

Criminal Actions

“HERMES” Trademark

Hermes International vs. Malik Tükel

(*) **3rd Criminal Court of Istanbul on Intellectual and Industrial Property Rights**
Case No.2006/770 Decision No.2007/1036 (5 November 2007)

In the action^(*) against shop keeper/retailer dealing with and selling counterfeit goods carrying the trademark “HERMES”, upon complaint filed by the plaintiffs to the Public Prosecutor, the police raids effected upon his order, resulted in the seizure of 47 infringing goods in their premises upon which the Public Prosecutor instituted the criminal action against him.

In its decision, the Criminal Court, ruled, on the basis of an experts’ opinion and on the basis of the evidences gathered in that the goods seized in the defendant’s business premises infringe the plaintiff’s registered trademarks taking into account that the assertion of the defendant is confession of guilt, the absence of the invoices of the goods, well-known of the trademark, considering the job of the defendant he knows/or has to know the products subject to the infringement are counterfeit goods and therefore the court has determined that the crime has been constituted with all elements.

The court convicted the defendant to:

- Imprisonment for one (1) year and eight (8) months,
- The closure of his business premises for a period of 10 months,
- The ban of his trading activity for a period of 10 months,
- The suspension from exercising the rights until after the imprisonment charge is fully executed/served as of the Article 53/1(a) (b) (d) (e) of Criminal Code¹,
- The confiscation of the counterfeits seized at their premises.
- Charging the defendant to pay all the expenses for the litigation costs.

The court further decided to adjourn the imprisonment in the view of the fact the defendant has not committed similar offences in the past with the proviso that he would not commit any similar offences and subjected the defendant to a probation period for 2 years without imposing him any further obligation/constraint or without appointing him a tutor as of Article 51 of the Turkish Criminal Code.

¹ “ Person, as a legal result of a penalty of imprisonment conviction due to a premeditated crime, is divested from the following rights:

a-) committed a continues, time-bound or provisional civil service; in this scope the membership of the Grand National Assembly of Turkey or being employed in all government jobs and services ancillary to appointment or election given by villages, city halls, Government, state or the corporations and enterprises, which are under the supervision and control thereof.

b-)choice and election ability and the use of other political rights

d-) managers or audits of foundation, association, labor organization, cooperative and political party communities. “