

## **Report Q203**

in the name of the Turkish Group  
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### **Damages for infringement, counterfeiting and piracy of Trademarks**

#### **Questions**

##### **1) The state of the substantive law in the countries**

- 1) *The Groups are invited to indicate, in summary form, if their national law distinguishes between different kinds of infringement, counterfeiting and piracy of trademarks and what the conditions are for liability for those different kinds of infringement, counterfeiting and piracy.*

*The Groups are also invited to indicate if these various forms of the violation of trademark rights have an impact on the monetary compensation to be provided to the trademark owner.*

The main national legislation pertaining to the protection of trademark rights in Turkey namely the Decree Law No. 556 (hereinafter referred to as "DL 556") does not provide any distinctions between the different kinds of trademark infringement, counterfeiting and piracy. There are no clear and precise distinctions in the trademark case law either.

Article 61 of DL 556 which specifies the trademark infringement provides that the following acts would constitute an act of infringement:

- the use of an identical or similar trademark without the consent of the trademark owner, to sell, to distribute or put to commercial use or to import or to keep in possession for these purposes the goods carrying the infringed trademark,
- to participate or to assist or to encourage or to facilitate in whatever form the aforementioned acts,
- to transfer to third parties or to expand rights acquired by a licensing contract without authorization,
- to abstain from explaining where and how the product carrying the registered or confusingly similar trademark was obtained when found in possession.

- 2) *The Groups are asked to present in a summarised form the legal theories in their respective jurisdictions for the assessment of damages for the violation of trademark rights.*

For the infringement of a registered trademark:

According to Articles 62, 64, 66, 67, 68 of the DL 556 basically it is possible to ask for three types of damages in a civil trademark infringement action namely compensation for material damages, moral damages and damages for the use which has been detrimental to the reputation of the trademark. Article 62/b of DL 556 clearly states that a trademark proprietor whose rights have been infringed may in particular ask the court to order material and moral compensation for damages incurred. The material damages will cover the actual/effective loss and the loss of income caused by the infringement. According to Article 67 of

DL 556 it is possible to ask for circumstantial damages caused by the infringement as the court is empowered to add on a reasonable extra amount if in court's opinion the trademark contributes substantially to the economic value of the product.

Article 68 of the same Decree Law provides the trademark proprietor with the right to request extra damages for the harm incurred from the improper use of the trademark by the infringing party which is detrimental to the reputation of the mark.

For the infringement of non-registered trademarks:

The trademarks, which are used without any registration, can be protected in accordance with the unfair competition provisions of the Turkish Code of Commerce. Article 58 of the Turkish Code of Commerce provides the right to claim moral and material damages in such cases.

It is also theoretically possible for the trademark proprietor to claim compensation in accordance with the provisions of Code of Obligations for the actual damages as the infringement of either a registered or non-registered trademark is also considered to be a tortuous act.

The above-referred claims can be made within the context of a civil action. It is further important to note that the court will refuse to rule to compensation if the defendant uses a registered trademark since according to the settled case law the use of a registered trademark does not constitute trademark infringement and therefore would not give rise to any liability until its cancellation by a court decision.

*Is this assessment based on the ground of civil liability or on the ground of violation of property ownership or some other ground(s)?*

As the compensation on the basis of trademark infringement is provided by specific provision(s) in DL 556 it can be considered to be based on grounds of the violation of the trademark right that is violation of property ownership.

However, although it is not widely implemented in trademark infringement actions, it is to be noted that the trademark infringement being also a tortuous act the right holder is entitled to ask the material and moral compensation even on the basis of Article 42 and 49 of the Code of Obligations. Therefore, it can also be stated that the damages occasioned by the trademark infringement does theoretically have a civil liability aspect, as well.

3) *The Groups are asked to indicate what factors are taken into account in the assessment of damages and how the value of the trademark is used in this assessment.*

For claiming the material damages, DL 556 provides the trademark owner with the right to ask for compensation not only for value of the effective loss but also for the loss of income caused by the act of infringement.

The plaintiff is entitled to claim the effective damages which the doctrine accepts as the loss caused by the act of infringement in the market such as the expenses for the advertisements for repairing an infringed trademark, image or the costs of the right holder for changing their packaging as a result of an infringement. As the burden of proof rests with the plaintiff according to the Turkish Procedural Law, the court will seek whether such damages have been evidenced by documentary evidences or not.

