

Turkish Constitutional Court Considers Constitutionality of Provisions for Trademark Infringement and Related Sanctions

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The Turkish Constitutional Court recently considered and rejected a claim that Articles 29 and 30 of the Industrial Property Law ("**Law**") are unconstitutional. These provisions outline acts which constitute trademark infringement and related sanctions.

The Criminal Court of First Instance claimed that Articles 29 and 30 of the Law should be struck out. It argued that criminalization of acts which could be prevented by legal sanctions is not fair and the sanctions are disproportionate. It also claimed that deeming acts to be a crime leads to subjective evaluations and determining the necessary intent element causes uncertainty. Thus, it sought to strike out the provisions because they breach constitutional principles regarding:

- The State of law.
- Clarity and definiteness.
- Legality.

The Constitutional Court rejected the lower court's claim on the grounds that:

- The state has a constitutional duty to protect property rights and prevent interferences from third parties.
- Intellectual property rights are property rights.
- Legislators are authorized to determine the method and procedure for protecting trademark rights.
- The legislators' decision to designate an act as constituting either unfair competition or a crime does not breach the constitution.
- Articles 28 and 29 of the Law clearly state the legal and punitive sanctions for trademark infringement. Therefore, there is no vagueness, nor violation of the legality principle.
- The Law's preamble defines similarity as the "likelihood of confusion" in a certain and predictable manner.
- A trademark infringement complaint is prosecuted as a criminal charge, depending on repentance provisions. Therefore, the sanctions are appropriate for the intended purpose and a reasonable relationship exists between the purpose and the means.

Please see this [link](#) for the full text of the Constitutional Court's decision, number 2017/172 E., 2018/32 K., dated 28 March 2018 and published on the Official Gazette number 30397 on 20 April 2018 (only available in Turkish).

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