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Registration process related to geographical indications

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Résumé. La première réglementation directe concernant les Indications Géographiques est le Décret Législatif Concernant la Protection des Indications Géographiques n°555 (LD 555) qui a été appliqué à partir de sa publication au Journal Officiel n°22326 du 27 août 1995. Les Indications Géographiques sont déjà protégées par les dispositions du Code concernant la Concurrence Déloyale et les dispositions du Décret Législatif concernant la Protection des Marques n°556 (LD 556).

Selon le LD 555, une Indication Géographique s'applique à un produit qui a été identifié avec un emplacement, une zone, une région ou un pays grâce à une qualification distinctive, une notoriété ou d'autres caractéristiques spécifiques. La procédure de reconnaissance des Indications Géographiques est réglementée par le Décret LD 555 et l'autorité d'enregistrement est l'Institut Turc des Brevets. Les affaires juridiques ayant trait aux Indications Géographiques sont réglées par ce communiqué et le processus d'enregistrement se fait par le décret L 555.

Mots clefs : Indication Géographique, LD555, procédure de reconnaissance des indications géographiques

Abstract. The first direct regulation related to geographical indications is the Legislative Decree Concerning the Protection of Geographical Indications No. 555 (LD 555) which became effective upon being published in the Official Journal no. 22326 of 27.08.1995. Geographical indications are already protected by the relevant unfair competition provisions and the relevant provisions of the Legislative Decree Concerning the Protection of Trademarks No. 556 (LD 556).

According to LD 555, a Geographical Indication is an indication which shows a product which has been identified with a location, area, region or country due to a distinctive qualification, renown or other characteristics. Registration process related to geographical indications is regulated under the LD 555 and the registration authority is the Turkish Patent Institute. Legal regulations related to geographical indications are addressed under this communiqué and the registration process under LD 555.

Key Words: Geographical indication, LD555, registration process for geographical indication.

Introduction

In our country, geographical indications are protected under the Legislative Decree Concerning the Protection of Geographical Indications No. 555 and the Regulation Showing the Application Method of the Legislative Decree Concerning the Protection of Geographical Indications No. 555. The geographical indication concept is defined; the products covered by protection are identified and the parties who are entitled to file an application are designated in LD 555. Further, formative conditions, registration process and protection scope related to any geographical indication application are regulated by LD 555 as well.

Besides LD 555, geographical indications are further protected under the relevant provisions of the Legislative Decree Concerning the Protection of Trademarks No. 556. For instance, as per the subparagraph (c) of the first paragraph of the article 7 entitled "Absolute Reasons for Rejection in Trademark Registration" of LD 556, those expressions which contain those statements which designate geographical origin exclusively or as the base element may not be registered as trademarks. It is thus intended to prevent a statement which is the subject of a

geographical indication from being given to the monopoly of a single party as an industrial property right.

At this point, it should be stated that geographical indications are a collective right and they do not provide their holder with a monopoly right. Geographical indication right fails to entitle the party who has it registered to “impede competitors” or “establish market domination”. In geographical indication protection, it is essential to protect both the actual producers of the relevant products and the interests of the consumers. As it is well known, a geographically indicated product (e.g. Çorum Chickpeas) are distinguished from their likes in terms of their local characteristic properties, and in this sense, consumers agree to pay more for such products due to their local properties. In this context, one of the basic objectives of the geographical indication protection is to ensure rural development. Therefore, geographical indication registration is a collective right which does not entitle its holder to monopoly but which covers the actual producers of the product.

I – Definition of Geographical Indication

As per LD 555 (Art. 3), a Geographical Indication is an indication which shows a product which has been identified with a location, area, region or country due to a distinctive qualification, renown or other characteristics. By this definition, there must be an area of which geographical limits have been indicated in order to be able to speak of a geographical indication; there must be a product which originates from natural and human elements belonging to such area; there must be some connection between the distinctive properties of the product and the geography; and all or at least one of the production, processing and other procedures of the product must take place in such area. Under LD 555 (Art. 1), natural, agricultural and mineral products and handicrafts as well as those industrial products which bear the conditions as stipulated in legislation may be the subject of a geographical indication application.

