

# Trademark Registration Notices On Goods

By Banu Barbur, Chartered Trademark And Patent Attorney

The notice registration is not mandatory in Turkey since the Decree Law no.556 on Trade/Service marks does not contain any provisions pertaining to the marking requirements. Therefore, the marking of the articles and/or the packaging in that the concerned trademark is registered is not compulsory but it is still highly advisable as in case of litigation, the situation resulting from the marking could constitute the basis of a further claim in terms of unfair competition since the marking of goods/services to refer to signs, trademarks or other rights and titles not owned by the third parties using them on their products is an act of unfair competition according to the general unfair competition provisions of the Turkish Code of Commerce.

For the Decree Law no.556 on Trade/Service marks not containing any provisions pertaining to marking requirements, no penalty has also been foreseen in case a registration notice is used in Turkey for a trademark registration obtained in the United States but not in Turkey. However, according to the Article 56 of the Turkish Code of Commerce, any acts of the parties who in conducting their business behave against the rules of objective good faith are considered as unfair competition. Article 57 enumerates such acts unexhaustively so that unfair competition is not limited to said acts only. According to the paragraph 3 of Article 57 *“Informing others wrongly or deceptively regarding its own personal situation, specification of goods, business products, business activities and commercial enterprises”* are considered as acts of “unfair competition” and in this sense, announcing its products as being registered could be considered as an act of unfair competition obviously depending on the circumstances of the case and especially on the notoriety the concerned mark enjoys worldwide. Moreover, said use can also be considered as against the Law on Protection of Consumers no.4077 which reads in article 4 that *“Goods and services which do not have the quality and/or quantity that are mentioned on the packaging, labels or manuals thereof, or which have been promised or offered by the vendor or which do not meet the standards’ requirements thereof or those with material, legal or economic deficiencies, which decrease their value in respect of their use or*

*decrease the benefits expected by the consumer shall be considered as defective goods and defective services”.*

As to what notice is to be used, it is to be noted that the ® sign is widely used in Turkey to indicate a trademark registered in this country. Accordingly, this sign can certainly be used in this country to indicate that a trademark is registered in this country and under protection as a registered trademark. Please further note that the sign “T.M.” standing for “TESCILLI MARKA” (meaning registered trademark) is also extensively used in Turkey to designate a registered trademark.

However, the acronym “T.M.” is used also for designating the term “TURK MALI” (meaning Made in Turkey). For these reasons we believe it is totally improper to use the acronym “T.M.” for designating in Turkey the unregistered trademarks with the belief that the consumers in Turkey will understand it as indicating a trademark owned but not registered as it is the case in the U.S.A. To our opinion, such use should be absolutely avoided as the acronym “T.M.” will project in the mind of the Turkish consumer the incorrect understanding/information in that the concerned trademark is indeed a trademark registered and under protection in Turkey. In this sense, such use of “T.M.” should to our opinion constitute an act of unfair competition pursuant to art.57 paragraph 3 as here-above mentioned.