

CHECKLIST OF ISSUES ON ENFORCEMENT

Responses from Greece

Addendum

Civil and Administrative Procedures and Remedies

(a) Civil judicial procedures and remedies

1. Specify the courts which have jurisdiction over IPR infringement cases.

In case of infringement of a trademark, civil courts have jurisdiction to hear relevant claims. The action may be brought before the court of first instance, the decision of which can be appealed before the Court of Appeals. The Civil Division of the Supreme Court is the court of last resort for the reversal of any judgement.

Injunctions are issued by the one member court of first instance in most cases.

The rules of civil procedure (Article 22 *et seq.* of the Code of Civil Procedure) determine the venue. In most cases, the competent court is the one where the defendant has its domicile.

2. Which persons have standing to assert IPRs? How may they be represented? Are there requirements for mandatory personal appearances before the court by the right holder?

According to Article 26 of Law No 2239/94, the owner of a trademark or any rightholder has standing to bring an action for infringement.

All parties must be represented in court proceedings by a lawyer acting as their counsel (Article 94 paragraph 1 of the Code of Civil Procedure) admitted to practice before the specific court. The only exception provided where a party can represent himself, is in the case of provisional measures or of an imminent danger. However, it is within the discretion of the judge to order a party to be represented by a lawyer.

No party is required to appear in person. Upon petition of an interested party, the judge has the authority to order a party to appear before a court, should he consider it necessary for clarification purposes of the facts of a case (Article 245 paragraph 1(a) of the Code of Civil Procedure).

3. What authority do the judicial authorities have to order, at the request of an opposing party, a party to a proceeding to produce evidence which lies within its control?

Following a petition of an interested party or ex officio, a court may order a litigant in possession of a document assumed to have evidentiary value, to produce such document on the date set for the trial (Article 232 paragraph 1(c) of the Code of Civil Procedure). Should the litigant fail to comply with the court order, the court may take this fact into account in the assessment of the case and impose a fine as well as the trial expenses.

In case of non-compliance, Article 451 paragraph 1 of the Code of Civil Procedure further provides to any interested party, the possibility to file a petition during the course of a trial to have specific documents produced. Unless there are specific grounds for exemption, the documents have to be delivered to the interested party. The court's decision can be enforced according to Articles 452 paragraphs 1, 941 and 946 of the Code of Civil Procedure.

4. What means exist to identify and protect confidential information brought forward as evidence?

Pursuant to Article 402 paragraph 2 of the Code of Civil Procedure, a witness can deny to testify regarding any information related to a trade or artistic secret.

Any person or any party is exempted from the obligation to provide to the court any document having an evidentiary value, if this document contains information related to a trade or artistic secret (Article 450 paragraph 2 of the Code of Civil Procedure).

5. Describe the remedies that may be ordered by the judicial authorities and criteria, legislative or jurisprudential, for their use:

- **injunctions;**
- **damages, including recovery of profits, and expenses, including attorney's fees;**
- **destruction or other disposal of infringing goods and materials/implements for their production;**
- **any other remedies.**

Pursuant to Article 25 paragraphs 1 and 2 of Law No 2239/94, the lawsuit may be brought against anyone using or imitating a trademark which belongs to some body else for omission or damage or both. The same applies to anyone using a trademark which is identical or similar to another but not used in connection with similar goods or services to those for which the trademark has been registered, provided the latter has acquired reputation in Greece and that use of such a sign would, without due cause, take unfair advantage of, or be detrimental to, distinctive character or to repute of the earlier trademark.

The lawsuit is brought before the competent court of first instance, regardless of the amount claimed and is judged according to the usual procedure. The statute of the limitation for the lawsuit for damages is three years starting from the end of the year during which, the first illegal use, alternation or imitation has taken place. Upon interruption of the statute of limitation period, a new one commences from the end of the year during which the interruption is completed.

The procedure to be followed is the one provided in Article 682 *et seq.* of the Code of Civil Procedure.

Pursuant to Article 27 of Law No 2239/94, anyone having the right to bring a lawsuit against omission which is contrary to the present Law, can seek provisional measures.

Where the claim is brought against a third party, the owner of the undertaking the products or services or which bear the infringed trademark must be summoned, if it is established from the aforementioned products or services that he is the owner.

The application for registration of the trademark filed by the person against whom the petition for interlocutory injunctions has been made, does not affect the above petition.

The court of first instance of the district where the products or the rendering of services takes place, as well as the district where the undertaking has its registered office the products or services of which bear the trademark, is competent for granting the provisional measures. Since the injunctions are provisional, measures cannot be appealed.

Award of court expenses to the winning party is a standard practice of the Greek courts. Attorney's fees or expert's fees may be awarded (Article 189 of the Code of Civil Procedure).

Pursuant to Article 31 of Law No 2239/94, the civil or criminal court orders in the case of alteration, the destruction of the products or goods which bear the altered trademark; in the case of imitation, the removal and destruction of the trademark or the destruction of the product.

The removal or destruction of the trademark can be ordered by the court even in the case of acquittal of the accused, if it takes the view that there exists a likelihood of confusion.

6. In what circumstances, if any, do judicial authorities have the authority to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the goods or services found to be infringing and of their channels of distribution?

There are no specific provision in the trademark law granting such an authority.

7. Describe provisions relating to the indemnification of defendants wrongfully enjoined. To what extent are public authorities and/or officials liable in such a situation and what "remedial measures" are applicable to them?

Please see the response to question 7 in the Checklist of Issues on Enforcement.¹

8. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

Please see the response to question 8 in the Checklist of Issues on Enforcement.¹

¹IP/N/6/GRC/1/Add.1.

