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ANKARA

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Sayın ASAN,

TÜSİAD olarak markaların korunması ve taklitle mücadelenin ülkemiz yatırım ortamının iyileştirilmesi adına büyük bir önem taşıdığına inanıyoruz. Bu bağlamda, taklitle mücadelede karşılaşılan sorunların tespit edilmesi ve daha iyi anlaşılabilmesi için Avrupa Birliği Eşleştirme Projesi kapsamında yürütülen çalışmaya davetiniz için teşekkür ederiz.

“Analysis of the Civil and Criminal Enforcement of Trademark Protection in Turkey” başlıklı taslak rapora ilişkin TÜSİAD Fikri Haklar Çalışma Grubu’nun hazırladığı görüş ve değerlendirmeleri ekte bilgilerinize arz ederiz.

Saygılarımla,

(Orijinali imzalıdır.)

Zafer Ali YAVAN
TÜSİAD Genel Sekreteri

Ek: “Analysis of the Civil and Criminal Enforcement of Trademark Protection in Turkey” başlıklı taslak rapora ilişkin TÜSİAD Görüşü

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TÜSİAD
ŞİRKET İŞLERİ KOMİSYONU

FİKRİ HAKLAR ÇALIŞMA GRUBU

**“ANALYSIS OF THE CIVIL AND CRIMINAL
ENFORCEMENT OF TRADEMARK PROTECTION IN
TURKEY”**

BAŞLIKLİ TASLAK RAPORA İLİŞKİN

TÜSİAD GÖRÜŞÜ
TS/ŞİB/11-23

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ANALYSIS OF THE CIVIL AND CRIMINAL ENFORCEMENT OF TRADEMARK PROTECTION IN TURKEY	TUSIAD'S POSITION
<p>2. Criminal measures ...</p> <p>c) Search warrant and search</p> <p>It has become more difficult to obtain a search warrant. As an example, in one case a criminal court rejected a notary test purchase combined with an affidavit being sufficient evidence for issuing a search warrant. The main problem in their view is that the search warrant has to be applied for at a regular criminal court and not at the specialized IP Criminal courts. The local judges lack awareness of the importance to fight counterfeiting; in fact, in some areas it is impossible to obtain a search warrant as some local criminal courts deny any application for a search warrant for IP cases. Often their decisions have to be appealed at the Court of 1st instance, which has specialized IP courts. They proclaim that many prosecutors are reluctant to apply a search warrant when it comes to similar and not to 1:1 copies. Therefore they file in similarity cases civil legal action.</p> <p>...</p>	<p>2. Criminal measures ...</p> <p>c) Search warrant and search</p> <p>...</p> <p style="text-align: center;">Often their decisions have to be appealed at the Court of 1st instance, which has <u>sometimes is a</u> specialized IP court, of course if there is one. They proclaim that many prosecutors are reluctant to apply a search warrant when it comes to similar and not to 1:1 copies. Therefore they file in <u>similarity</u> <u>look-alike</u> cases civil legal action.</p> <p>...</p>
<p>3. Civil proceedings</p> <p>They claim that preliminary injunctions are in their opinion hard to obtain and it often takes too long as judges often require a hearing or point out an expert for examination.</p> <p>...</p>	<p>3. Civil proceedings</p> <p>They claim that preliminary injunctions are in their opinion hard to obtain and it often takes too long as judges often require a hearing or point out an expert for examination <u>prior to that hearing</u>.</p> <p>...</p>

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5. Cooperation with the Police

They expressed that they were satisfied with the special IP Police. Still, they point out that the Prosecutor is the central figure as it is in his discretion whether to send the local police to conduct a search or the specialized IP units. The latter is the case in 40 % of the cases, only. Some of the advantages in using the IP-unit are that they can act undercover and not in uniform and that they know what goods to look for. The local police seems to have a more emotional link to the perpetrator, they don't want to hurt the business he and his family live on. In some cases they returned the goods to the infringer. As the IP units are specialized and experienced and don't have any connection to the infringer they wish the Prosecutors would exclusive make use of the specialized IP units. It is also an advantage for the infringer, because the specialized police know about his rights, as well.

5. Cooperation with the Police

...

The local police seems to have a more emotional link to the perpetrator, they don't want to hurt the ~~business he and his family live on~~ businessmen who they come across on daily basis. In some cases ~~they returned the goods to the infringer~~ local police support the perpetrator to keep the goods and contact the Prosecutor in a way that goods would be left with infringers and only samples would be taken. ...

6. Disclosure of information

...

To obtain the disclosure of information through civil litigation is in their view very complicated as the infringer in most cases does not possess proper documents. Most brands therefore use private investigators to get hold of information about the sales chain.

6. Disclosure of information

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To obtain the disclosure of information through civil litigation is in their view very complicated as the infringer in most cases does not possess proper documents or destroy their commercial connections with their source bearing in mind that the consequences of a civil litigation has less of an effect to them in comparison to criminal procedures. Most brands therefore use private investigators to get hold of information about the sales chain.

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7. Cooperation with the Customs

The new system of border seizures is considered to be good. In their view the system is not always working but when it's working it is fantastic. But as an example in 2009 Nike received only one notification from the Customs and in 2010 zero.

...

Regarding the simplified destruction they have experience it being not simple so far, as the 10 days deadline for this measure is not extendable.

7. Cooperation with the Customs

The new system of border seizures – wording of the new regulation – is considered to be good....

Regarding the simplified destruction they have experience it being not simple so far, as the 10 days deadline for this measure is not extendable too short to conclude such a task in Turkey, bearing also in mind that owners of suspected products tend to await lapse of that first 10 days with the hope of right owners not taking any action.

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