

## I. PRE-FILING REQUIREMENTS/DEMAND LETTERS

- On the other hand, in the area of criminal law, the number of disputes that shall be referred to reconciliation after instituting proceedings was increased in 2016 with the entry into force of Law No. 6763 regarding Making Changes in the Code of Civil Procedure and other laws. Currently, criminal actions arising from trademark infringement disputes are referred to reconciliation by the courts after instituting proceedings.

As a recent development, mediation became mandatory in relation to commercial receivables claims with the Code of Commencement of Execution Proceedings in Monetary Receivables Arising from Subscription Agreements ("the Code"). Pursuant to Article 20 of the Code, Article 5/A is incorporated to Turkish Commercial Code ("TCC")

- The name for such a letter is: ihtarname ("cease and desist letter" in English).
- Such a letter should be sent at the following time: There is no specific time for sending such a letter.









The court system or administrative body that most frequently hears claims for infringement of a registered trademark is: Criminal courts for anticounterfeiting cases and civil courts for look-alike infringement cases. Criminal enforcement is more common in the Turkish system.

The other court system or administrative body that can also hear claims for infringement of a registered trademark is: civil courts (IP or first instance, depending on the city).

The following factors determine which court or administrative body can hear a case:

- The court system or administrative body that most frequently hears claims for infringement of a registered trademark is: Criminal courts for anticounterfeiting cases and civil courts for look-alike infringement cases. Criminal enforcement is more common in the Turkish system.
- The other court system or administrative body that can also hear claims for infringement of a registered trademark is: civil courts (IP or first instance, depending on the city).
- The following factors determine which court or administrative body can hear a case:
  - - place of alleged infringement;
  - - place where alleged damage occurred;
  - - residence of plaintiff;
  - - residence of defendant;
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- If there is risk of serious damage, the non-exclusive licensee can request implementation of a preliminary injunction (PI) from the court, without waiting for the three-month period mentioned above to pass. If the court grants the PI request, the non-exclusive licensee shall be entitled to institute court proceedings as well. In such case, notification shall be made to the owner/registered proprietor after the proceedings are initiated.).







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- judgment/decision;
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- hearing to determine appropriate remedies;
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- damages (or other financial relief) assessment.

### III. CLAIM FOR INFRINGEMENT OF AN UNREGISTERED TRADEMARK/UNFAIR COMPETITION/PASSING OFF

- registered trademarks are protected under the following laws:
- - unfair competition statute.
- The following parties have standing/authority to institute proceedings in case of infringement of an unregistered trademark:
- - the owner of the unregistered right;

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### A. Ex Parte Injunctions

- Ex parte injunctions are available to claimants seeking emergency relief.
- In order to apply for an ex parte injunction, it is not necessary to institute infringement proceedings at the same time. It is possible to request precautionary measures separately from the main action, such as determination of evidence, injunction, etc. In this respect, it is possible

- The types of ex parte injunction available include:
  - - prohibitory (to prohibit the defendant from performing certain acts) (such as confiscation or recalling (from the market) of the allegedly infringing products and their admission to the fiduciary, prevention of production, distribution, promotion, import and export of the allegedly infringing products, prevention of the sales or use of the allegedly infringing products (including through online platforms), removal of the allegedly infringing products from the content of the defendant's website, prevention of the promotion of the allegedly infringing products, denial of access to the whole content or a part of the content of the defendant's website on which the infringing products are presented);



- - to obtain or preserve evidence;
- - to ensure the effectiveness of the eventual remedy;
- - to preserve the status quo;
- - to prevent irreparable injury;
- - to protect the public interest.
- The strategic benefits of obtaining an ex parte injunction include:
  - - it may put an end to the infringement and litigation quickly;
  - - it may save costs;
  - - putting the defendant at a strategic disadvantage at the beginning of the case;
  - - obtaining or preserving evidence;
  - - ensuring the availability of the requested remedy;
  - - ensuring the availability of compensation for damages;













appeal the court's decision regarding the objection to the District Court. The District Court's decision regarding this appeal is final and is not subject to further appeal.

- Appeal of a decision for grant of an ex parte injunction cannot be expedited. However, it is foreseen under the Code of Civil Procedure that the appeal filed with the District Court against the court's decision regarding the objection to the grant of an injunction shall be evaluated with priority.
- The denial of an ex parte injunction can be appealed. This appeal shall be filed before the District Court.
- Appeal of a decision denying an ex parte injunction cannot be expedited. However, it is foreseen under the Code of Civil Procedure that the appeal filed with the District Court against the court's decision regarding the objection to the denial of an injunction shall be evaluated with priority.

## B. Interim Inter Partes Injunctions

- Interim inter partes injunctions are available to claimants seeking emergency relief.
- In order to apply for an interim inter partes injunction, it is not necessary to institute infringement proceedings at the same time. As explained in Section IV.A above, the injunction can be requested as a subsidiary action or along with the main action. The interim inter partes injunction where the injunction request is rendered at the presence of both parties will be explained.
- The types of interim inter partes injunction available include:
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- prohibitory (to prohibit the defendant from performing certain acts) (such as prevention of production, distribution, promotion, import and export of the allegedly infringing products, prevention of the sales or use of the allegedly infringing products (including through online platforms), prevention of the promotion of the allegedly infringing products, denial of access to the whole content or a part of the content of the defendant's website on which the infringing products are presented);
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- mandatory (to require the defendant to perform certain acts) (such as confiscation or recalling (from the market) of the allegedly infringing products and their admission to the fiduciary and removal of the allegedly infringing products from the content of the defendant's website. Also, ordering the defendant to deposit a guarantee amount for any potential damages instead of the prohibitory injunctions mentioned above is done in case the trademark infringement is not obvious and there is a risk for the defendant to suffer severe financial damages due to the implementation of prohibitory injunctions, by taking into consideration the principle of proportionality.).
- There is no specified deadline for seeking an interim inter partes injunction. However, it should reasonably be sought while filing the action or within a short time period after having been aware of the act requiring an injunction, since "imminent danger" is one of the conditions for the injunction. If an injunction is sought after a long time passes, the court may not grant the request because there does not seem to be imminent danger.
- A delay in applying for an interim inter partes injunction can prevent the applicant from obtaining the desired relief under the following circumstances: if the imminent danger has passed, the court may not grant the request for an injunction as well.















