as the spread of social media, even one of the most dynamic industries, such as fashion, has to orientate itself to the demand of immediate access to the latest trends. Even the concept of 'fast fashion' has evolved due to retail chains that immediately capture and manufacture the newest design that has just been presented to the public during fashion weeks, and offers customers the current style at affordable prices. Legal regulations are developing to keep pace with the fashion industry. Accordingly, the need for the protection of unregistered designs has arisen from the rapidly changing feature of the fashion industry, and with this right, designers may seek protection without undergoing the registration process, which is indeed a financial and time-consuming burden given that the design may lose its value within weeks.

Although the protection period for unregistered designs is much shorter compared with registered designs, which is five years and may be extended up to 25 years by renewals, given that the fashion industry is 'driven by fast-paced innovation embodied in the creation of seasonal collections of new fashion designs,'[2] three years of protection seems sufficient – and even too much? – for designers.

This new rule has indeed provided fashion designers with a practical tool for the protection of their rights on the designs they create. To demonstrate this, designers are liberated from both a loss of time and from incurring unnecessary costs to register a design that may already become out of fashion in just one season, or a design that is simply not admired by the public. Hence, this new regulation is anticipated to have a major impact on the fashion industry.

Notes

[1] Feyzan Hayal Sehirali Çelik, 6769 Sayili Sinaî Mülkiyet Kanunu Sempozyumu (Bankacilik ve Ticaret Hukuku Arastirma Enstitüsü, 2017); İlhami Günes, Sinaî Mülkiyet Kanunu'nda Tasarım Tescili Konusundaki Yenilikler (Terazi Hukuk Dergisi, 2017).

[2] Eveline vanKeymeulen & Louise Nash, Fashionably Late (Intellectual Property Magazine, 2011–2012); Cahit Suluk, 'Basics of the new Turkish Industrial Property Law' (2018) 13(6) Journal of Intellectual Property Law & Practice 492.