

## Trademark Infringement on the Internet Under Turkish Law

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In an era where every transaction can take place through the Internet, trademark holders would like to immediately prevent each and every illegal use in the blink of an eye. Unfortunately, in Turkey, the law protecting IP rights has not developed fast enough to protect trademark holders' rights in every aspect of life. Therefore, although the Trademark Decree Law provides the same protection to trademarks in cyberspace, no specific measures defined in law apply in order to prevent infringing acts in a short period of time.

While the Trademark Decree Law accepts the existence of trademark infringement when counterfeit goods are sold through a website; or when the trademark is displayed on the web page or used as a domain name, code, key code or similar, neither civil nor the criminal provisions provide an immediate solution to cease the illegal use of a trademark on the Internet.

In other words, the law does not provide a solution equivalent to a raid, where the infringing acts are immediately ceased. As a result of this, trademark owners need to start a criminal or civil lawsuit and wait until the end of the judgment (more than 18 months) to have the illegal use stopped.

Alternatively, trademark owners might request a preliminary injunction within the scope of a civil action, which cannot be the best option for trademark owners who are constantly dealing with online trademark infringement and cyber-squatting issues.

Moreover, it is possible to say that the nature of online infringement cases does not always comply with the principles of the Civil Procedural Law. For example, the plaintiff needs to identify the defendant's name and address on its petition and this information may not be available in most of the online trademark infringement and cyber-squatting cases.

On the other hand, the Law no 5846 on Intellectual and Artistic Work, in its additional provision Article 4, provides for the taking down of a website containing copyright-infringing elements, after the copyright owner sends a warning letter to the content provider (and second to the service provider). However, in practice, this option works efficiently only for rights holders who can easily prove their rights (such as for video or music).

Apart from starting a criminal or civil action, there is no governmental authority to apply in cases of online trademark infringement in Turkey. Therefore, it is possible to say that trademark infringements do not result in taking down a website (or relevant web page) as the first step in Turkey. Considering that time is of the essence in ceasing the illegal use and/or preventing the relevant public's access to the website, Turkish trademark law is challenging in online trademark infringement and cyber-squatting cases.

While the Turkish legal system does not provide any option for an expeditious and even temporary orders for blocking access to a website, Internet Law no 5651 provides a limited list of crimes that can result in the

taking down of a website. According to Article 8 of Law no 5651, access to websites is subject to blocking if there is sufficient suspicion that certain crimes are being committed on a particular website.

Although the crimes are limited to incitement to suicide, sexual exploitation and abuse of children, facilitation of the use of drugs, provision of substances dangerous to health, obscenity, gambling and crimes committed against Atatürk, a broad range of crimes can be considered within this scope. Therefore, a considerable number of websites have been taken down based on this law (including web 2.0 platforms such as YouTube and Blogger), upon court decisions and administrative bodies. Law no 5651 is much discussed as it has a detrimental effect on freedom of expression and it is paradoxical that the law is overprotecting on one side and not protecting on the other.

The Trademark Decree Law's provisions on trademark infringement are cumbersome when it comes to applying them on the online platform. This will cause damage to trademark owners unless an expeditious solution is introduced.

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