

THE

Gökçe

Fine PRINT

May 2018

68

IN THE EYES OF LAW: DESIGNS



Highlights of this issue

Interview with Muhammet Taşlı, Founder of Ham:m

IN THE EYES OF LAW: DESIGNS

Let's think of a chair. When you are reading this article, it might be possible that approximately one million chair is being manufactured all over the world. The thing makes one chair different from the others, makes some of them more comfortable or more functional is substantially the concept of "design". Due to designs contains "intellectual effort", almost every legal system gives a great importance to "**designs**" and regulates them specifically.

What is Design?

The lexical meaning of design refers to the shape that is visualized and envision in mind. It might be seen that; such definition does not differ too much within the scope of Turkish law. First, it should be necessary to define the "product" that the design emerges from. In this scope, according to Industrial Property Law, numbered 6769, product is defined as; "except computer programmes, any objects produced by industrial means or hand, any products consisting of replaceable/renewable parts by disassembling and assembling, packages, presentations of objects perceived together by individuals, graphic symbols, typographic characters". As can be seen above, except computer programmes almost everything might be deemed as "product". With regards to Law, design is defined as "**appearance of the products or its ornamentation** arising out its specific features such as line, form, shape, colour, material or surface texture". **When these two definitions are evaluated together, we might come to a conclusion that everything we can see in our daily lives contains in itself a design.**

How Designs are Protected by Law?

As stated above, although design is something that might be encountered everywhere in daily life, it is not possible as all designs are protected by law. The reason is, the law aims to protect intellectual value and novelty of the design contain within itself. Within this scope, it takes certain designs that have several specific characteristics under its special protection. Only in this way, use of such designs without/against permission of its owner might be prevented. In Turkish law, two features are sought for the protection of design; **novelty** and **individual character**.

These might be defined as;

- **Novelty:** A design not being disclosed to public in anywhere around the world;
- **Individual Character:** The difference between the general impression made by the design on an informed user and general impression made on him by any design available on the market.

In this context, if a design is novel and has an individual character, the Law provides the mentioned rights herein. Novelty and individual character are the features that should be evaluated specifically on the basis of each sector and each product.



A design having the above-mentioned features might be protected in two ways:

- **Unregistered Design:** The unregistered designs made available to the public in Turkey for the first time without a registration by means of exhibition, launching to the market such as sales, usage, description, transmission, promotion; are protected for 3 years.
- **Registered Design:** After filing the registration application to the Turkish Trademark and Patent Authority, it is the protection provided for five years from the date of application with the determination that the design is novel and has an individual character. This protection might be renewed for a period of five years and extended to a total of 25 years.

Within this scope, the designs considered as “design” legally shall not be produced, made available to market, sold, imported, or used for any commercial purposes without the consent of the design owner. However, in case of any nonregistered designs, the right to prevent such acts will only be subject to the same design or the similar and indistinguishable one which is acquired by duplicating the protected design. For this reason, any individual who supposes that his design has commercial value should try to register his design under any circumstances. Otherwise, in case of any dispute, proving the fact would be more difficult and risky.

Designs of Employees

According to Law, unless otherwise it is understood explicitly from the agreement between the employee and employer or from the nature of the work, employers are the right owners of the designs created by the employees during the employment relationship, based on the activity they are responsible for or based on enterprise’s experience and previous works. In this scope, the design rights of the products created by a designer working in an industrial design office shall belong to the employer. Also, the designs created by the students; the interns working without term contract; and the designs created by the instructors as a result of scientific studies are subject to the abovementioned regulation.

It should be noted that; even if the rights of the design belong to the employer, the employee has the right to demand for remuneration based on the value of the employee’s idea. The amount of such remuneration might be explicitly determined between the parties. If the price is not determined or the parties cannot agree with such remuneration, the amount is determined by the court.