The trademark proprietor can also ask for the loss of income caused by the infringement of the trademark rights, according to one of the following options which are stated in Article 66 of DL 556:

- i) possible income that the trademark proprietor would have generated if the competition of the infringing party had not taken place
- ii) income generated by the infringing party from the use of the trademark

- iii) exemplary license fee that would have been paid if the infringer had utilized the trademark under a license.

According to Article 66, in calculation of the loss of income, the court shall take into consideration, in particular the economic value of the trademark, the term of protection remaining at the time of infringement, the type and number of the licences outstanding and similar effects. The term similar effects mentioned in this provision, as agreed in the doctrine, indicates that the court is free to consider other effects such as the specific circumstances of the case, for instance, the fact as to whether the trademark is locally or internationally used, the scope of the use and area where the infringement has taken place.

It is also important to note that if the plaintiff has selected any one of the above referred options (Article 66) for calculating the loss of income, according to Article 67 of the DL 556 the court would be able to add on a reasonable extra amount if in the court's opinion the trademark contributes substantially to the economic value of the product. The assessment of the trademark's contribution to the economic value of the product will be deemed to be grounded only on the verification that the demand for the product results substantially from the trademark.

The trademark proprietor can claim compensation for the harm incurred from the improper use of trademark by the infringing party, which were detrimental to the reputation of the mark. The court will take into account the circumstances in the use of the trademark by the infringer which is detrimental to the reputation of the trademark together with notoriety of the infringed trademark and the reputation gained in the market through such notoriety. This kind of compensation claim is treated as a kind of moral damages.

Finally, it is possible to ask for the moral damages. The court has a total discretion of ruling for the amount of moral damages without relying on an expert opinion/evaluation. The courts will consider the specific circumstances of each case namely the fault of the infringer, the impact of the infringement on the trademark right holder, the scope of the use of the infringed trademark, the insisting and frequent use of the trademark by the infringer despite the warnings of the right holder before the institution of the action. In one of the Supreme Court's decision (11th Chamber of the Supreme Court, 06.02.2001, Case No. 2000/9741, Decision No. 2001/888) the Supreme Court has considered the impact of the infringement on the image built by the trademark in the market for the assessment of the moral damage.

- a) *Do the Courts take into consideration how strong the trademark is, both in terms of its inherent distinctiveness and popularity acquired through use and publicity?*

The inherent distinctiveness itself does not constitute criteria in the evaluation of the damages. Assuming that the trademark having popularity acquired through use and publicity refers to a trademark, which becomes known by the public through intensive promotion for a specific time limit, the group believes that the distinctiveness acquired by such short-term popularity can be taken into account by the court.

- b) *Do the Courts take into consideration the investment made by the trademark owner in order to make the trade mark known?*

As referred under point 3/a the economic value is one of the criteria, which is taken into consideration by the court.

- c) *Do the Courts consider what direct effect the infringing activity has had on the trademark proprietors profitability? If so, how?*

According, to Article 66 of the DL 556 the loss of income of the trademark proprietor besides other options, can be requested to be calculated according to the possible income that the trademark proprietor would have generated if the competition of the infringing party did not exist. In such case, the trademark proprietor is invited to evidence

such loss of income usually by submitting their official commercial and accounting records in order to be examined and evaluated by the panel of experts, which will be appointed by the court.

However, the trademark proprietor can have difficulty in calculating the possible loss of income due to the evidencing problems especially in claiming the causality link between the infringement and the trademark proprietor's loss of income.

d) *Do the Courts take into account price erosion? If so, how?*

The courts do not directly consider the price erosion. However, this situation can be evaluated as criteria as per the option in calculating the loss of possible income that the proprietor of the trademark would have generated if the competition of the infringing party had not taken place. In practice, the trademark proprietors are inclined to claim the loss of income caused by the infringing party from the use of the trademark as this option provides the possibility to examine the commercial and accountancy records of the infringer upon court order and constitutes an advantage in evidencing of the loss in favor of the plaintiff, provided that the records of the infringers reflect correctly and entirely the production and/or sale of the counterfeit goods.

