

TURKEY

Evidence gathering is important in criminal actions

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In Turkey, the prosecution of criminal offences relating to 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, have become more and more reluctant to issue decisions recently. Hence, it is now more important than ever for trademark owners to be well-prepared before filing a complaint, in terms of evidence gathering.

The preparation of the complaint starts with investigations, and on-site investigations are particularly important to obtain very basic evidence, such as the 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 private investigators are not regulated by law.

Undercover notarised test purchases are the strongest evidence in criminal actions, especially where it is not possible to conduct a test purchase with receipt. With a notarised purchase, it becomes indisputable that the target deals with the sale of counterfeit goods, and it provides protection for the brand owner in case products cannot be seized during a raid (this theoretically gives the counterfeiter an option to request compensation from the complainant due to an 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 an option, despite not being as strong as other forms of evidence.

Recently, public prosecutors have 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. In this circumstance, the police visits the target's address and confirms whether or not the targets deal with counterfeits. This conduct can also be supervised via contact with the police, so that the counterfeits do not notice that they are under surveillance.

We suggest brand owners give priority to evidence gathering procedures before filing criminal complaints, not only to increase the chances of obtaining a search and seizure order but also in order to secure themselves against counterclaims from counterfeits.