

The Importance of Evidence Gathering for Criminal Cases

In Turkey, the prosecution of criminal offenses in trademark law depends on a proper complaint filed by the trademark owner. Once the complaint and the evidence is submitted to the local prosecutor's office, the file is brought before the local Criminal Court. The Criminal Courts, however, become more and more reluctant to issue the decisions recently. Hence, it is now more important than ever for the trademark owners to be well-prepared before filing the complaint, in terms of evidence gathering.

The preparation of the complaint starts with investigations, and on-site investigations are particularly important to obtain the very basic evidence, such as target's clear address, photos, samples with receipt etc. These steps should be handled by trusted investigators and the supervision of legal professionals should be sought at all times, as in Turkey, the activities of the private investigators are not regulated by law.

Undercover notarized test purchases are the strongest evidence in criminal actions, especially where it is not possible to conduct a test purchase with receipt. With a notarized purchase, it becomes undisputable that the target deals with the sale of counterfeit goods, and it provides protection for the brand owner in case no products can be seized at the raid eventually - which theoretically gives the counterfeiter an option to request compensation from the complainant due to unlawful raid.

The public prosecutor and the criminal judge may also request original samples to compare with the counterfeits and a simple technical report comparing the original and counterfeit items would be beneficial. Witness statements are also available, despite not being as strong as the others .

Recently, the public prosecutors also started assigning the police for undercover investigations as per articles 160 and 161 of Criminal Procedural Law, as an additional ground for the search and seizure warrant, where the police visits the target's address and confirms whether or not the targets deal with counterfeits. This conduct can also be "supervised" based on the personal contacts with the police, so that the counterfeiters would not notice that they are under surveillance.

In this context, we suggest the brand owners to give priority to the evidence gathering procedures before filing the criminal complaints, not only to increase the chances of obtaining a search and seizure order but also in order to secure themselves against counter claims from counterfeiters.