

Understanding the Doctrine of Exhaustion in the Context of Trademark Rights in Turkey

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As the global economy grows, technology expands, and the sale of electronic goods increases, principles of exhaustion rights relating to trademarks are becoming more relevant as various products are sold across international borders. The concept of gray market goods (also known as parallel imports) comes into play and influences pricing, quality of goods, labeling and other key elements of the product.

It's important to understand the guiding principle of the doctrine of exhaustion and its implications on the economy as well as the tug-and-pull between trademark owners and those selling products. Different regions of the world adopt variations of the doctrine of exhaustion, and Turkey, in particular, is important in terms of intellectual property rights due to its geography's key transportation role between Europe, Africa and Asia.

Let's take a look at the doctrine of exhaustion, the change in Turkey's intellectual property landscape in trademark rights, and how its new standard differs from the European Union.

What is the definition of the doctrine of exhaustion and gray market goods?

The doctrine of exhaustion is born out of a need to strike a balance between the trademark owner and those third-parties who eventually sell the product. Under the doctrine, the enforceability of the patent, trademark or copyrights in a product become "exhausted" after the first sale. The IP owner or others with IP owner's consent have no right to stop others from reselling or using the product. In effect, the doctrine allows the disposition and movement of goods and prevents the IP owner from taking control or influencing the distribution and creating a monopoly.

Gray market goods are original branded products from one market or area (e.g., Asia) that are subsequently imported into another different market or region (e.g., Europe) without the consent of the trademark's owner.

What are the types of exhaustive rights?

The type of exhaustive rights a country adopts is important because it has implications for the IP rights owner and the consumer. The three types are:

- In a national exhaustion of rights, once a sale of a good occurs in the country, the IP owner exhausts the right to control the disposition of the good within that country.
- A regional exhaustion of rights, according to the World Intellectual Property Organization, "takes place when goods are released with the consent of the owner of the patent in any country member of a regional market or union."

- In an international exhaustion of rights, there is a free distribution of goods once the product is sold in the market by the IP owner or with consent of the IP owner.

In 2017, Turkey adopted international exhaustion of rights.

Prior to the 2017 change, Turkey adopted the national exhaustion of IP rights once the first sale occurred within the country, despite rulings from the Court of Appeal in the 2000s interpreting exhaustion of rights in broader terms, making it impossible to prevent the subsequent sales that took place after the first sale. However, until the 2000s, IP owners' rights were protected if a sale occurred outside of the country. Essentially, IP owners had more control over the distribution of their goods outside of Turkey.

However, as of 10 January 2017, with the new IP Law, Turkey decided to adopt international exhaustion of rights whereby products can be sold on the open market and obtaining permission from the rights' holder is not required —with one caveat, discussed below. Under this doctrine, as long as the product is legally marketed, the IP owner has exhausted his or her rights. This clearly benefits the consumer because there is more competition for the product in multiple areas.

National exhaustion of rights favors the IP owner, while international exhaustion of rights favors the buyer or consumer.

When a country implements a national exhaustion of rights, the IP owner can set different prices of a particular good and set the value of the product depending on the country in which it is sold. A richer country might be charged a higher price, while a poorer market will probably be charged less. The IP owner sets the pricing accordingly, allowing for various market fluctuations in the same product.

In an international exhaustion of rights, the consumer can seek to find the best price among several suppliers of the same product. Once a product is sold anywhere in the market, it is fair game, and consumers can take advantage of price differences.

How do Turkey's exhaustive rights differ from the European Union's?

Turkey adopts an international exhaustive rights doctrine. Under this version, the world is seen as a single market or "one country." Under Turkish law, the import of gray goods is not considered trademark infringement. The IP owner has exhausted his or her rights over those goods. One caveat applies: If the importer or reseller damages, impairs, or changes the goods in a way to damage the reputation of the trademark or harm the product, the IP owner can file suit for infringement.

The European Union adopts a regional exhaustion of rights. Once the trademarked goods are sold by the IP rights owner (or with his consent), he cannot prevent subsequent sale in their own country or in any other country that is also a part of that specific region. However, any sale in a foreign jurisdiction is prohibited.

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