

New circular improves customs protection of IP rights; number of suspensions increases considerably
Turkey - Gün + Partners

**Counterfeiting
Infringement
Enforcement
National**

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- **New circular by Ministry of Customs and Trade reinforces customs protection of IP rights**
- **Customs liquidation officials now have access to database of customs applications**
- **There is no need for IP owners to file separate application with Customs Liquidation Directorates**

The official system for the protection of IP rights by Turkish Customs requires that a single application - for each and every IP right - be filed before the General Directorate of Customs in Ankara; the customs application covers importation and exportation, as well as transit trade and Turkish free zones. It is possible to file a customs application for any determined timeframe, with an upper limit of one year. Each application is processed within 30 working days; upon acceptance, the local Customs can suspend suspected goods for three to 10 working days, depending on the nature of the goods, and must notify the brand owner's representative of the suspension.

This system is pretty effective and, with the cooperation between Turkish Customs and the European Union over the past two years, it has become the preferred tool to fight counterfeiting.

Turkish Customs, like other customs offices, also deals with the issue of smuggled products. The smuggling police and customs enforcement officers may take *ex officio* actions against smuggling offences under the Anti-Smuggling Law 5607, the basic purpose of which is to fight customs tax evasion; all smuggled products seized by such enforcement bodies are delivered to the Customs Liquidation Directorates for storage and sale. The Customs Liquidation Directorates organise tenders for the sale of such products and delivers them to the successful tenderer.

However, when a smuggling crime was committed, Turkish Customs and the Liquidation Directorates did not usually pay attention to whether the goods were counterfeit or not, while the brand owners should have been notified - which meant that counterfeits ended up on the market after all. Brand owners started following up on the tenders, filing specific applications to try to suspend those, but it became evident that this gap in the system had to be filled as soon as possible.

On July 12 2017 the Ministry of Customs and Trade published a circular in order to harmonise customs applications with the matters before the Customs Liquidation Directorates, and put into force some new rules.

With the new system, there is no need for IP owners to file a separate application before the General Customs Liquidation Directorate; the customs applications also cover the products processed by the Customs Liquidation Directorates. All local customs liquidation officials are now given access to the database of customs applications filed before the General Customs Directorate by IP owners. Local customs liquidation officials are also obliged to check this database whenever they receive a product bearing a trademark and contact the relevant IP owner immediately with a temporary decision, providing it with 10 working days to check the products and obtain a court decision, after the smuggling raids and/or before proceeding with the liquidation procedures. Officials may even inform IP owners who have not filed a proper customs application and provide them with three days to file a general customs application; however, it seems quite optimistic to expect that customs liquidation officials will take such steps *ex officio* without an application by the brand owner.

The new circular also regulates how fake products will be stored. Enforcement units must deliver the counterfeit products to National Estate Service warehouses, instead of the facilities of the Customs Liquidation Services, under Article 163 of the new IP Law. However, in practice, the National Estate Service does not have sufficient facilities or warehouses to store the goods. Thus, it is not currently possible to apply Article 163 to smuggled counterfeits and the local prosecutors' offices are forcing Customs Liquidation Services to accept such products until further notice.

In addition, the issue of the destruction of such products is still pending. The National Estate Service should perform the destruction under Article 163 if the courts decide that destruction should be prompt. However, some of the courts decide to order the confiscation of the goods instead. The National Estate Service does not perform the confiscation, unless assigned to do so by the courts or the local prosecutors' offices. The

Customs Liquidation Services also refuse to perform the confiscation, claiming that they have no responsibility in trademark infringement cases. Nevertheless, it is expected that this problem will be resolved in the near future through the adoption of a practical solution, considering the number of smuggled counterfeits that have started piling up.

This new circular, as well as the practical approach that it introduced, allows rights holders to combat counterfeiting more effectively. It is noteworthy that the number of smuggled counterfeits is ten times higher than the number of counterfeit products suspended during regular customs IP procedures. The new circular has already improved the efficiency of Customs and the number of suspensions has increased considerably.

With these recent developments, customs protection of IP rights is now stronger in Turkey. It has also become evident that the cooperation between Customs and right holders, as well as the filing of customs applications, is crucial.

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