

Comparison of Civil and Criminal Methods for Challenging Counterfeiters in Turkey

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As in many countries, manufacturing, selling, and distributing counterfeit products in Turkey is considered to be both a crime and a tort. Therefore, brand owners may challenge Turkish counterfeiters by initiating either civil or criminal actions (or both).

As Turkish law provides a dual mechanism allowing both civil and criminal prosecution, brand owners often question the effectiveness of the alternatives and understandably wish to adopt the approach which provides the most effective results in the shortest time frame.

Taking into account the pros and cons of initiating criminal and civil actions against counterfeiters, initiating criminal action will arguably better serve a brand owner's immediate needs by quickly removing the counterfeit products from the market. A useful strategy for brand owners is to explore the counterfeit market through criminal raids and challenge bigger fish through the civil courts where more severe penalties are available.

The Turkish Legal Framework Encourages Brand Owners to Proactively Pursue Remedies Against Counterfeiters

Contrary to some other jurisdictions, Turkish Law does not provide ex-officio criminal measures allowing the administration or public prosecution to act on behalf of the trademark owners where it discovers or suspects counterfeiting. Rather, the Turkish legal framework encourages brand owners to be more active in their fight against counterfeiting, pursuing prosecution of counterfeiters themselves.

However, this means that when brand owners are faced with counterfeiting, Turkish law offers them the freedom to choose a prosecution strategy that most effectively and efficiently meets their particular business and strategic requirements.

Effectiveness may be measured in terms of time, cost and reduction of counterfeit activity. When determining the appropriate course of prosecution action brand owners should take into account the following considerations, among others:

- Their individual business and strategic aims
- The amount or extent of counterfeit products in Turkey
- The size of the counterfeiter's operation
- The jurisdiction where the counterfeiter is located
- Maintenance of customers' perceptions of the brand

Brand owners may wish to take advantage of [Turkey's Online Intellectual Property Registration System](#) to help identify counterfeit goods passing through Turkish Customs points.

Criminal Actions: Quick Results, Removing the Counterfeit Goods from the Market

Arguably, initiating criminal actions against counterfeiters in Turkey provides the most effective results for brand owners. Since the primary concern of most brand owners is their brand's reputation, criminal action is generally the preferred alternative because it prevents the counterfeit products from entering the market.

Criminal actions against counterfeiters are a timely and effective alternative because they allow immediate seizure of the goods, usually within the same day. Importantly, the brand owner's attorney plays a collaborative role during the seizure process, attending the raid and receiving insight into the relevant counterfeit market as well as the specific illegitimate activities in question.

Due to the current legal framework and workload, Turkish police generally do not take any steps against counterfeiters beyond seizing the counterfeit products. However, the information or documents obtained during the raid can be useful for a brand owner's future anti-counterfeiting activities. Brand owners may obtain information in this way, forming the basis of a later civil action that seeks a more satisfactory long-term solution than the criminal avenue offers.

Criminal action is a relatively cost-effective alternative compared to civil actions because the courts require only a minimal official fee from complainants in criminal actions. Although criminal action is swift and comparatively cheap, it is not designed to recoup damages and expenditure suffered by brand owners.

In practice, criminal penalties for counterfeiting are not harsh in Turkey. Although the law mentions imprisonment, prison penalty sentences are generally converted into criminal fines. Therefore, in practice, the criminal courts rarely issue decisions of imprisonment. In addition, according to Turkish criminal procedural law, if the counterfeiter has no criminal record the court may suspend the sentence for five years. If the counterfeiter does not receive any further criminal conviction within this five year period the initial punishment is erased from their criminal record.

Therefore, while the current criminal law does not have a major deterrent effect on counterfeiters, in practice, criminal action provides an effective mechanism for timely seizure and destruction of counterfeit goods.

Civil Actions: Relatively More Severe Penalties Against Counterfeiters

Brand owners may choose to initiate a civil lawsuit against counterfeiters either instead of, or in addition to, a criminal action. Civil actions allow brand owners to potentially eliminate trademark at its source and seek damages (both moral and material).

The Turkish Civil Procedural Law provides that brand owners may request a preliminary injunction to prevent the sale of the counterfeit goods to third parties. However, in practice, the civil court judges are reluctant to render such preliminary injunction decisions. In most cases, before rendering a preliminary injunction decision the civil court will schedule a hearing date and after the hearing, it might send samples of the counterfeit

product for expert examination. In some cases, the court may issue a preliminary injunction decision if the brand owner deposits an amount in order to compensate the counterfeiter's possible future damages. Because this process takes time there is a risk that the counterfeiter may sell or dispose of the counterfeit products in the meantime.

As the plaintiff in a civil action, brand owners must cover every official fee and expense (i.e. postage, expert examination fee, etc.) up until the end of the process. Therefore, initiating civil action against counterfeiters is comparatively more expensive for brand owners than initiating criminal actions.

Unlike in criminal actions, brand owners who initiate civil actions against counterfeiters may seek to recover their material and moral damages. However, as it generally takes around three to four years to receive the court's decision, this alternative is not suitable in all cases. A further consideration is that since counterfeiters in Turkey usually do not have permanent business addresses, if the court orders that the counterfeiter must pay the brand owner an amount as compensation these damages are not always collectable.

Despite this, the amount of damages ordered by the court has an effective deterrent effect to counterfeiters because when the court calculates the damages it considers the brand owner's actual loss or the income of the counterfeiter. Therefore, the possible consequences of a civil action for counterfeiters are financially more severe than the consequences that may result from a criminal action.

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