

Turkish Supreme Court Clarifies Trademark Infringement in Context of Violating Personal Rights

18 Aug 2017

The Turkish Supreme Court recently ruled that if trademark infringement also infringes personal rights, then the right holder can seek protection under Law Number 5651 Regulating Internet Broadcasting and Fighting Crimes Committed through Internet Broadcasting ("**Law**"). Under the Law, parties which suffer violations of personal rights can ask the courts to remove the offending content from the internet and deny access. The decision is the first time the courts have clearly indicated how the Law can be used in trademark infringement conflicts.

In the case at hand, the complainant was a company, which claimed its registered trademark was being used on counterfeit products, as well as in photos of the goods on social media.

Article 9 of the Law allows parties to request content be removed from the internet and access denied if the content damages their personal rights.

Accordingly, the complainant asked the First Instance Court to remove access to the content on the basis that it damaged the company's personal rights.

The First Instance Court rejected the complainant's request, ruling that:

- The complaint petition did not include the relevant URL addresses.
- Mere broadcast of musical instruments' photos should not be deemed illegitimate.

The complainant appealed the First Instance Court's decision to the Supreme Court.

Legal Standing to Make the Request

As a first step, the Supreme Court considered whether the complainant (as a company) possessed valid legal standing to request access be denied based on alleged personal right violations.

The court considered provisions of the Turkish Civil Code, Turkish Commercial Code and Turkish Criminal Law. It ultimately ruled that legal entities do possess certain personal rights: prestige, honor, as well as professional and personal values.

Therefore, the court determined that the complainant does hold legal standing to request access be denied under Article 9, if its personal rights are violated.

Trademark Infringement as a Breach of Personal Rights

The broadcast in dispute involved visuals of counterfeit products. Therefore, the court held that the claim must be considered in terms of both trademark infringement and personal rights.

The court noted that broadcasts which may damage the prestige of a trademark owner can be deemed to be an infringement of personal rights, if all other conditions in the Law are met. This is the first time the Turkish courts have

given such a clear indication on this point.

However, the Supreme Court rejected the complainant's appeal, ruling that the situation did not represent an emergency (one of the elements which must be met for under Article 9) and it had not yet been established whether the social media content actually constituted trademark infringement.

(Case reference: Yargıtay 19. CD. 15.05.2017 T., 2016/74 E., 2017/4574 K.)

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