

Enforcement

An International Litigation Guide

[Search](#) | [How To Use This Resource](#) | [Editors and Contributors](#)

TURKEY

Last updated: December 2019

This material is only intended to provide an introduction to and simplified profile of an area of this jurisdiction's trademark law and practice and has primarily been prepared for practitioners considering the merits of filing an opposition in this jurisdiction. This material does not take the place of professional advice given with full knowledge of the specific circumstances of each case and proficiency in the laws of this jurisdiction such as might be provided by a local trademark attorney.

For more information about particular areas of practice, please see INTA's companion online publications: [International Opposition Guide](#), [Trademark Cancellations](#), [Practitioner's Guide to Madrid Agreement and the Madrid Protocol](#), [Global Portal](#).

CONTRIBUTOR: [Guldeniz Dogan](#), Gun + Partners, Istanbul, Turkey
PRINCIPAL EDITOR: [David Allison](#), Bird & Bird, Hong Kong SAR, China
PRINCIPAL EDITOR: [Odette Gourley](#), Corrs Chambers Westgarth, Sydney, Australia
PRINCIPAL EDITOR: [Christoph Kleiner](#), Kleiner Rechtsanwälte, Stuttgart, Germany
PRINCIPAL EDITOR: [Allan Poulter](#), Bird & Bird, London, United Kingdom
PRINCIPAL EDITOR: [Fernando Triana](#), Triana, Uribe & Michelsen, Bogotá, Colombia
PRINCIPAL EDITOR: [Rick Young](#), Quarles & Brady, Chicago, United States

I. PRE-FILING REQUIREMENTS/DEMAND LETTERS

- Although it is not mandatory to send a demand letter before instituting proceedings in this jurisdiction, it is common to send such a letter.
- Although it is not mandatory to attempt to settle with the other party before instituting proceedings in this jurisdiction, it is commonly done.
- It is neither mandatory nor common to engage in mediation or other alternative dispute resolution proceeding with the other party before instituting infringement proceedings in this jurisdiction. However, the Law on Mediation in Civil Disputes ("Mediation Law") (Law No. 6325) has been in force since 2012, and in 2017, engaging in mediation before instituting proceedings was made mandatory for certain labor law disputes with the entry into force of the Law on Labor Courts (Law No. 7036). The Industrial Property Code (Law No. 6769), which entered into force in January 2017, also makes reference to the mediation law in respect of trademark opposition proceedings before the Turkish Patent and Trademark Office.

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") which stipulates mediation for claims regarding commercial receivables, in which a request for compensation of damages or payment of a certain amount is sought. In these cases, the application to mediation is regulated as a precondition of bringing a lawsuit. The date of entry into force of this regulation was January 1, 2019. Even if it is not explicitly stated in this article that disputes related to IP matters are subject to mandatory mediation, pursuant to Article 4/d of the TCC, civil suits regulated under IP related codes are considered as commercial actions. Therefore, mediation became mandatory for IP-related disputes in which a request for compensation or payment of a certain amount is sought, such as compensations due to IP right infringements, etc.

Therefore, if there is a monetary claim based on infringement rather than only a request for determination of infringement, a party must engage in mediation as a precondition for filing a Court action.

- Before initiating an infringement proceeding, a party is required to take the following actions: None.
- Before initiating an infringement proceeding, a party may take the following actions: The plaintiff can file a request with the court for the determination of evidence, which is a procedure that enables the plaintiff to secure the evidence regarding infringement prior to initiating an infringement proceeding, against the possibility that the defendant removes the evidence once it faces the court action.

The plaintiff can also request a preliminary injunction (PI) from the court ex parte (before initiating an infringement proceeding) to prevent the defendant's infringing uses.