(b) Administrative procedures and remedies

9. Reply to the above questions in relation to any administrative procedures on the merits and remedies that may result from these procedures.

Infringement of a trademark is a matter to be decided only by judicial authorities.

Provisional Measures

(a) Judicial measures

10. Describe the types of provisional measures that judicial authorities may order, and the legal basis for such authority.

According to Article 27 of Law 2239/94, anyone having the right to bring a lawsuit against omission which is contrary to the present Law, can seek a provisional measure where the claim is brought against a third party, the owner of the undertaking the products or services of which bear the infringed trademark must be summoned, if it is established from the aforementioned products or services that he is the owner. The application for registration of the trademark filed by the person against whom the petition for interlocutory injunctions has been made, does not affect the above petition. The court of first instance of the district where the products or the rendering of services takes place, as well as the district where the undertaking has its registered office the products or services of which bear the trademark, is competent for granting the provisional measures. The procedure to be followed is the one provided in Article 682 *et seq.* of the Code of Civil Procedure.

11. In what circumstances may such measures be ordered *inaudita altera parte*?

Please see the response to question 11 of the Checklist of Issues on Enforcement.²

12. Describe the main procedures for the initiation, ordering and maintenance in force of provisional measures, in particular relevant time-limits and safeguards to protect the legitimate interests of the defendant.

Please see the response to question 12 in the Checklist of Issues on Enforcement.²

13. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost.

Please see the response to question 13 in the Checklist of Issues on Enforcement.²

(b) Administrative measures

14. Reply to the above questions in relation to any administrative provisional measures.

Provisional measures can only be issued by the courts.

²IP/N/6/GRC/1/Add.1.

Special Requirements Related to Border Measures

15. Indicate for which goods it is possible to apply for the suspension by the customs authorities of the release into free circulation, in particular whether these procedures are available also in respect of goods which involve infringements of intellectual property rights other than counterfeit trademark or pirated copyright goods as defined in the TRIPS Agreement (footnote to Article 51). Specify, together with relevant criteria, any imports excluded from the application of such procedures (such as goods from another member of a customs union, goods in transit or *de minimis* imports). Do the procedures apply to imports of goods put on the market in another country by or with the consent of the right holder and to goods destined for exportation?

Please see the response to question 15 in the Checklist of Issues on Enforcement.³

16. Provide a description of the main elements of the procedures relating to the suspension of the release of goods by customs authorities, in particular the competent authorities (Article 51), the requirements for an application (Article 52) and various requirements related to the duration of suspension (Article 55). How have Articles 53 (security or equivalent assurance), 56 (indemnification of the importer and of the owner of the goods) and 57 (right of inspection and information) been implemented?

Please see the response to question 16 in the Checklist of Issues on Enforcement.³

17. Describe provisions governing the length and cost of proceedings. Provide any available data on the actual duration of proceedings and their cost. How long is the validity of decisions by the competent authorities for the suspension of the release of goods into free circulation?

Please see the response to question 17 in the Checklist of Issues on Enforcement.³

18. Are competent authorities required to act upon their own initiative and, if so, in what circumstances? Are there any special provisions applicable to *ex officio* action?

Please see the response to question 18 in the Checklist of Issues on Enforcement.³

19. Describe the remedies that the competent authorities have the authority to order and any criteria regulating their use.

Please see reply to question 15 above.

Criminal Procedures

20. Specify the courts which have jurisdiction over criminal acts of infringement of IPRs.

Please see the response to question 20 in the Checklist of Issues on Enforcement.⁴

³IP/N/6/GRC/1/Add.1.

⁴IP/N/6/GRC/1/Add.1.

21. In respect of which infringements of which intellectual property rights are criminal procedures and penalties available?

According to Article 28 of Law No 2239/94; with at least three (3) months in prison and a penalty amounting to Dr 200,000 or with one of these is punished:

- (a) anyone altering a trademark or knowingly using an altered trademark;
- (b) anyone knowingly affixing to products of the undertaking or to objects of the latter's trade, a trademark not owned by him;
- (c) anyone imitating a trade mark, wholly or in part, without altering it with a view to mislead buyers or knowingly to use a mark;
- (d) anyone knowingly selling or exposing for sale or distribution products or goods bearing the trademark which constitutes an alteration or imitation of another trademark;
- (e) anyone using as a trademark in violation of the provisions in Article 19;
- (f) anyone using as a trademark, the emblems and symbols of the Greek State and of every authority as well as the religious symbols.

The provisions of paragraph 1 of the present Article also apply to service marks.

22. Which public authorities are responsible for initiating criminal proceedings? Are they required to do this on their own initiative and/or in response to complaints?

According to Article 29 of Law No 2239/94, as regards laws provided in Article 28 paragraph (1) (a) (b) (c) (d) and (e) and laws committed after registration of the prosecutor's trademark, prosecution commences with the filing of the complaint; as regards paragraph 1 (f) prosecution is made ex officio.

23. Do private persons have standing to initiate criminal proceedings and, if so, who?

No. A person may only report a crime or file a complaint with a police officer or a public prosecutor.

24. Specify, by category of IPR and type of infringement where necessary, the penalties and other remedies that may be imposed:

- **imprisonment;**
- **monetary fines;**
- **seizure, forfeiture and destruction of infringing goods and materials and implements for their production;**
- **other.**

Please see reply to question 21 above.

25. Describe provisions governing the length and any cost of proceedings. Provide any available data on the actual duration of proceedings and their cost, if any.

Please see the response to question 25 in the Checklist of Issues on Enforcement.⁵

⁵IP/N/6/GRC/1Add.1.