e) *Do the Courts distinguish between actual lost sales ( i.e; the sales which would otherwise have been made by the trademark owner) and all sales made by the infringer? If so, which sales matter?*

As referred above under point (3), the court can distinguish the non-materialized sales and the sales made by the infringer. The trademark proprietor shall have to clearly ask the court to consider either the sales which would have been made by the trademark proprietor or the sales made by the infringer as the court does not ex-officio make such distinction.

f) *Do the Courts treat parallel imports differently ? If so, what is the legal basis for this differentiation?*

Article 13 of DL 556 refers to the exhaustion of rights conferred by a trademark right and provides that:

The acts related to a product on which the registered trademark is used shall not constitute breach of the rights of a registered trademark, where such acts have occurred after the product has been put on the market in Turkey by the proprietor or with his consent.

The proprietor has the right, even within the context of the provision of the first paragraph, to oppose further commercialization of the goods, by third parties especially where the conditions of the goods are changed or impaired after they have been put on the market.

The wording of the DL No. 556 refers to national exhaustion of rights whereas the Supreme Court has rendered rulings which interpret and apply Article 13 of DL 556 so as to have regulated the international exhaustion. Therefore, it is difficult to mention a consistent and settled practice with respect to exhaustion of rights considering the discrepancy between the provision in the literal sense and the case law of the Supreme Court.

On the other hand, there is no specific provision concerning the compensation of the damages sustained by the parallel importation however, the Turkish group believes that the provisions concerning trademark infringement can be applied by analogy in the actions where the court finds the trademark proprietor's claim for parallel importation to be grounded.

4) *In case the compensation is evaluated on the basis of lost profits of the trademark owner or an account of the profits arising from infringement:*

a) *What are the key principles?*

The key principles are set forth in the Articles 66, 67 and 68 of DL 556. As referred above under point (3) Article 66 provides that the injury suffered by the proprietor of the trademark include not only the value of the effective loss but also of the non-materialized income because of the infringement. The loss of income can be calculated in accordance with one of the following evaluation methods, on the options of the proprietor of the trademark who has suffered the injury:

- a) According to the possible income that the proprietor of the trademark would have generated if the competition of the infringing party had not exist;
- b) According to the income generated by the infringing party from the use of the trademark;
- c) According to a license fee that would have been paid if the party infringing the trademark right had utilized the trademark under a legal licensing contract.

The court will rule to compensation according to the option selected by the plaintiff as the court does not ex-officio retain any of the above-mentioned options. However, according to the Supreme Court case law (11th Chamber of the Supreme Court, 07.03.2002, Case No. 2001/10185 Decision No. 2002/2000) the court can ask the plaintiff to clarify or to advise which option will be selected for the calculation of the loss of income in the absence of such statement in the writ of summons. The burden of proof rests with the trademark right holder to evidence the injury suffered.

If the trademark is not registered despite its use in Turkey, the surrender of profits may be claimed on basis of unfair competition provisions in accordance with the Article 58 of Turkish Code of Commerce.

b) *How are the profits defined and how are they calculated?*

The courts usually appoint a panel of experts for the calculation of the material damages.

For evidencing the possible income that the proprietor of the trademark would have generated if the competition of the infringing party had not taken place (Article 66/a) ; the court will require the commercial and accountancy records of the trademark proprietor and any other available evidence for determining the loss in the trademark proprietor's income. If the loss in income of the trademark proprietor is caused by the competition of the infringing party, or, in other words, if there is a causality link between the loss of income and the infringement, the court may rule to a compensation as per this option. It is however, difficult to ask for a calculation on the basis of such option as the trademark proprietor's loss of income can be caused by multiple reasons and that it can be difficult to evidence the causality link.

For evidencing the income generated by the infringing party from the use of the trademark; (Article 66/b); the court will order the submission of the commercial and accountancy records of the infringer for determining the income generated by the infringing party from the use of the trademark. This option provides an advantage to the trademark proprietor in providing evidence to the court through the infringer's commercial and accountancy records however, at the same time bears a disadvantage due to the improperly updated records of the infringer, which in most cases do not mention the infringed trademark.