- 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.
- Such a letter can be sent by:
 - the owner of the mark;
 - a licensee;
 - an attorney for the owner of the mark;
 - an attorney for the licensee of the mark.
- There are no rules/customary practices applicable to such letters. However, such letters generally are served through a notary public for ease of proof of the same in the possible subsequent court proceedings.
- With regard to the form or content of the letter, the following details are commonly included:
 - identification of claimant;
 - details of alleged rights infringed;
 - identification of any trademark registrations owned by the objecting party;
 - details of the alleged infringement;
 - potential claims (other than infringement), e.g., damage claims or costs;
 - time for response;
 - consequences of not responding within the time set out in the letter;
 - request for undertaking, including obligation to pay contractual penalty for future infringement;
 - request for summary of sales, revenues and/or profits derived from the use of the allegedly infringing mark;
 - request for identification of customers and/or suppliers of products bearing the allegedly infringing mark.
- The benefits of sending a demand letter before initiating infringement proceedings rather than immediately initiating proceedings without sending a demand letter include:
 - may help ascertain that infringement was inadvertent;
 - may help ascertain that alleged infringer is impecunious and not worth suing;
 - may help ascertain whether alleged infringer has meritorious defenses;
 - results may be achieved more quickly and at lower cost;
 - may provide a basis for a claim of willful infringement;
 - may be viewed favorably in litigation by decision maker;
 - may lead to negotiations and avoid the need to commence proceedings.
- The potential consequences of sending such a letter include:
 - provides grounds for an action for declaration of invalidity or non-infringement;
 - the possibility of the recipient's initiating infringement proceedings based on alleged prior rights;
 - the possibility of the recipient's initiating proceedings for unjustifiable threat of infringement;
 - plaintiff may be deprived of an interim ex parte order on the first date of hearing because defendant has been put on notice;

- destruction of evidence;
- adverse publicity and/or adverse social media response;
- loss of the element of surprise, giving infringer time and opportunity to prepare a defense;
- if an infringement proceeding is not initiated within a reasonable time period after sending the letter, the plaintiff can face an objection based on loss of rights by remaining silent when an infringement proceeding is initiated.
- Factors to consider if a demand letter is sent and proceedings for infringement are not initiated include:
 - the claim may be barred by time limits or statute of limitations;
 - the claim may be barred by delay or acquiescence.

II. CLAIM FOR INFRINGEMENT OF A REGISTERED TRADEMARK

- There is more than one court system or administrative body that has jurisdiction over claims for infringement of a registered trademark (see below). There are two main court systems that have jurisdiction over claims for trademark infringement.

The first one is the Civil Courts of Intellectual Property Rights ("Civil IP Courts"), which handle civil claims. There are currently Civil IP Courts established in three cities in Turkey: Ankara, Istanbul and Izmir. For other cities, Civil Courts of first instance are the competent courts in civil actions based on infringement of a registered trademark.

The second one is the Criminal Courts of Intellectual Property Rights ("Criminal IP Courts"), which handle criminal actions. If the trademark infringement is so obvious (such as look-alike cases), criminal actions can be initiated. Before initiating a criminal action before the Criminal Court, the plaintiff first files a criminal complaint before the Prosecution Office. During the prosecution stage (before the court action) a raid also can be conducted, upon the order of the Prosecution Office, and thus the counterfeit goods can be seized, etc. After this, the criminal action starts. Like the civil courts, the Criminal IP Courts exist only in Ankara, Istanbul and Izmir. In other cities, Criminal Courts of first instance are the competent courts in criminal complaints based on infringement of a registered trademark.

- 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;
 - nature of the remedies sought.
- The following parties have standing/authority to institute a trademark infringement proceeding:
 - the registered proprietor of a mark;
 - an exclusive licensee (the owner/registered proprietor need not join the proceeding);
 - a non-exclusive licensee (the owner/registered proprietor need not join the proceeding) (The non-exclusive licensee must first request that the owner/registered proprietor initiate the proceeding by way of notification, if its right to institute a court proceeding due to infringement is not expressly limited in the agreement between the parties. If the owner/registered proprietor does not accept this or does not initiate the proceeding within three months as of the date of notification, the non-exclusive licensee can initiate the proceeding in its own name and to the extent its interests require. In such case, the non-exclusive licensee shall notify the owner/registered proprietor that the proceeding has been instituted.

