

# Managing Intellectual Property

## The Global IP Resource

### TURKEY: CHANGES TO ANTI-COUNTERFEITING LEGISLATION

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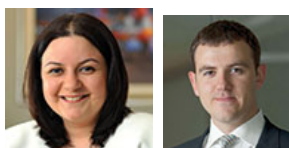
The Industrial Property Code (IP Code) entered into force upon publication in the Official Gazette on January 10 2017. The IP Code has now replaced the respective decree-laws (D-L) pertaining to the protection of trade marks, patents, geographical indications and industrial designs, unifying them into a single code.

Article 30 of the IP Code extends the scope of offence, compared to the trade mark D-L. Under Article 61/A of the D-L, the "manufacturing, offering for sale and selling of goods or services bearing identical or confusingly similar trade marks" were listed as acts constituting an offence. Article 30/1 of the IP Code now sets forth that "manufacturing goods or providing services bearing identical or confusingly similar trade marks, offering for sale or selling, importing or exporting, buying, keeping at hand, shipping or stocking those for commercial purposes" constitute an offence. The penalties foreseen are the same as in the D-L: a sentence of one to three years and a fine to be paid to the state. The IP Code also has an immunity clause; the infringer may avoid punishment if he/she provides information as to the source of the counterfeit goods and enables the manufacturer(s) to be revealed and the counterfeit goods to be seized.

A quite important change introduced to Turkish trade mark law with the new IP Code is the "fast destruction procedure". Article 163 of the IP Code entitles the Public Prosecutor to have the seized goods delivered to local fiscal administrations for storage after having the necessary amount of samples taken to the trustee's office at the courthouse. The new procedure introduced entitles the Public Prosecutor – or the judge if the matter matures into a full criminal case - to order the destruction of the rest of the goods that lay with the trustee where the goods are at risk of damage or serious loss of value, or if the storage of the goods is very costly, provided that the counterfeit nature of these goods is confirmed by an expert report.

Whereas this procedure is indeed considered a favourable development by rights holders as it aims to avoid the incurrence of unreasonable costs from the very beginning, in practice public prosecutors may call for the delivery of the products to private trustees considering that the local fiscal administrations would not have sufficient place for storage of goods and expect the rights holders to bear the costs. Nevertheless, fast destruction may be applied to goods that cause damage to health if kept for a long time.

The IP Code has had a positive impact regarding criminal IP matters and these amendments will strengthen rights holders in trade mark infringement matters.



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**COMMENTS**

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