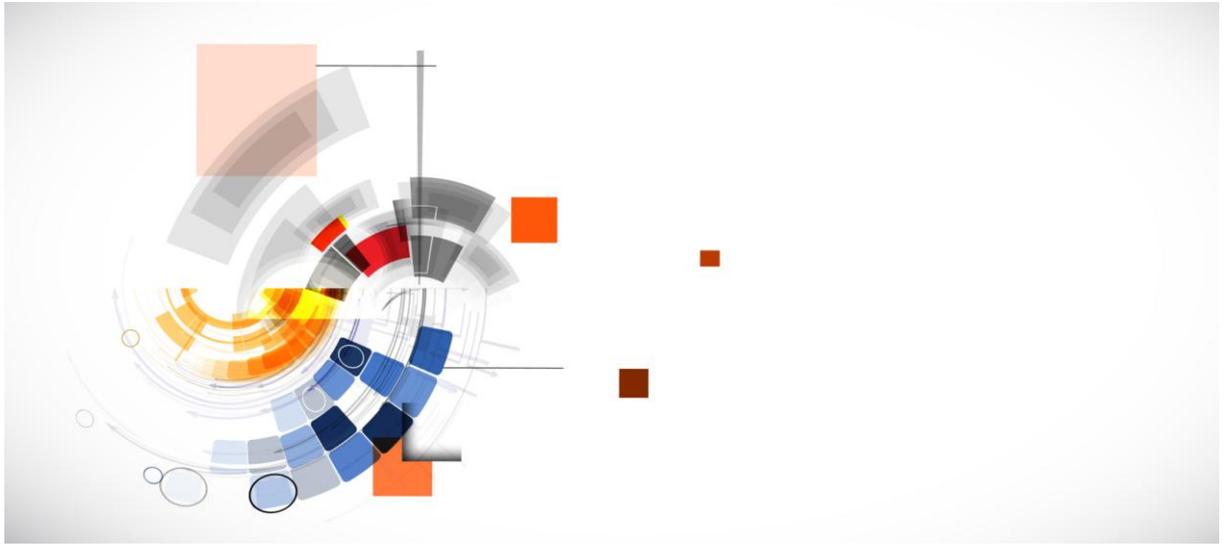


Search and Seizure Warrants in Criminal Proceedings

N.Serra Coral, Tuğçe Güven/ May 2018

Deris IP Attorneys



The criminal provisions of the Code of Industrial Property No:6769 (IP Code) which has been entered into force on January 10, 2017 lists the following acts to constitute trademark infringement;

“manufacturing, providing services, offer for sale, selling, importing, exporting, purchasing for commercial purposes, holding possession, transporting and storing for commercial purpose.”

The Code enables the registered trademark holder to initiate criminal action against a third party’s infringing acts. The criminal proceeding is initiated with the filing of a complaint before the local Public Prosecutor by the right holder. The complaint if accepted by the Public Prosecutor will be then referred to the General Criminal Court for the issuance of search and seizure warrant which will enable the police the search and seize the counterfeit products.

The request of search and seizure warrant is evaluated by a Judge of the Criminal Court which is a general criminal court but not specialized in IP matters. The Court on duty reviews the claims mentioned in the complaint petition and order approval or rejection of the search and seizure request by the Public Prosecutor. The objection against the decision of Judge can be filed before the same first instance court, not before the specialized Criminal IP Courts.

The search and seizure warrant can be issued if there is reasonable doubt concerning the existence of the evidences. The term of “reasonable doubt” is not defined in Law. According to the case law, the Judge of Criminal Court would like to see objective and convincing evidences supporting the infringement claims.

The evaluation of the search and warrant orders by the non specialized IP Judges and the fact that the “reasonable doubt” condition might be interpreted wide or narrow depending on the Court can cause inconsistent decisions in practice.

So far to our experiences, we believe that in order to build an effective criminal case, the right holder should proactively be prepared for the criminal proceeding by conducting a detailed investigation, drafting a simple and clear complaint petition, collecting strong and concrete evidences, and planning the timing of the complaint and the consequent raid after the issuance of the search and seizure warrant