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.).

- If there is more than one registered proprietor/owner, they need not all join in instituting the proceedings.
- Trademark infringement proceedings are decided by a judge with no jury. There is no jury system foreseen under Turkish law.
- There is no time limit for initiating trademark infringement proceedings. As long as the infringement continues, there is no time limit to initiating the infringement proceedings. If the infringement has stopped, the time limit is determined according to the general principles set forth in the Turkish Commercial Code and Code of Obligations. In such case, the extended time limit of eight years that applies to criminal cases may apply here as well by way of interpretation and extending the time limit to eight years. Also, it is debatable that the time limit for initiating trademark infringement proceedings as five years as of the date of the plaintiff becomes aware or is expected to become aware of infringing uses. The Industrial Property Code no. 6769 ("the IP Code") foresees this five-year term only in respect of trademark invalidation claims. However, it is thought that the relevant provision can be applied by analogy to trademark infringement claims as well.
- Once infringement proceedings are initiated, the stages of the proceedings include:
 - filing of claim (including presentation of facts and legal arguments);
 - filing of reply/defense to claim;
 - filing of counterclaim;
 - filing of evidence;
 - mediation (This has become obligatory for criminal actions arising from trademark infringement claims. Currently, such criminal actions are referred to reconciliation by the Courts after instituting proceedings. Mediation also became obligatory for civil actions arising from trademark infringement claims, if there are monetary claims based on infringement rather than only a request for determination of infringement, a party must engage in mediation as a precondition for filing a Court action.);
 - discovery;
 - expert discovery;
 - preliminary motions (to dismiss, for preliminary injunction or temporary restraining order) (A preliminary injunction can be requested ex parte (before initiating infringement proceedings), while initiating infringement proceedings, along with the complaint petition or after initiating the proceedings.);
 - filing of briefs/written arguments;
 - oral hearing;
 - oral testimony/examination of witness;
 - trial;
 - judgment/decision;
 - hearing to determine appropriate remedies;
 - damages (or other financial relief) assessment.
- The average amount of time from the instituting of infringement proceedings through trial/final hearing is:
 - between one and two years.
- The average amount of time from the end of the trial/final hearing to the issuance of judgment is:
 - up to three months.

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

- Unregistered trademarks are protected under the following laws:
 - unfair competition statute.

- The following parties have standing/authority to institute proceedings for infringement of an unregistered trademark:
 - the owner of the unregistered right;
 - an exclusive licensee (The owner of the unregistered right need not join the proceedings.);
 - a non-exclusive licensee (The owner of the unregistered right need not join the proceedings.) (In trademark infringement actions based on a registered trademark (filed as per the provisions of the Industrial Property Code ("IP Code")), the non-exclusive licensee's right to initiate proceedings is conditioned upon fulfillment of certain criteria mentioned in Section II above. However, it is accepted under the doctrine and the precedents of the Court of Appeals that the non-exclusive licensee can directly institute proceedings with the claim of unfair competition (in case of an unregistered trademark) and does not have to fulfill the conditions for filing a trademark infringement action as per the provisions of the IP Code.).
- If there is more than one owner of an unregistered mark, they need not all join in instituting the proceedings.
- It is possible to institute a single proceeding for both registered trademark infringement (under the trademark law) and unregistered trademark infringement (under the law(s) listed above).

IV. CIVIL ENFORCEMENT-- EMERGENCY MEASURES

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 to request a preliminary injunction before filing the main action, and this is, in a way, a subsidiary action. Therefore, the infringement proceedings (main action) must be instituted within two weeks as of the date the plaintiff requests implementation of the injunction. Otherwise, the injunction will be removed ex officio.

The ex parte injunction can be requested along with the main action as well. As a matter of fact, generally, the party seeking a precautionary measure requests it from the court to be rendered ex parte, so that the party against whom the injunction is requested cannot tuck the infringing goods/acts away from the court (either with the main action or with the subsidiary action). However, the court may decide to obtain the defense of the party against whom the injunction is requested and/or conduct a hearing to hear the parties, and in such scenario the examination of the injunction request transforms into an interim inter partes injunction.