For evidencing the income according to a license fee that would have been paid if the party infringing the trademark right had utilised the trademark under a legal licensing

contract. The trademark proprietor can file with court exemplary license agreements concluded for the trademark with third parties.

c) *What shares of the profits are attributed to the trademark owner and any licensees?*

According to the provisions of DL 556 the licensee is entitled to act as a plaintiff under special circumstances: Article 73 of the Decree law states that unless provided otherwise by the contract, the holder of an exclusive license may, in the case of an infringement of the trademark rights, institute in his own name all legal proceedings which have been made available to the proprietor of the trademark.

Holders of non-exclusive licenses do not have the right to directly institute legal proceedings. In the case of an infringement, the holder of a non-exclusive license may give notice, through a notary public, requesting the proprietor of the trademark to institute such proceedings as required. In the event that the proprietor of the trademark right refuses to initiate or within three months of the reception of the notice fails to institute proceedings, the non-exclusive license holder shall have the right to institute legal proceedings.

So far to the knowledge of the group, there is no case law in this matter. However assuming that both the trademark proprietor and the licensee are co-plaintiffs in the same infringement actions, the court would take into consideration the specific licensing conditions, such as the region for the license and their actual loss in accordance with the license agreement.

d) *Does the strength of the trademark come into play in apportioning the profits?*

There is neither a provision nor precedent court decisions in this matter.

5) *In case the monetary compensation is assessed on basis of a royalty,*

a) *How is the royalty rate fixed?*

As stated above under point (4/b) the trademark proprietor may file with court exemplary license agreements concluded for the trademark with third parties.

b) *Do the Courts consider whether the mark in question is one which is or was available for licence? If so, how does this affect their analysis?*

Article 66 of the DL 556 provides that the number of the licenses outstanding with respect to the infringed mark shall also be considered in the calculation of the damages. Although there is no sufficient case law at this point, the group believes that the current provisions do not prevent the court from questioning this issue.

6) *The Groups are asked to summarise what information in relation to the unlawful activities causing the violation of the trademark can be obtained by the trademark owner in administrative or judicial proceedings in order to assess the level of monetary compensation.*

Under Turkish Trademarks Law and Procedural Law, it is possible to mention three main legal means of obtaining information by the trademark proprietor concerning the unlawful activities of the infringer in order to assess the level of monetary compensation in the proceedings.

According to Article 65 of the DL 556, the trademark proprietor is entitled to ask the infringer to present the documents on use of the trademark for the purpose of calculation of the damages caused by the infringement.

The trademark proprietor on the other hand can file a specific action for determining the evidence and the facts concerning the infringement. The action for the determination of evidence and facts is a declaratory and ex-parte action (to the extent the court accepts to conduct the proceedings ex-parte), which is regulated under Article 75 of the DL 556 and under the general provisions of the Civil Procedural Law. By filing such action the trademark

proprietor can request the search of the infringer's premises with the judge without prior notification to the infringer in order to determine whether an infringement exists or not. The court may appoint an expert or a panel of experts for the evaluation of the facts and evidences which will issue a report as to the existence of the trademark infringement. The expert report if favourably received can constitute evidence in favour of the plaintiff in the main civil proceedings where compensation of damages can be requested.

Finally during the judicial proceedings, the trademark proprietor may request from the court to inquire from the relevant authorities to provide information concerning the infringing activities of the defendant. For instance, the court may inquire from the customs authorities about the transactions conducted by the defendant and the amount of either exportation or importation of the infringing products.

- 7) *One of the forms of the prejudice suffered by the trademark owner through the infringement is the damage to the trademark in a reputational sense (diluting exclusivity). The Groups are invited to report if this form of prejudice is considered by the Courts and what are the factors that are used in their evaluation?*

Yes, the Courts in Turkey take into consideration the damages in a reputational sense if there is misuse and improper use of the trademark. In accordance with the provisions of Article 68 of DL 556, the trademark proprietor may request extra damages for the harm incurred from the improper use of his trademark by the infringing party which were detrimental to the reputation of the trademark. Although in doctrine such kinds of damages are called "reputational damages" and according to the Law "reputational damages" may be requested separately other than the "moral damages", in practice it is treated as a part of "moral damages".

