

Using Trademarks in Turkey on Goods Manufactured for Export Purposes

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In Turkey, court interpretations of the Trademark Decree Law have created a grey area for foreign companies using Turkey as a production location, as well as for Turkish contract manufacturers. A disconnect exists between seemingly clear legislation and the interpretation applied by the courts. Under the current approach adopted by Turkish courts, a foreign company which manufactures its goods in Turkey will only be deemed to be using its trademark in Turkey if the goods are introduced into the Turkish market.

Turkey is an important contract manufacturer, particularly for the textile and clothing industries. The country has relatively high standards for working conditions. It is also a notable transport hub for land, sea, and air. Finally, Turkey has a Custom Union Agreement with the European Union. Due to these factors, global brands based out of the European Union and United States regularly cooperate with Turkish contract manufacturers to have products manufactured in Turkey, according to their specifications. Depending on each brand's policies, these Turkish manufactured products can be sent to the intended market either with or without labelling.

From a trademark perspective, questions arise whether Turkish trademark registration is necessary, given that only the production takes place in Turkey. A further question exists as to whether manufacturing goods in Turkey constitutes use of a trademark within the context of proving use of a mark. While the Trademark Decree Law appears to specifically and clearly address these questions, court practices seem to be contradictory.

Article 14 of the Trademark Decree Law outlines a non-exhaustive list of what constitutes use of a trademark in Turkey. Use of the trademark on goods or their packaging solely for export purposes is listed among the other means of usage. From the wording of this provision, it is clearly understood that use of the trademark in Turkey includes attaching the trademark onto the label, or onto the package, before the product is dispatched from Turkey. If a trademark is not attached to the Turkish-manufactured product once it has left Turkey, this will not be considered to be a use of the trademark in Turkey. Article 14 does not make a distinction as to the nature of the production.

Despite the wording of Article 14, in practice Turkish courts seem to give weight to whether the company manufactures the goods for itself, or as a contract manufacturer on behalf of another company. In some cases Turkish courts have held that a trademark has not been used in Turkey, in circumstances where a Turkish company acts as a contract manufacturer and the goods are not introduced into the Turkish market. The courts have treated the question of whether or not the goods are introduced into the Turkish market as determinative. Under the current approach, if a court determines that this introduction has not occurred, a company which has arranged for its goods to be manufactured in Turkey will not be deemed to be using its trademark in Turkey.

Contradictorily, Turkish contract manufacturers are generally held liable by Turkish courts in trademark infringement claims initiated by Turkish trademark holders regarding goods being manufactured in Turkey. In such cases, courts have not accepted the contract manufacturer's defense that it is manufacturing the goods upon order, according to the purchasing company's specification. The Appeal Court has approved the existence of trademark infringement in certain cases, despite the products not being introduced into the Turkish market.

In future, Turkish courts must make a clear distinction as to the products manufactured solely for export purposes and which will never have access to the Turkish consumer.

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