- 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);
 - mandatory (to require the defendant to perform certain acts) (such as ordering the defendant to deposit a guarantee amount for any potential damages instead of the prohibitory injunctions mentioned above. This is done in case the trademark infringement is not obvious and there is 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 statutory or court-determined deadline for seeking an ex parte injunction. However, an ex parte injunction should reasonably be sought within a short time period after contacting the infringer to reach an amicable resolution (such as sending a cease and desist letter) or taking action against the infringing uses (such as conducting a determination of evidence), since "imminent danger" is one of the conditions for the injunction. If an injunction is sought after too much time has passed from the establishing contact with the infringer or taking action against the infringing

uses, the court may consider that there is no imminent danger and not grant the injunction.

- A delay in applying for an ex parte injunction after becoming aware of the alleged infringing activities can prevent the applicant from obtaining the desired relief under the following circumstances: Since imminent danger is one of the conditions for the grant of an injunction, if the injunction is sought too long after becoming aware of the alleged infringing activities, the court may not grant the request.
- The purpose of an ex parte injunction is:
 - to restrain further infringing activities until trial or a further hearing;
 - to prevent the consequences of an infringement or violation;
 - 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;
 - reducing potential damage caused by infringement.
- The risks of seeking an ex parte injunction (if it is not granted) are:
 - increased costs of the proceedings;
 - early adverse determination.
- An ex parte injunction remains in place:
 - for the following period of time: until the finalization of the decision regarding the main proceedings, with the following exceptions:
 - (1) if the alleged infringer objects to the grant of the injunction once it becomes aware of it, the court can remove the injunction if it finds the objection well grounded;
 - (2) if, upon request, the court decides that there has been a change in the conditions of the case; or
 - (3) if the claimant does not request its implementation from the Execution Office within one week as of the date of grant or does not institute infringement proceedings within two weeks as of the date it requests implementation of the injunction, the ex parte injunction will be removed ex officio.
- The defendant is notified of the grant of an ex parte injunction:
 - by the court.
- The procedure for applying for an ex parte injunction includes the following:
 - motion;
 - supporting memorandum/points and authorities of law;
 - supporting documentary evidence;
 - hearing (The court can decide to obtain the defense of the defendant, an expert report, set a hearing to hear parties, etc., before deciding on the injunction request, as noted above, even if the injunction has been requested to be rendered in the absence of the defendant, and, in such scenario, the examination of the injunction request transforms into an interim inter partes injunction. On the other hand, the defendant may still be absent during the ruling of the injunction even if the court has notified the action and the hearing date to the defendant, and it will then be an ex parte injunction.);
 - order;
 - posting bond, cross-undertaking or other security.
- The amount of the bond or cross-undertaking is determined based on:
 - the potential damage/losses to the defendant caused by an improvidently entered injunction.