The Courts when evaluating reputational damages as a part of moral damages, takes into consideration:

- if there is misuse and improper use of the trademark (for instance use of the trademark on poor quality goods)
- whether the Turkish Trademarks Office has announced the trademark to be well-known in Turkey
- the fact that the reputational damages should not cause poverty of the adverse party.

For evaluation of the above facts, Plaintiff can submit its commercial and accountancy records, latest Annual Reports, documents showing their advertisement expenses and product prices, and a trademark value report, if any.

- 8) *The Groups are also asked to indicate if the moral/wilful element of the violation of a trademark right, and particularly the will to profit or gain from counterfeit activities (where the goods do not originate from the trademark proprietor or are not marked with his consent) is taken into consideration in the evaluation of the damages and/or the account of profits. If so, what are the consequences?*

Yes, under Turkish Legal System, the wilful element of the violation of a trademark right is taken into consideration in connection with the evaluation of damages. According to Article 64/1 "the person who, without the consent of the proprietor of the trademark, produces, sells, distributes or puts to commercial use or imports for these purposes or keeps in possession for these purposes the product produced by plagiarising the trademark shall be liable to remedy the illegality and to compensate the damages he has caused."

According to Article 64/1 of DL 556, where counterfeiting is in question proof of fault is not a condition for claiming compensation. This is due to the reason that in counterfeiting

wilful intention is deemed to exist. Those who manufacture the counterfeit products as well as who intentionally commercialize the said products are obliged to compensate the damages caused by their intentional acts.

However under Article 61/c of DL 556 acts of those who sell or distribute the counterfeit products or commercialize them through other channels or keep them for such purpose would constitute trademark infringement only on condition that they are or ought to be aware of the infringement.

Therefore interpretation of Article 61/c and Article 64/1 together leads to the conclusion that those who sell or distribute the counterfeit products or commercialize them through other channels or keep them for such purpose will be liable to compensation only if they are or ought to be aware of the infringement. This is due to the fact that if the acts of those do not constitute infringement they cannot be held liable to compensation based on trademark infringement. (Please see; Yasaman Marka Hukuku, Vol. II, page 1165; Arkan Marka Hukuku Vol. II, page 242)

According to Article 64/2 of DL 556, others who use the counterfeit goods for any other reason (such as painters repairers who use them in the course of their profession) can be held liable for damages they have caused only if they continue to use the counterfeit trademark despite being notified of the trademark and of the infringement by the trademark proprietor.

*The Groups are also asked to indicate if ignorance of the trademark and/or ignorance of the infringement is taken into consideration in the evaluation of damages or the account of the profits.*

Ignorance of a trademark is not considered to be an excuse. It is accepted that before using a trademark, availability thereof should be searched. An act to the contrary is considered negligence. Under Turkish Legal System, the Trademarks Registry is publicly available. Therefore ignorance of a registered trademark cannot be put forward as a defence.

Further, under Turkish Commercial Code, traders are under the obligation of acting as prudent trader/merchant. As a result, not being aware of a trademark is contrary to the conditions of being a prudent trader/merchant. An act to the contrary constitutes fault by negligence and results in compensation of damages.

The ignorance of infringement is taken into consideration regarding compensation of damages by those who hold the goods for the purposes of their professional use (such as repairers and painters). Those can be held liable only if they were made aware of the infringement and of the trademark by the trademark proprietor.

*Finally, is the scale of the counterfeiting or piracy an additional element which influences the assessment of damages and/or account of the profits? If so, what are the consequences?*

There are no provisions in DL 556 regulating this issue. The scale of the counterfeiting or piracy may be taken into consideration in the calculation of the profits but it is not an additional element which influences the assessment of damages and/or account of the profits.

- 9) *Is the evaluation of damages based on the same principles in cases where the infringement also constitutes a violation of a contractual obligation, for example, a violation of a licence?*

In cases where the infringement constitutes violation of a contractual obligation, in connection with the damages, the trademark proprietor would have alternative claims arising out of the provisions of the DL 556, the Code of Obligations and the Contract itself. In other words, the contract clauses would not deprive the trademark proprietor of his rights arising out of DL 556.

