

New online system for customs applications introduced

By Barış Kalaycı and Ali Bozoğlu

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The Turkish customs legislation concerning IP protection was amended on April 1 2013 and, as a consequence, IP rights holders can now file customs applications via the website of the General Directorate of Customs in Ankara. These customs applications cover all imported and exported shipments, as well as goods in transit at all Turkish customs gates and free trade zones.

IP rights holders are entitled to file such applications directly, but must bear in mind that the new system requires a Turkish national identity number and an electronic signature. Foreign IP rights holders will be able to file an application only through a local representative in possession of an electronic signature.

Under the new system, customs applications no longer need to be submitted to all customs departments. The system thus minimises the effort, time and physical documents required to file customs applications.

The General Directorate of Customs will notify the applicant of the outcome of its application via email within 30 days of the actual submission, and almost all applications are directly accepted for a period of one year.

If the customs authorities discover suspected counterfeit goods, they will grant a temporary suspension order, and the IP rights holder will be requested to check the products, acquire samples or take pictures of the products, and obtain a preliminary injunction decision or a criminal seizure order within 10 working days of the notification of the decision.

Under the legislation, the customs authorities are even entitled to take action *ex officio* and suspend the suspected counterfeit goods of their own initiative for three days, after which they will invite the IP rights holders to check the shipments at issue and take any necessary action. However, it seems more than optimistic to expect customs officials to take such steps without a proper customs application. Therefore, IP rights holders are strongly advised to file customs applications, as all relevant material will be made available to all customs officials via their intranet.

Furthermore, Article 57/6 of the Customs Law allows the destruction of counterfeit goods directly by the customs administration without a court order if a consensus is reached between the IP rights owner and the owner of the fake goods. However, a lack of action on the part of the owner of the goods following notification by the customs authorities cannot be deemed to constitute acceptance of the destruction of the goods. Infringers tend to consent to this procedure if they have a chance to rescue the rest of the products contained in the same shipment, and if they believe that the IP rights owner will not take further civil or criminal action after the destruction of the fake products.

Despite these changes, the new system still needs to be improved to provide IP rights holders with better protection, such as protection based on unfair competition provisions. The new Turkish Commercial Code (Article 61) states that any product that creates unfair competition could be seized by the customs authorities. However, it is not currently possible to file customs applications

based on unfair competition provisions. Arguably, a new section should be added to the online system to protect rights based on unfair competition provisions.

Additionally, the draft bill amending the Turkish Trademark Decree Law has not yet been enacted. The current criminal provision on trademark infringement stipulates only that a party who manufactures, sells or offers for sale fake products will be penalised. In the draft bill, however, the importation, exportation or transit of counterfeit goods are clearly cited among the acts that constitute trademark infringement. Hence, even though most of the IP judges accept that the importation and exportation of counterfeit goods could be penalised based on the current piece of legislation, this legal gap should be filled by Parliament as soon as possible.