- The determination on an application for an interim inter partes injunction can be made into a final decision on the merits (i.e., an interim inter partes injunction can be made permanent).
- The hearing on an interim inter partes injunction can be consolidated with the trial or final determination on the proceeding.
- The grant of an interim inter partes injunction can be appealed without waiting for final disposition of the case only under the following circumstances: The party against which the injunction has been granted can appeal the decision within two weeks before the District Court.
- Further appeal of the grant of an interim inter partes injunction is not available.
- Appeal of a decision for grant of an interim inter partes injunction cannot be expedited. However, it is foreseen under the Code of Civil Procedure that the appeal filed with the District Court against the court's decision regarding the objection to the grant of an injunction shall be evaluated with priority.
- The denial of an interim inter partes injunction can always be appealed without waiting for final disposition of the case. This appeal shall be filed before the District Court.
- Further appeal of the denial of an interim inter partes injunction is not available.
- Appeal of a decision denying an interim inter partes injunction cannot be expedited. However, it is foreseen under the Code of Civil Procedure that the appeal filed with the District Court against the court's decision regarding the denial of the application for injunction shall be evaluated with priority.

- The following forms of evidence can be relied upon in support of a claim in this jurisdiction's trademark infringement proceedings:
  - - documentary evidence (including samples/photos of allegedly infringing items);



A party to the proceedings may obtain information that is within the possession or control of another party to the proceedings:

- - at the request of the tribunal. As per Article 219 of the Code of Civil Procedure, the parties shall submit the evidence they possess that is shown as an evidence by the other party. In this regard, it should be noted that the court can request the party to submit the evidence it possesses that is shown as an evidence by the other party if that party requests so.

- Evidence may be presented at the trial or oral hearing in the form of:
  - - oral testimony of witnesses (This is possible only if the relevant party presented oral testimony of witnesses as evidence in the exchange of petitions phase. However, it should be noted that the trial, a final hearing at which witness testimony is or may be presented, is not available in Turkey. Accordingly, as explained previously, it is possible only to submit any kind of evidence within two weeks as of the notification of the preliminary examination hearing and it is not possible to submit new evidence after this period. More precisely, after the preliminary examination hearing, the court can hear testimony of the witnesses only if the relevant party showed oral testimony of witnesses as evidence at the above-explained period.);



- Therefore, all of the above-mentioned hearings are 10-15 minutes each.

- The nature of the proceedings is:
  - - adversarial, i.e., the proceedings are driven by the parties and their representatives (e.g., the litigants control and present evidence) and the decision maker plays a relatively passive

- A trial or final hearing includes the following:

- It takes approximately the following amount of time for a decision to be

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## IX. POST-JUDGMENT MATTERS

- A defendant has the following length of time to comply with an order issued in a judgment: immediately.
- A judgment may be enforced by way of the following proceeding(s): As per the Enforcement and Bankruptcy Code, the judgment can be executed by enforcement proceedings with judgment via the enforcement offices.

## X. COSTS OF LITIGATION

### A. General

- The types of costs that may be recovered by the prevailing party during/after legal proceedings include:

- - attorney fees (which are the minimum attorneyship fee determined in the minimum attorneyship fee tariff; this fee is paid to the attorney. Currently, this fee is TRY 4,910 (around USD 610) for IP cases.);
- - court fees;
- - expert fees;
- - bond or security for costs.
- A range for the all-inclusive cost of a typical action for trademark infringement from filing of the claim through trial is as follows:
  - - between USD 20,000 and USD 50,000.
- The successful party in a trademark infringement claim cannot expect to recover any of the attorney fees incurred (as distinguished from damages awarded). It can recover only the minimum attorneyship fee determined in the minimum attorneyship fee tariff. Currently, this fee is TRY 4,910 (around USD 610) for IP cases.

## B. Security for Costs

- When initiating proceedings, a plaintiff may be required to provide security for any costs that may eventually be awarded against it. As explained previously, professional fees cannot be recovered or cannot be guaranteed by a security, but only the minimum attorneyship fee can be recovered by the attorney of the winning party. On the other hand, if

A defendant may be required to provide security for costs after proceedings are initiated.

Application for security for costs is made via the following procedure: A security for costs can be ruled ex officio or upon the request of the party.

For the court to grant security for costs, the following conditions must be met:

- - the claimant is resident outside the jurisdiction; As per the reciprocity principle, if the claimant is a foreigner whose country requires security for Turkish citizens/companies, it shall pay security in Turkey as well. Furthermore, if the parties are parties to an international convention, then they are not required to pay security, and if they are not, they will.
- An application for security for costs can be made at the following stage of the proceedings: An application for security for costs can be filed at any stage of the proceedings.
- In granting security for costs, the court may make the following orders:
  - - the amount of the security;
  - - the manner in which the security must be given;
  - - the time frame in which the security must be given.

- The following monetary remedies are available for trademark infringement:
  - - accounting of defendant's profits and actual damages;
  - - accounting of defendant's profits (but not actual damages);
  - - actual damages (but not an accounting of defendant's profits).
- Actual damages are assessed using the following methods:
  - - lost profits of plaintiff;

