

## Criminal Actions

### “HERMES” Trademark

#### Hermes International v. Berkant Hepyurdakul “Espada Deri Ürünleri”

##### 1st Istanbul Criminal Court of Intellectual and Industrial Rights, Case No.2006/346 Decision No. 2007/338 (March 14, 2007)

In the action<sup>1</sup> against shop keeper/retailer dealing with and selling counterfeit goods carrying the trademarks “HERMES”<sup>2</sup>, upon complaint filed by the plaintiffs to the Public Prosecutor, the police raids, effected upon his order, resulted in the seizure of 30 counterfeit 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 defendant trades in similar goods since long enough and that, by his very profession, he is in a position to distinguish counterfeits from originals and that his denial of the facts and of his intent to infringe are not found sincere and convincing.

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 Code<sup>3</sup>,
- ❑ The confiscation of the counterfeits seized at their premises.

The Court further decided to adjourn adjourned 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 an 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. Hermes International vs. Berkant Hepyurdakul “Espada Deri Ürünleri” Case No.2006/346 Decision No.2007/338 (1<sup>ST</sup> Istanbul Criminal Court of Intellectual and Industrial Rights), (14.03.2007).
2. Registrations No.107656 and 107857.
3. 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