- The factors considered in the granting of an ex parte injunction are:
 - inadequacy of damages as a remedy;
 - balance of convenience or hardships; i.e., consideration of the hardship to each side arising from the grant or from the denial of the injunction;
 - whether the status quo should be preserved;
 - likelihood of success on the merits;
 - urgency;
 - timeliness with which plaintiff sought the injunction.
- The following forms of evidence are admissible in support of an ex parte injunction application:
 - written witness statements;
 - documents;
 - affidavits (discretionary evidence);
 - samples of infringing product(s).
- If the court later finds that the ex parte injunction was granted in error, the applicant will be required to:
 - compensate the defendant for damages suffered from the injunction; The court will not directly order the applicant to pay such compensation. The defendant has to file a separate action for compensation first. If the defendant does not file a compensation action within one month of the removal of the injunction, the bond paid by the applicant will be refunded by the court.
- The cost of obtaining an ex parte injunction, including attorney fees and court costs (but not including the cost of a bond), is approximately:
 - between USD 10,000 and USD 50,000.
- The costs of an ex parte injunction are recoverable as follows: the legal expenses (judicial expenses spent during the proceedings, such as experts fees, etc.) and legal attorney fees (determined by a tariff updated each year: currently it is around USD 680 for IP cases) associated with the injunction. Professional fees (actual attorney fees) are not recoverable.
- On average, an ex parte injunction is issued within the following time period (counting from filing of the application to issuance of the injunction):
 - between 30 and 90 days.
- In an ex parte proceeding, a party may request an order to enter the premises of another party and to search for property/documents/items that may become evidence (i.e., a "search order" or "search and seizure order"). If the injunction includes confiscating the allegedly infringing products, the party that requested the order can enter the premises of the other party during the implementation of the confiscation.
- The following party or parties will be present at the inspection:
 - the judge(s) (this is not obligatory);
 - the marshall, sheriff or other law enforcement officer;
 - the party who obtained the order (In practice, the legal representative(s) of the party who obtained the order attends the inspection/determination of evidence.);
 - the party against whom the order is granted;
 - the party/parties' legal representative(s);
 - the court-appointed expert.
- In an ex parte proceeding, a party may request an order to freeze the assets of another party to prevent dissipation of the assets before conclusion of the proceedings (i.e., a "freezing order" or "freezing injunction").
 - The grant of an ex parte injunction can be appealed. The party against whom the injunction has been granted in its absence can object to this decision of grant before the court that issued the decision. This objection shall be made within one week as of the implementation of the injunction or within one week as of the date of the notification of the injunction. The parties can appeal the court's decision regarding the objection to the District Court. The District Court's decision regarding this appeal is final and cannot be subject to a 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 with 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:
 - 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);
 - 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 purpose of an interim inter partes injunction is:
 - to restrain further infringing activities until trial or a further hearing;
 - to prevent the consequences of an infringement or violation;
 - 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 interim inter partes 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 (However, this does not mean that the court will make an assessment on the merits of the case. On the contrary, the court will reject the injunction request if an assessment on the merits is necessary for rendering a decision related to the injunction request.);
 - obtaining or preserving evidence;
 - ensuring the availability of the requested remedy;
 - ensuring the availability of compensation for damages;
 - reducing potential damage caused by infringement.

- The risks of seeking an interim inter partes injunction (if it is not granted) are:
 - increased costs of the proceedings;
 - early disclosure of plaintiff's case;
 - prejudicial adverse determination;
 - potential for a damages claim under the bond or cross-undertaking.
- An interim inter partes injunction remains in place:
 - until further order by the court. An interim inter partes injunction remains in place until the finalization of the decision regarding the main proceedings, with the following exceptions:
 - (1) if, upon request, the court decides that there has been a change in the conditions of the case; or
 - (2) if the claimant does not request its implementation from the Execution Office within one week as of the date of grant or does not institute infringement proceedings within two weeks as of the date it requests implementation of the injunction, the ex parte injunction will be removed ex officio.
- The procedure for applying for an interim inter partes injunction includes the following:
 - motion, with notice to all parties;
 - supporting documentary evidence;
 - responsive memorandum/points and authorities of law;
 - discovery;
 - hearing;
 - posting bond, cross-undertaking or other security (However, it should be noted that if the court finds it appropriate, it can rule the injunction without ruling for the bond, cross-undertaking or other security for the plaintiff.).
- The amount of the bond or cross-undertaking is determined based on:
 - the potential damage/losses to the defendant caused by an improvidently entered injunction.
- The factors considered in the granting of an interim inter partes injunction are:
 - inadequacy of damages as a remedy;
 - balance of convenience or hardships; i.e., consideration of the hardship to each side arising from the grant or from the denial of the injunction;
 - whether the status quo should be preserved;
 - likelihood of success on the merits;
 - urgency;
 - timeliness with which plaintiff sought the injunction.
- The following forms of evidence are admissible in support of an interim inter partes injunction application:
 - written witness statements;
 - documents;
 - affidavits (discretionary evidence);
 - samples of infringing product(s).
- If the court later finds that the interim inter partes injunction was granted in error, the applicant will be required to:
 - compensate the defendant for damages suffered from the injunction; however, it should be noted that the defendant shall file a separate court action requesting recompense for damages suffered from the injunction (Article 399/2 of the Code of Civil Procedure).
- The cost of obtaining an interim inter partes injunction, including attorney fees and court costs (but excluding the cost of a bond), is approximately:
 - between USD 10,000 and USD 50,000.
- The costs of an interim inter partes injunction are recoverable as follows: Since all of the official expenses will be recovered by the winning party, the winning party will also recover the costs of an interim inter partes injunction, which are an official expense.
- It takes approximately the following length of time to obtain an interim inter partes injunction (counting from filing of the application to issuance of the injunction):

