

# Exhaustion Of Trademark Rights

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Article 13 of the Decree Law no.556 on “Exhaustion of the Rights Conferred by a Registered Trademark” reads in its first paragraph that “The acts related with a product bearing the registered trademark shall not constitute a 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”. Accordingly, as of the first authorized sale of the marked product in Turkey, the proprietor of the trademark cannot forbid the further sales, exportation from or re-importation in Turkey of these products. This position has been widely confirmed by different Turkish doctrines as well as the established jurisprudence of the Supreme Court on the occasion of various parallel importation cases.

In view of the text of the Law expressively reading “after the product has been put on the market in Turkey”, such exhaustion of rights is to be national/territorial and accordingly, in case the product has been put on the foreign market by the proprietor or with his consent, the trademark rights are not to be exhausted in Turkey and their importation from this country, could be forbidden by the proprietor.

However, some authors, although confirming that the textual interpretation of the above provision leads to the principle of national/territorial exhaustion of rights, they also point out that the doctrine and the jurisprudence of the Supreme Court in this regard do not distinguish and address various issues clearly and therefore are subject to interpretation and that in view of the “ratio legis” of the trademark rights which is to guarantee the origin of the product and prevent trademark infringement in this scope only, it is possible to consider that the provision of Article 13 paragraph 1 is not imperious/commanding and indicates just the minimum level of exhaustion and accordingly, finally opt for and apply the principle of international exhaustion of rights.

In fact, it seems that the contemporary opinions are progressing towards an international exhaustion of rights for a national exhaustion being of nature to protect the distribution channels of the proprietor by excluding from the market third parties trading his goods rather than protecting the trademarks and restraining others freedom to trade against the purpose of trademark rights. Please further note the Jurisprudence of the Supreme Court while deciding on two cases on parallel importation confirmed in their motivations that the parallel importation of original products should generally not be forbidden for the above reasons. Since in the subject cases, the goods were sold in Turkey and therefore the trademark rights were nationally exhausted, the possibility of an international exhaustion has not been specifically addressed but we believe that in case products were not sold in Turkey, the motivations may have led to a preference for the international exhaustion of rights on the abovementioned basis.

Accordingly, despite the text of the Law and in the absence of any jurisprudence for a case where the products were sold by the proprietor or with his consent in the foreign market but not in Turkey, we believe that the question of a national or international exhaustion of rights is still open.