

# Turkey

ATG Law Firm

## Criminal complications – Turkey’s counterfeiting challenge

Turkey is a tourist hot spot – but as the visitor numbers escalate, so too do the fake products. A good brand protection strategy can help to reduce the visibility of counterfeit products riding on the coattails of a trademark

**Regrettably, Turkey ranks** second in the world for the highest number of counterfeit product confiscations and first for counterfeit fashion products. Turkey’s counterfeit market is worth \$17.2 billion, reaching \$20 billion when imported counterfeit products are added to the mix. At its present size, the counterfeit market could employ 90,000 people in a non-shadow economy. These statistics are a huge problem for Turkey.

Much like the abrogated Decree Law 556, the new IP Law (6769) includes regulations on counterfeit products and has options for civil and criminal action against infringers.

With respect to civil actions, Article 29 of the law stipulates that certain acts should be considered as an infringement of trademark rights, meaning that infringement suits can be filed against a party that:

*use[s] the trademark as set out in Article 7 without the consent of the trademark proprietor, to counterfeit the trademark by using the trademark or a confusingly similar trademark without the consent of the trademark proprietor, while being aware or should be aware that the trademark is counterfeited by use of the trademark or a confusingly similar trademark, to sell, distribute, put on the market in a different form, possess for commercial purpose, import, export the products carrying infringed trademark or to offer to make a contract related to this product, to broaden or to transfer to third parties, without consent, the rights given by the trademark proprietor through license.*

With respect to criminal actions, Article 30 states that a person who produces

or provides services, places on the market, sells, imports or exports, buys for commercial purposes, possesses, transports or stores goods, while infringing trademark rights through quotation or likelihood of confusion, will be sentenced to between one and three years’ imprisonment and fined. For a sentence to be issued, the trademark must be registered in Turkey. The investigation and prosecution of such crimes are subject to a complaint being made. According to the IP Law, an individual who sells or places counterfeit products on the market will not be sentenced if they provide information about where the goods were acquired, as this could be used to identify the counterfeit producers and ultimately result in seizure of the products.

Trademark owners, particularly owners of luxury brands, usually build their strategies on criminal action because it is quick and cost efficient. Since infringers are not well-established companies (at least most of the time), it is almost impossible to collect compensation from them when a civil case is finalised on behalf of a trademark owner.

### Complications in criminal courts

Although the law is clear, it is not entirely in line with the relevant regulations. The courts require concrete evidence in order to issue search and confiscation decisions

– lawyers should back up allegations with invoices, product samples, comparative charts and exact addresses. However, obtaining these supporting documents can impede an investigation’s progress.

Turkey’s south coast is a summer tourist hot spot. As the visitor numbers escalate, so too do the fake products – damaging brand owners’ profits and reputations. The courts in this region firmly believe that the sale of counterfeit products contributes to the economy and tourism. Consequently, even the smallest deficiency in filing evidence will result in search and seizure requests being rejected. In some cases, even where files are accurate, courts reject search and warrant requests on the basis that a determination of evidence is required. However, when a case for determination of evidence is filed, the adverse party is notified and as a matter of course generally takes the opportunity to hide its counterfeit products.

Should a police raid be conducted, the prosecutor will file the case with the courts and non-IP specialised judges will evaluate the unlawful acts as economic crimes. These judges believe that economic crimes do not require imprisonment and verdicts usually result in the lowest level of penalty, meaning that Article 231 of the Criminal Procedure Code becomes applicable. Delaying the pronouncement

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of the judgment significantly lessens its impact as a deterrent. Pursuant to Article 231, if the infringer is fined or imprisoned for two years or fewer, the court may decide to delay the pronouncement of the judgment, which means that the judgment has no legal affect for the accused. Consequently, criminal action does not generally result in punishment, but merely pressures infringers into destroying the counterfeit products.

### Obstacles to gathering evidence

There are two sides of the counterfeit coin; while trademark owners, their lawyers and investigators are trying hard to hunt fake products, the manufacturers and retailers of these products are hiding insidiously. For example, they will often refrain from handling invoices unless a bulk purchase is made. Where they do issue invoices, they may exchange swiping machines with nearby shops. In addition, infringers do not use signboards to specify the names of their shops and often remove door numbers to make their addresses more vague. All of these tactics can be witnessed in the Grand Bazaar – one of the oldest shopping malls in the world and currently the main source of counterfeit products in Turkey. Since there is no landlord protection programme in Turkey, collecting evidence is tough work in the Grand Bazaar.

### Country of transit

A country's strategic importance always plays a significant role in counterfeiting activities. Turkey is a bridge between east and west and, as a result, one of the main channels for the flow of fake products, particularly via the Bulgarian border – a crucial entry point into Europe for counterfeit goods.

### Online infringement

In today's information era, counterfeiters are arming themselves with the latest methods to conduct their activities online and through social media to ensure fast action and the widest possible reach. Online sales are high but determining the source of these remains complicated. Online counterfeiting activities bring many downsides for



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lawyers, investigators and trademark owners, as infringers can cover their tracks more effectively, meaning that it is not always easy to conduct an internet-based investigation. Advertising over social media is a significant marketing tool for infringers – clicking on counterfeiters' ads will direct users to websites where the counterfeit products are sold. Online shopping can be carried out through these links but the websites provide no contact information and there is no regulation obliging them to do so. When an order is placed and a return address is requested, infringers tend to give a false address.

### Solutions for the Turkish market

As long as luxury brands exist, counterfeit products will be found on our shelves. It would be an impossible task to clear the Turkish market of counterfeits; however, a good brand protection strategy – prepared with the cooperation of trademark owners, attorneys and investigators – will reduce the visibility of counterfeit products riding on the

coattails of a trademark. Since infringers choose the path of least resistance, they tend to concentrate on trademarks with the least protection.

Turkey has harmonised its Customs Code with the Agreement on Trade-Related Aspects of Intellectual Property Rights, ensuring extensive protection for rights holders. Brands can be protected with one online application, which is then shared among customs offices across the country. To achieve maximum protection, rights holders should pay frequent visits to significant customs offices at Turkey's most important borders and provide training in how to identify counterfeit products.

To trace counterfeiters that use the Internet proves a greater challenge. Online marketplaces and social media must be monitored and sufficient data gathered, while investigators must establish trust with infringers so that is possible to visit their actual addresses. Only once an exact location is determined – which remains a low possibility – can lawyers can take a case to court. **WTR**