As per LD 555 (Art. 3), geographical indications are divided into two as designation of origin and indication of origin. For designation of origin, all of the production, processing and other procedures of the related product must take place in the area whose geographical limits are indicated; and for indication of origin, one of such operations must take place in the designated area as a minimum. In order to be able to mention a designation of origin, there must be a product originated from a location, area, region or, in very special circumstances, country whose geographical limits have been indicated; all or essential qualifications or properties must originate from those natural or human elements specific to such location, area or region; and the production, processing and other procedures of the relevant products must completely take place within the limits of such location, area or region. Designations of origin are not generated outside the geographical regions to which they belong. Because the product may only acquire its qualifications if it is produced in the location to which it belongs. Van Herbal Cheese and Anzer Honey may be shown as examples of a designation of origin. And in order to be able to mention an indication of origin, there must be a product originated from a location, area or region whose geographical limits have been indicated; the relevant product must have been identified with such location, area or region in terms of a distinctive qualification, renown or other properties; and one of the production, processing or other procedures thereof must take place in the indicated location, area or region as a minimum. Of the indications of origin, although at least one of the properties of the product belongs to that location, it may also be produced outside the location. Trabzon Bread may be shown as an example of an indication of origin.

II – Who May File an Application for a Geographical Indication?

As per the article 7 entitled “Right of Application” of LD 555, natural persons or legal entities who are the actual producer of a product, consumer associations and public organisations that are related with the subject and the geographical region may file an application for a geographical indication.

III – Registration Process

As it has been stated earlier, geographical indication applications are filed with the Turkish Patent Institute. The Institute examines the application filed as per the article 9 entitled “Examination” of LD 555. The relevant article makes references to the article 3 containing the definitions, article 5 regulating the designations and indications which may not be registered as geographical indications and article 8 regulating the conditions of application of LD 555 and stipulates that the examination is to be carried out in terms of compliance with the articles in question.

For the registration of a geographical indication, it is required to submit the information and elements as listed in the article 8 together with the application containing the information about the identity of the applicant. To do this, an application format which contains the required information has been created in order to guide the applicants in the Institute’s practice. Applicants must submit to the Institute any required information and documentation in accordance with the application format containing the following headings: name of the product, type of geographical indication, name of geographical indication, mode of utilisation, description and distinctive features of the product, its production area, production method and inspection. Further, the Institute is entitled to require one or more public organisations or universities or impartial private organisations specialised on the matter to examine the application in order to prove the technical data about the application (Art. 9).

Those applications found proper as a result of the examination are promulgated in the Official Journal and in a local newspaper published in the production area of the geographical indication by the Institute. In designations of origin, the informative notice as to the promulgation of the application in the Official Journal is additionally published in one of the two daily newspapers with highest edition which are distributed throughout the country.

Any related parties may file an objection with the Institute not later than 6 months of the date of promulgation of the application in the Official Journal (Art. 11). In case of objection, the application and objection are forwarded to an organisation specialised on the matter by the Institute, obtaining the opinion of the applicant. The application may be rejected as a result of the evaluation of the objection or the objection may be rejected or a decision may be made to make some modifications in the application while the objection is rejected. The modified application is re-promulgated, but such promulgation is not subject to objection.

Any application which is promulgated as a result of examination and for which no objection is raised within 6 months is finalised as of the date of its promulgation in the Official Journal and entered in the geographical indication register (Art. 12). And those applications modified as a result of objection are re-promulgated and registration is finalised as of the date of promulgation (Art. 12).

Conclusion

The basic objective of the geographical indication registration which is regulated by LD 555 is to register those products originated from a certain geography which are renowned for their distinctive qualifications in the name of “their actual producers”. It is thus intended to protect the

actual producers and to support rural development. By registration, the local characteristics, traditional production method and quality of the product are guaranteed. Thanks to this aspect, geographical indication serves the protection of consumers as well. Registration does not entitle its holder the right of monopoly, but provides a common property right.