- between 30 and 90 days.
- In an interim inter partes proceeding, a party may request an order to enter the premises of another party to search for property/documents/items that may become evidence (i.e., a “search order” or “search and seizure order”). This can be requested within the procedure called “determination of evidence,” which is a different procedure than “injunction.” In the determination of evidence, the applicant/claimant can request a visit to be made to the premises of another party in the presence of a court-appointed expert, to determine and secure the evidence regarding the infringing uses.
- The following party or parties will be present at the inspection:
 - the judge(s) (this is not obligatory);
 - the marshall, sheriff or other law enforcement officer;
 - the party who obtained the order (In practice, the legal representative(s) of the party who obtained the order attends the inspection/determination of evidence.);
 - the party against whom the order is granted;
 - the party/parties’ legal representative(s);
 - the court-appointed expert.
- In an interim inter partes proceeding, a party may request an order to freeze the assets of another party to prevent dissipation of the assets before conclusion of the proceedings (i.e., a “freezing order” or “freezing injunction”).
- 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 with 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.

C. Standards for Obtaining Inter Partes and Ex Parte Injunctions

- The standard for obtaining an interim inter partes injunction is the same as the standard for obtaining an ex parte injunction.

V. EARLY RESOLUTION OF LITIGATION

A. Interim Applications Available for Ending Proceedings Early

- A party cannot end proceedings prior to trial or final determination by any interim applications (such as summary judgment or determination of preliminary issue by trial or hearing).

B. Summary Judgment

- Not Applicable

C. Trial of Preliminary Issue

- Proceedings cannot be expedited through an early trial or hearing on a preliminary issue.

VI. EVIDENCE

- 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);
 - expert evidence;
 - oral testimony (Although this can be requested by the parties, it is rarely accepted by the IP Courts due to the nature of the disputes.);
 - survey evidence.
- The following forms of evidence can be relied upon in defense of a claim in this jurisdiction's trademark infringement proceedings:
 - documentary evidence;
 - expert evidence;
 - oral testimony (Although this can be requested by the parties, it is rarely accepted by the IP Courts due to the nature of the disputes.);
 - survey evidence.
- A claimant must present or give notice of any evidence upon which it will rely at a time set by the tribunal. As a rule, the claimant shall submit or at least explain its evidence and what the evidence proves in its plaint and rejoinder petitions. However as per Article 140/5 of the Code of Civil Procedure, the claimant can also submit its evidence, which was included in its plaint or rejoinder petitions, within two weeks as of the preliminary hearing. This non-extendable period of two weeks is given by the tribunal at the preliminary hearing.
- A defendant must present or give notice of any evidence on which it will rely at a time set by the tribunal. As a rule, the defendant shall submit or at least explain its evidence and what the evidence proves in its reply and rebuttal petitions. However as per Article 140/5 of the Code of Civil Procedure, the defendant can also submit its evidence, which was included in its reply or rebuttal petitions, within two weeks as of the preliminary hearing. This non-extendable period of two weeks is given by the tribunal at the preliminary hearing.
- 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.