If the trademark proprietor chooses to make his claims under DL 556, as explained above the material damages that can be claimed by the trademark proprietor would cover not only the



actual loss and also the loss of income. The trademark proprietor may still choose one of the three alternative methods of calculation of the lost incomes.

- 10) *The Groups are also invited to explain the problems and practical difficulties that the trademark owners face in the assessment of the damages and/or account of the profits for the violation of trademark rights?*

The assessment of the actual loss or the loss of profit arising from trademark infringement is made by the experts who are appointed by the Court during the civil proceedings. The experts examine the infringer's commercial and accountancy records for the calculation of the loss of income. However, in Turkey the most important difficulty in such calculation appears to be the improper and incomplete commercial and accountancy records which usually do not reflect the infringed trademark. Another difficulty that the trademark owners face in the assessment of actual loss or profit is the long duration of the court actions due to the backlog of work at the Courts. The lack of sufficiently experienced experts for calculating the value of trademarks is another obstacle that the trademark proprietor face in the assessment of effective loss or loss of income.

- 11) *In some cases the national law may provide, as a remedy for the violation of the trademark right, for the confiscation of the products bearing the illicit sign.*

*If this applies in their national law, the Groups are asked to indicate, if this confiscation influences the evaluation of the damages.*

The Turkish Trademarks Law provides as a remedy for the violation of the trademark right for the confiscation of the products bearing the illicit sign. The provisions of Article 62 (d) of DL 566 provides that the trademark proprietor whose rights have been infringed to claim for the proprietorship over the products confiscated. In case the trademark proprietor claims the proprietorship over the products confiscated, the value of the products are deducted from the compensation awarded. If the value of the products turns out to be above the compensation value awarded, the proprietor of the trademark refunds the balance to the infringing party.

However, in practice in Turkey the number of such claims are so few and these kind of claims are not encouraged either. The practice in fact is destruction of the products bearing the illicit sign.

- 12) *The Groups are asked to indicate if the jurisprudence in their countries is a useful source of information and comparison on the assessment of monetary compensation for the violation of the trademark rights.*

*In this context, the Groups are invited to indicate if they are satisfied with the degree of certainty in their laws on evaluation of the compensation.*

The first Turkish Legislation regarding the Trademarks was the "Regulations on Trademarks" dated 1871. In 1965 the "Trademarks Act" came into force. In 1995, the "Decree Law No. 556 on Protection of Trademarks" replaced the "Trademarks Act" within the context of harmonization with the European Law. Although DL 556 still has minor deficiencies it is possible to say that it has brought the Turkish Trademarks Law to a contemporary level. With the establishment of the specialized Intellectual and Industrial Property Rights Courts in 2001, another important step was taken in protection of trademarks and other IP rights in Turkey. However, the group still believes that there is a room for the improvement of the case law and achieving a certainty in this regard.

- 13) *The Groups are finally asked to explain any other issues related to the topic which would appear useful in the examination of the question.*

The group has no further issue for the examination of this topic.

## **II) Proposals for the future harmonisation**

- 1) *The Groups are requested to indicate if the evaluation of damages for violation of the trademark rights should be the subject of the international harmonisation and if this harmonisation should be undertaken through an international treaty.*

The group supports the idea of Harmonization of Laws for the evaluation of the damages however, believes that the existence of differing local civil procedural laws in each country can constitute an obstacle in the harmonization through an international treaty.

- 2) *The Groups are requested to indicate what should be, based on their national experience, the harmonised system for the evaluation of damages for violation of the trademark rights.*

Based on our national experience and from the Turkish law and practice point of view, in our opinion, the harmonized system should in any case facilitate assessment of the infringing activities and the other means for assessment of damages.

Specifically, a system providing certainty in commercial and accountancy records and ensuring appearance of the trademark therein would in our opinion be helpful in calculation of damages. Considering that in most cases the evaluation of the loss of income cannot be possible due to the failure or the intentional act of the infringer in not mentioning the trademarks in the commercial and accountancy records that are taken as basis for calculation, the group believes that determination of standards to this effect would facilitate the calculation of the loss of income. Furthermore, appointment of specialized and qualified experts for the assessment of the damages caused by the infringement of IP rights would assist in reaching sound and satisfactory results.

