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Combating Counterfeit and Smuggled Drugs

Foreign pharmaceutical trademarks, in principle, are registered in the name of the companies in the countries where they are established, and trademark protection procedures are managed by those companies. Although affiliates in Türkiye are not a party to trademark protection proceedings, since they become the marketing authorization holders of the drug, they are considered the relevant addressee of the Ministry of Health ("MoH") in all transactions related to the product.

The Turkish Medicines and Medical Devices Agency ("Agency") is responsible for regulating and supervising drugs and other healthcare products. The Drug Tracking System ("DTS") has been developed to combat drug smuggling and counterfeiting; all drugs are registered with a unit based QR code and every transaction is tracked from the moment it enters the market until it reaches the patient. Marketing authorization holders in Türkiye must notify the Agency of any counterfeiting and smuggling activities of which they become aware and are also obliged to notify under Article 278, "Crime of Failure to Report a Crime", of the Turkish Penal Code ("TPC").

How to get informed?

Since pharmaceutical companies do not sell medicines directly to patients and drugs are delivered through pharmaceutical warehouses and pharmacies, there are many actors in the supply of drugs. Therefore, information on counterfeit drugs can be obtained through reports made to the company by physicians, warehouses, or pharmacists other than the patient. Upon such reports, it is possible to act based on the individuals identified and the detailed information, evidence and samples obtained through general field and/or address-based investigations conducted by lawyers or investigation companies.

What are the legal remedies?

Depending on the evidence obtained, complaints can be filed under Articles 186 and 187 of TPC, under "Manufacturing Counterfeit Drugs" and "Infringement of Trademark Rights and Unfair Competition". In the case that counterfeit or original drugs enter the country without being subjected to the required customs regime (in other words, if they are smuggled), legal action pursuant to the Anti-Smuggling Law can also be taken separately or alongside the complaints mentioned above.

Since the crimes of Trademark Infringement and Unfair Competition are crimes prosecuted upon complaints, the trademark or marketing authorization holders must

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decide whether or not to file a complaint, depending on the evidence obtained. As the principle of ex officio prosecution applies to crimes that violate Article 186 and 187 of TPC and the Anti-Smuggling Law, investigations and raids can be initiated by the Security Forces on their own or following criminal complaints filed by pharmaceutical companies.

When to notify?

In criminal investigations related to drugs, local affiliates can file a complaint with the MoH or the Agency. Even if the trademark owner is a foreign company, the involvement of the local affiliate may be necessary in some cases to ensure ease of notification and follow-up.

When it comes to counterfeit or smuggled drugs, as they cannot be tracked via the DTS, it is essential to investigate the manufacturer, production sites and distributors of counterfeit drugs to take legal action. Filing a complaint before all the information is obtained, or only based on hearsay/suspicion, may prevent the process from proceeding efficiently and quickly. It is advised that the most effective option is to investigate allegations and file complaints with the competent authorities after sufficient evidence has been collected. Otherwise, perpetrators may become aware of the situation and destroy the evidence.

When a criminal complaint is filed with the prosecutor's office based on the trademark right, it is beneficial to wait for the conclusion of the process and then file a complaint with the Agency about the relevant product. This is because the issues to be examined by the Agency are not trademark disputes, but issues concerning public health. Especially in cases where a pharmacist or a physician is a suspect, it is important to file a complaint with hard evidence. The timing of the complaint is an important strategic factor, as criminal complaints against these persons may be withdrawn at a later stage.

In cases where the process is initiated ex officio by law enforcement officers, it is equally important to follow up by getting involved in the process. Complaints to the Agency or the MoH should also be considered after raids and the main stages of the process should be completed.

In recent years, operations related to smuggled and counterfeit drugs can be initiated not only by data obtained from domestic sources, but also by investigations conducted by international platforms. Last year, a significant number of counterfeit or smuggled drugs were seized in the Pangea XVI operation, which was conducted in coordination with the Interpol-Europol Department and the Anti-Smuggling and Organized Crime Directorate.



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In 2024, it is expected that similar operations will be conducted. It is advised that trademark owners conduct investigations to obtain as much information as possible to support the related processes.