



Journal of Recreation and Tourism Research

Journal home page: www.jrtr.org

ISSN:2148-5321

THREE-DIMENSIONAL BRAND AND REGISTRATION APPLICATIONS

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EXTENSIVE SUMMARY

Three dimensional brands and their registration constitute the subject of the study. Article 5 of Statutory Decree number 556 regulates under which conditions a sign may be a brand. According to this provision, a brand “contains any sign which may be displayed by drawings or expressed similarly, published by printing and reproduced especially such as letters, numbers, shape and packing of goods, including personal names, provided to insure distinction of the goods or services of a business from the goods or services of another business.” Any sign which is distinctive and can be displayed by a drawing or expressed similarly may be a sign under this provision.

Furthermore, the shape of goods and their packing may be a brand, too. According to the law, three dimensional brands may be created by designs such as “...ornamenting, shape, figure, color, texture, material, flexibility and relief...”

There must be basically two elements in three dimensional brand. Firstly, there should be designations such as pictures, photos, graphs which may be displayed by drawings or expressed similarly. The second element is distinctiveness of the three dimensional shapes. In other words, designs that differ from the specific, natural structure of the goods may be selected as brands. The important point here is that the selected shapes must be as unique as not to cause any confusion with their traditional shapes. Today, companies spend significant amounts of money to create and maintain three dimensional brands. Along with the development of the industry, globalization necessitates brand registration at national and international dimensions.

In this study, registration of three dimensional brands in Turkey is examined. In addition, it is also aimed to set forth the problems by examining three dimensional brand lawsuits placed by legal reasons in the Civil Court of Intellectual and Industrial Rights. For this purpose, 323 “three dimensional brands” which were registered by Turkish Patent Institute (TPI) within 21 years starting from 1995, when the registration of brands was initiated, are analyzed by the method of document review, one of the qualitative research methods. In the study, the lawsuits placed in the Civil Court of Intellectual and Industrial Rights about three dimensional brands and design brands are examined.

The first three dimensional brand was registered in 1995 in Turkey and, in the first ten years, too little request was made by the businesses. It is noteworthy that this rally started to take place in 2007 and rose to the highest level in 2011.%64 of the registered three dimensional brands belong to local businesses. It attracts attention that, mainly manufacturing firms request the registration of three dimensional brands, and the businesses which are

active especially in the sector of computers and software and those which produce personal care products try to differentiate themselves by three dimensional brands.

In the registration of three dimensional brands where distinctive features are important, it is natural that there would be resemblance, approach to the rival, and more important, plagiarism. When the results of the lawsuits examined in this aspect are examined, it is seen that serious hesitations arise about the existence of "distinguishing" features of three-dimensional brands and malice is interrogated. In addition, a firm trying to monopolize the ordinary designs which define the product as a three dimensional brand and the approval of TPI of this case, and the rival firms placing a lawsuit as a reaction for this case confronts us as important results. Another important result is the presence of companies which desire to approach prominently to the worldwide recognized three dimensional brands.

In the light of these results, raising talented designers who can create original three-dimensional designs, and encouraging businesses to create their own brands instead of imitated brands by paying deserved fees to these designers, are recommended. In addition, it is necessary for TPI to carry out the registration process by conducting serious research on the existence of "distinctiveness" in three dimensional brand applications and to establish fair trade environment by concluding trademark cases in a short time.