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# Appeal court issues significant decision on jurisdiction in case of online infringement

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- A foreign company with registered trademark rights in Turkey filed an action for infringement before the IP Court of Ankara
- The court found that it did not have jurisdiction to hear the case as the defendant was based in Istanbul
- The Regional Court of Appeal disagreed: as the infringement occurred online, its impact could also be felt in Ankara

The Regional Court of Appeal has held that, in case of online infringement of a registered trademark, the owner of the trademark may initiate a court action against the infringer anywhere in Turkey.

## Background

The claimant, a foreign company which owned registered trademark rights in Turkey, was suffering from the defendant's infringing acts and initiated a trademark infringement action.

Article 156 of the Turkish IP Code, entitled "Commissioned and competent court", states that:

*in legal proceedings to be instituted against third parties by the owner of industrial property rights, the competent court shall be the court of the place where the plaintiff is domiciled or where the action violating the law has taken place or where the effects of this action are observed.*

Since the defendant also committed the infringement through its website, the claimant chose to initiate the action before the IP Court of Ankara, as the impact of the online infringement was also felt in Ankara.

However, as the defendant was not domiciled in Ankara, the latter claimed that the IP Court of Ankara did not have jurisdiction in this case; rather, the IP Court in Istanbul had jurisdiction to hear the case. Article 156/3 states that, in such actions, the competent court is that of the place where the plaintiff is domiciled, and Article 156/4 sets out that, where the plaintiff is not domiciled in Turkey, the competent court shall be that of the place where the business premises of the registered attorney are located and, if the record of the attorney has been deleted in the register, that of the place where the headquarters of the Turkish IP Office are located.

The Ankara IP Court found the defendant's plea lawful and ruled that it did not have jurisdiction to hear this case, because the defendant was based in Istanbul and the registered trademark agent of the trademark owner was also located in Istanbul.

## Court of Appeal decision

On appeal, the Regional Court of Appeal returned the case to the IP Court of Ankara. It found that the Ankara IP Court had jurisdiction and should hear the case on the merits, because the infringement also occurred online and, therefore, the impact of such infringement could be felt in Ankara (and, in fact, anywhere in Turkey).

The decision of the Regional Court of Appeal is final and binding. The Ankara IP Court thus resumed its examination and continued to hear the case on the merits.

## Comment

With this decision, the Regional Court of Appeal acknowledged that, in case of online infringement of a registered trademark, the owner of the trademark is authorised to initiate a court action against the infringement anywhere in Turkey. The trademark owner has the option to file the action before the court of the place where:

- the infringing action has taken place;
- the impact of the infringing action is being observed; or
- the plaintiff is domiciled.

If the claimant is not domiciled in Turkey and decides to choose the third option, then Article 156/4 will apply and the competent court will be that of the place where the business premises of the registered attorney are located and, if the record of the attorney has been deleted, that of the place where the headquarters of the Turkish IP Office are located.

Therefore, the decision confirmed that the trademark owner is not expected to strictly follow the order set forth in Article 156/3, but is entitled to choose one of the three options, irrespective of such order.

Arguably, this decision may encourage foreign companies with registered trademarks in Turkey to sue for trademark infringement and seek protection for their trademarks more readily in case of online infringement. Further, it is noteworthy that this rule does not apply only to trademarks, but is also valid in case of online infringement of other industrial property rights.

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