In this context, if it is desired that the design rights of the products created by the employee belong to the employee, the parties should clearly define such desire in the employment agreement. Otherwise, Law might be applicable and reach a result as the employee is not able to claim any right on the design.

INTERVIEW WITH MUHAMMET TAŞLI, FOUNDER OF HAM:M

We made an interview with the founder and CEO of Ham:m. We heard of Ham:m a lot in recent years since they give a great value and importance to design and their priority is providing unique and cheerful living places to the individuals.

How would you describe Ham:m? Where are your uniqueness and difference coming from?

Ham:m is a design brand, working with unique designers and producing unique products. Within such design brand, we bring furniture, lamps and accessories together with our customers. Additionally, we provide free interior design consultancy service with Ham:m Plus service, so that we are able to design individual's office and domestic life completely and differently.

How this adventure had started? Why this motto: "Unique Living for Unique People"

Ham:m started its adventure in the very beginning by selling their products at different stores and then opened its first store in Tophane by the end of 2012. Today Ham:m has become a brand creating living space with its motto as "unique living for unique people" and it is more than a brand you can find the design products.

We have another question comes from a cross point of design and law. Generally, a design might be protected in case it is novel and has an individual character. What does "novelty" and "individual character" mean to you?

Design is a valuable concept from my side. In the developed countries, everything is planned as design-oriented. Actually in these days, the designers generally try to design "durable products" instead of products have individual character. The most important factors regarding durability of the products could be counted as the design should be considered as "timeless"; the texture and feeling experience on the design, easily perceptible designs and use of natural material. Then, it is also important to distinguish the design from the others **by means of the design registration**. At this point we, as Ham:m, have intensively committed ourselves to protect our products by taking design registration certificates of all our products.



As a rule, the right owner of the designs created by the employees are the employers. How do you evaluate this with your designer identity on the one hand and with your employer identity and on the other?

As Ham:m, we try to look at this issue from two different perspectives. In fact, I can say that such point of view is arising due to I look at with the eye of an employer or a designer. While we gather the designs created for us under the name of Hamm; we also show the designer's name and credentials on the designs. In other words, there is also a designer name that will live as long as the design exists, although the design owner is Ham:m. Due to the internal teams of some certain companies design a product, such companies show the design as the design of the brand without the designer's name, actually they prevent the development of the design culture. We admit the exact opposite as our company culture and thus, approximately fifty Turkish designers imagine new products and designs for Ham:m every single day.

Answers. Not theories.

Gokce Attorney Partnership

Editors:



Assoc. Prof. Dr. Ali Paslı
ali.pasli@gokce.av.tr



Yağmur Yollu
yagmur.yollu@gokce.av.tr



Elif Aksöz
elif.aksoz@gokce.av.tr



Ahmet Başaran
ahmet.basaran@gokce.av.tr

About our firm

Gokce Attorney Partnership is an Istanbul-based law firm offering legal services across a broad range of practice areas including mergers and acquisitions, joint ventures, private equity and venture capital transactions, banking and finance, capital markets, insurance, technology, media, telecoms and internet, e-commerce, data protection, intellectual property, regulatory, debt recovery, real property, and commercial litigation. Please visit our web site at www.gokce.av.tr for further information on our legal staff and expertise.

Please contact us at
contact@gokce.av.tr
0 212 352 88 33

The Fine Print is prepared and published for general informative purposes only and does not constitute legal advice or create an attorney-client relationship. Should you wish to receive further information, please contact Gokce Attorney Partnership. No content provided in The Fine Print can be reproduced or re-published without proper attribution or the express written permission of Gokce Attorney Partnership. While all efforts have been made to ensure the accuracy of the content, Gokce Attorney Partnership does not guarantee such accuracy and cannot be held liable for any errors in or reliance upon this information. The Fine Print was created for clients of Gokce Attorney Partnership and the possibility of circulation beyond the firm's clientele should not be construed as advertisement.

For further information please contact us at contact@gokce.av.tr