

## **The Benchmark for an Advertising Slogan to be Registered as a Trademark in Turkey**

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### **I. Introduction**

Advertising slogans are, in a nutshell, short expressions or idioms that brand owners use in advertising in order to make the advertised product or service remembered easily and also to have the slogan be associated with the product, thus the brand. A powerful advertising slogan is created after quite a costly and time-consuming endeavor and therefore is worth being protected, since use of similar slogans may confuse the public about the commercial origin of the product/service that is advertised with that particular slogan. An effective way of protecting an advertising slogan is surely to have it registered as trademark, but registration of slogans is subject to strict and challenging thresholds.

In order to be registered as a trademark, an advertising slogan must be distinctive and creative, thus not have a generic nature or merely describe the product/service in question, or if not distinctive *per se*, must be such that it is associated with the commercial origin of the product/service. These conditions are interconnected, which turns assessing whether a given slogan can be registered as trademark into a multi-faceted consideration, revolving around distinctive nature of the slogan, perception of consumers and heavy use of the slogan. The following is to elaborate what a slogan should, and should not, be in order to be eligible for registration.

### **II. Conditions for Advertising Slogans to be Registered as Trademarks**

As briefly mentioned above, to be deemed eligible for registration, the slogan basically must be distinctive or be such that the consumer relates it with the particular brand or product.

(i) Being distinctive requires the slogan not to be generic or merely say what kind of product/service is advertised. For instance, the registration application for the slogan of “*everywhere on earth*” is denied by the European Union’s Office for Harmonization in the Internal Market (the “OHIM”) on the grounds that this slogan merely puts emphasis on what

is good about the service, and does not have any aspect giving away the commercial origin of that service, hence no distinctiveness about the slogan. Similarly the UK Trademark Registry denied registration of the slogan of “*say it with chocolates*” as this slogan merely promotes chocolate as product, not “the” chocolate of a particular brand, therefore the slogan lacks building a bridge with the product and the commercial origin thereof.

As it is seen, pointing out to characteristic nature of the advertised product/service (i.e. qualifications, quality, features or quantity etc.) kills distinctiveness. Such slogans are not deemed eligible for being registered since it would most certainly not be commercially fair to let the words, which actually define a particular product/service, be monopolized by just one actor in the relevant sector.

It should be noted that the words comprising the slogan itself do not necessarily have to be distinctive; it is the slogan that needs to be distinctive. The slogan, as a whole, must evoke the advertised product/service and in assessment of whether that is the case for a slogan, the defining element is surely the target consumer base, therefore it should be investigated whether the consumers connect that slogan, as a whole, to the commercial origin (i.e. the product/service or the brand etc.) For instance the slogan of “*have it your way*” is found to have the distinctiveness to make the consumers recall Burger King.

**(ii)** A slogan that is indistinctive or mundane for that matter, can be protected as trademark if the slogan goes beyond its literal meaning in the minds of consumers and brings the brand or commercial origin to those minds. The law refers to such aspect of a slogan as “secondary meaning”, as in the slogan lost its actual meaning and now brings the advertised product/service or the commercial origin thereof in mind. This can be achieved through heavy and continuous use of a slogan but this does not mean that such use alone guarantees registration.

Possible perception of consumers is just one of the elements in assessing whether a “distinctive” advertising slogan is eligible for registration, whereas consumer perception is “the” defining element for concluding whether an “indistinctive” slogan can be registered as trademark.

A perfect example of a slogan having secondary meaning is “*just do it*” by Nike. Both the slogan as a whole and the words comprising that slogan are as mundane as it gets, but this slogan gained a place in the consumer’s minds due to heavy and continuous use of that slogan combined with the well-known status of the brand itself. Being a widely well-known brand surely helps to build that bridge between the slogan and the commercial origin since consumers pay more attention to promotions and advertisements of well-known products/services, thus the slogans stick.

Legal or real persons investing heavily for building up a slogan, or a “catch phrase”, to be distinguished from their competitor by grabbing attention to that slogan should make sure that the slogan or the use thereof, makes it eligible for registration. Otherwise the investment on a slogan may turn out to be futile just because the slogan is simply not distinctive or the use thereof does not reach the prevalence, or catch the attention that can make up for lack of distinctiveness.

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