

The Resolution

April 2018

Issue

05

ATTACHMENT OF A TRADEMARK?



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ATTACHMENT OF A TRADEMARK?

The Trademark, an element of commercial enterprise, which can be transferred severally from commercial enterprises, might be attached independently of the enterprises. According to Article 148 of the Industrial Property Law (Law), entered into force on 22/12/2016, it is explicitly regulated that it is possible to attach the trademark. However, nonexistence of special provisions on the attachment of trademark in Law leads some particular questions about how the execution proceedings should be carried out.

Legal procedure to follow for the attachment of trademarks depends on whether the trademark is registered.

1- Registered Trademark

In case the trademark is registered, according to Article 148 of the Law, attachment of the trademark could be registered with the Trademark Registry. Such registration is a protective measure serves to purpose of notifying the third parties, but not have a constitutive nature. Registering such attachment with the registry secures the rights of creditor and, therefore, the attachment could be claimed against the transferee.

2- Nonregistered Trademark

In this case, Article 148 of Law is not applicable. Thus the attachment could not be registered with the Trademark Registry. Therefore, the attachment could not be claimed against for bona fide transferees. The attachment of nonregistered trademarks should not be preferred by the creditors due to it does not secure the rights of the attachers.

CONTROVERSIAL ISSUES

Attachment of Trademarks Contain Personal Elements?

There is no restraint to attach the Trademarks contain personal elements. Usage and registration of Trademarks include names, surnames or pictures are permissible by law. However, since the right to use of the name of the related individuals' are considered as a personal right, there is a controversial issue with this regard.

In such regard; attachment of Trademarks contain personal rights might be considered as a violation of personal rights. Therefore, such trademarks shall not be subject to attachment and personal rights carry high value for the individuals shall be protected.

According to the opposing view; it is necessary to distinguish between the personal rights on individual's name and the trademark includes individual's name. It should be taken into account that using individual's name as a trademark



creates economic value and commercializes such name. Therefore, attachment of the trademark includes individual's name shall be allowed.

Is Partial Attachment of A Trademark Possible?

In Industrial Property Law, it is clearly stated that Trademark may be assigned partially and a license for a trademark may be partially granted. However, there is no such regulation for attachment.

There are certain obstacles to allow partially attachment of trademark. In case the partial attachment is allowed, sale of the trademark by compulsory execution to satisfy the creditors causes that different individuals will have a right on the trademark in terms of similar goods and / or services. This may create a misleading in public perception.

Could Trademark Be Non-Attachable?

According to the comparative law and Turkish law, if it is identified that the debtor's sole professional activity is selling its' goods under its' trademark, there are certain opinions that the attachment of trademark shall not be allowed.

Provisions and Results of Attachment

In order to get a favourable and effective result from the attachment of trademark, the attachment shall be duly established. The attachment is completed by the registration with the Registry for the registered trademark, and for the unregistered trademark it is completed by a notification to the trademark holder.

It is crucial to state that attachment does not grant a right of use of the registered/unregistered trademark to the creditor or the creditor does not have a right to prevent the transfer of the trademark to any third party, unless there is an injunction with this regard.

In case the trademark has been attached and the attachment has been registered, the trademark holder could not waive its' trademark without the consent of its' creditor.

In case of the attachment of a debtor's trademark, the trademark is liquidated by a compulsory auction and the creditor receives the money collected after such auction. The liquidation of the trademark is completed after the valuation of the trademark by an expert.



Answers. Not theories.

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