

New Duty Free Stores Regulation Acknowledges the Enforcement of IP Rights

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On August 8, 2017; the Regulation on the Duty-Free Stores (the “**Regulation**”) issued by the Turkish Ministry of Customs and Trade was published in the Official Gazette. The Regulation will enter into force on **September 7, 2017**.

The Regulation, sets forth requirements including establishing and operating a duty free store, entrance and exit of goods in/to warehouses and record keeping obligations for the operators of the duty free stores.

What’s new for protection of IP rights?

It is now explicitly stated under Article 32 of the Regulation that;

“Relevant intellectual and industrial property laws shall apply in case sales of goods in the stores infringe IP rights”.

In this context, legal and penal sanctions¹ regarding the infringement of industrial property rights under the new IP Code and other IP Legislation shall directly apply due to the clear reference made by the Regulation.

Now, such reference waives the doubt for the Courts, and solidifies the legal grounds for the application of civil and criminal remedies including judicial fines and imprisonment, equally for operators of duty free shops.

It is to be noted that, matter had been previously discussed in a Supreme Court decision dated 1999² concerning the BAHMAN cigarette brand wherein the Court had ruled that there would be no trademark infringement for the goods in the Free Trade Zones unless there were attempts to import such goods into Turkey. The Supreme Court changed this approach in MARLBORO decision dated 2004³, by stating that the IP rights can be enforced in the Free Trade Zones since the entities operating in such areas will not benefit from any privilege.

The provision of the Regulation acknowledges the Supreme Court case law in favor of IP right holders from a legislative perspective.

¹ Penal sanctions are applicable for trademark and copyright infringements.

² 11. HD 23.09.1999 1999/4928-1999/7026

³ 11. HD 17.02.2004, E. 2003/5128, K. 2004/1432