- 3) *The Groups are invited to make any other suggestions about possible future developments of the present question.*

No further opinions than those expressed above.

### **Summary**

The Turkish Group,

- a) believes that DL 556 on the trademarks, the Turkish Code of Commerce and the Code of Obligations provide sufficient legal tools for claiming the compensation with respect to the trademark infringement;
- b) sees that DL 556 provides the right to claim material damages which can be requested both for the actual loss and the loss of income to be sustained due to the infringement of the trademark rights, that the compensation for the possible income can be calculated according to three options set in the Decree Law, that besides the material compensation the trademark right holder can request compensation for the moral damages and the harm of the reputation of the trademark;
- c) sees inconsistencies in the evaluation of compensation by the courts and believes that the establishment of the specialized Intellectual and Industrial Property Rights Courts, since 2001, will contribute to a consistent practice and case law;
- d) recognizes that the calculation of compensation amounts in the trademark infringement actions delays the proceedings and believes that the specialized and qualified experts for the assessment of the damages caused by the infringement of IP rights will assist in shortening the proceedings and reaching to satisfactory results.

## **Résumé**

Le Groupe turc

- a) estime que les prévisions du Décret-Loi N° 556 sur les marques, du Code [Turc] de Commerce et du Code [Turc] des Obligations contiennent des mesures adéquates en vue de faire des demandes pour une compensation au cas d'enfreintes aux droits des marques;
- b) constate que le Décret-Loi N° 556 prévoit le droit de revendiquer des dommages matériels qui peuvent faire-valoir pour perte actuelle aussi bien que pour perte de revenue à réclamer dû à enfreinte aux droits sur les marques; que la compensation pour revenue potentielle peut être calculée de trois manières à options suivants le Décret-Loi; qu'en outre d'une demande de compensation matérielle, un requérant peut demander une compensation pour causes de dommages morales et tort impliqués à la réputation d'une marque;
- c) constate qu'il y a des divergences dans la façon suivant laquelle les cours de justice évalue la compensation attribuable dans des cas d'actions judiciaires et le Groupe estime que l'institution des cours spécialisées de droits intellectuels et industriels contribueront à la formation d'une pratique et jurisprudence cohérente; et
- d) reconnaît que le calcul dans les procès d'enfreintes aux marques du montant de la compensation retarde la poursuite de la procédure et les contributions des experts spécialistes et qualifiés à évaluer les dommages dus aux enfreintes des droits de propriétés intellectuelles aideront à voir une diminution dans le processus de la procédure judiciaire ainsi qu' au but d'atteindre des résultats satisfaisants.

## **Zusammenfassung**

Die Türkische Gruppe,

- a) ist der Meinung, dass die Türkische Rechtsverordnung Nr. 556 für Marken, das Türkische Handelsrecht und Türkische Schuldrecht ausreichende gesetzliche Instrumenten für den Schadenersatz für Markenverletzungen anbieten,
- b) legt fest, dass gemäss der Türkischen Rechtsverordnung Nr. 556 es möglich ist, Materialschaden sowohl für tatsächlichen Verlust und auch für Einkommensverlust erlitten aufgrund Verletzung der Markenrechte zu beanspruchen, dass der Schadenersatz des möglichen Einkommens gemäss in der Rechtsverordnung bestimmten 3 Möglichkeiten berechnet werden kann, dass der Rechteinhaber neben Materialschadenersatz auch Schadenersatz für Moralschaden und auch für den Schaden von Reputation der Marke beanspruchen kann,
- c) sieht Unstimmigkeit zwischen der Bewertungen von Schadenersätzen bei Gerichten und ist überzeugt, dass die Gründung im Jahre 2001 von fachkundigen Gerichten für den geistigen und gewerblichen Eigentum einem einheitlichen Verfahren und Rechtsprechung beitragen werden,
- d) bewürdigt, dass in Verletzungsklagen die Bewertung von Schadenersatzbeträge den Verfahrenslauf verzögern; und ist der Meinung, dass die fachkundigen und qualifizierten Experten gemäss Bewertung von Verletzung der IP-Rechten angeführten Schadenersatzes der Verkürzung von Verfahren und Erreichung von zufriedenstellende Ergebnisse beitragen werden."