VII. TRIAL/ORAL HEARING

- 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 witness 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 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 witness as an evidence at the above-explained period.);
 - expert testimony (This is possible only if the relevant party requested an expert report as evidence in the exchange of petitions phase and if the court concludes that it is necessary to hear the experts upon the party's request or ex officio.).
- The length of an average trial or final hearing for a civil action for trademark infringement is: around 10 to 15 minutes. The hearings that are available in Turkey are:
 - The preliminary examination hearing, where the court will procedurally ask the parties to orally set forth their arguments and responses already mentioned in the petitions and, after evaluating the parties' statements, will determine the main conflicts

of the case and complete/correct the incomplete information/requirements, if any. Furthermore, the file might be sent to an expert panel for examination as a result of this hearing as well.

- When the file is sent to the expert panel, there might two to three hearings where the expert report is awaited.
- When the expert report has been submitted to the file, a hearing will be conducted where the court hears the parties' objections against the expert report.
- Finally, an oral hearing will be appointed where the court renders its final decision.

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 role. This applies to civil proceedings. Criminal proceedings are more inquisitorial.
- A trial or final hearing includes the following:
 - closing argument by counsel for each party.
- Witnesses are examined by:
 - the judge;
 - the lawyers (via the court).
- As part of trial preparation, the parties do the following:
 - provide draft findings and conclusions if the proceeding is to be decided by a judge;
 - provide a skeleton/outline of argument.

VIII. JUDGMENT/FINAL ORDERS

- It takes approximately the following amount of time for a decision to be handed down after trial or final hearing: two to three months.
- The decision may be appealed within the following time frame: two weeks as of the notification of the reasoned decision.
- Appealing a decision is of right; no permission is needed.
- There is only one court to which an initial appeal can be made, which is: the District Court of Appeal. However, since the District Court of Appeal started its duty on July 20, 2016, if the case has been appealed before the Court of Cassation before this date and the Court of Cassation revoked the decision of the court, the decision of the court that is given after the revocation cannot be appealed before the District Court of Appeal but shall be appealed before the Court of Cassation.
- The appeal court reviews:
 - both the facts of the case and legal issues.
- Further appeal is possible to the following court: Court of Cassation.
- Further appeal is granted as a matter of right; no permission is needed.

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 3,931 (around USD 680) 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 3,931 (around USD 680) 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 the other party is a foreigner (either a real or a legal person) whose country requires security for Turkish citizens/companies, it shall pay security in Turkey as well as per the reciprocity principle so as to guarantee the court expenses.
- 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.
- An order for security for costs may be appealed under the following circumstances: Interim decisions can be appealed only with the final judgment.
- If security is ordered, it is customarily provided in the form of:
 - bond/payment to the court;
 - cash;
 - as per Article 87 of the Code of Civil Procedure, whatever form of security may be determined by the court.

XI. REMEDIES

- 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;
 - damages to plaintiff;
 - constructive license fee/reasonable royalty.

- Where both are available, a party can choose whether to receive damages or an accounting of profits.
- Determination of the type and amount of remedy is part of the trial on liability.
- The following non-monetary remedies are available for trademark infringement:
 - injunctions;
 - delivery up of infringing labels, packaging or products;
 - destruction;
 - disposal;
 - removal or obliteration;
 - public dissemination of judgment;
 - recall of infringing products.

Permissions Statement

Users are permitted to provide copies of particular jurisdictional profiles to clients in response to their queries for such information. A copyright notice will automatically print at the end of each search when you use your browser's search function. Please note that this permission applies only to duplication or transmission of portions of the contents of this work and does not extend to duplication or transmission of the entire contents by any means.

Disclaimer

All information provided by the International Trademark Association in this document is provided to the public as a source of general information on trademark and related intellectual property issues. In legal matters, no publication whether in written or electronic form can take the place of professional advice given with full knowledge of the specific circumstances of each case and proficiency in the laws of the relevant country. While efforts have been made to ensure the accuracy of the information in this document, it should not be treated as the basis for formulating business decisions without professional advice. We emphasize that trademark and related intellectual property laws vary from country to country, and between jurisdictions within some countries. The information included in this document will not be relevant or accurate for all countries or states.