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# GUIDE TO ANTI-COUNTERFEITING 2023

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# Greece: Enforcement actions urgently needed to take on uptick in digital fakes and offline fraud

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Illicit trade in counterfeit and pirated goods is a long-standing, ever-evolving and rapidly adapting challenge that has a major economic impact on global markets, while also posing severe risks to business viability and consumer health. Its adaptability was tested during the covid-19 pandemic and its resilience was proven as, despite the recession, counterfeiters altered their *modus operandi* and turned the economic downturn into an opportunity for profit.

The pandemic has shifted international trade to the digital world, forcing businesses to conduct the vast majority of their sales online and strengthen their online presence through social media and digital marketing in general. In addition, the abiding emergence of innovative technologies that transform e-commerce into a completely consumer-friendly environment is another key factor shaping the digital markets era. Illicit traders quickly appreciated the adjustment of the modern supply chain to the rapid growth of e-commerce and made it the most popular route for channelling counterfeit products into the market. However, in accordance with the recent Operation Fake Star Analysis Report of the EUIPO, conventional offline marketplaces are still an important part of illicit trade, which should not be neglected by enforcement bodies due to the boom in digital markets.



Greece remains a key destination for illicit trade in counterfeit and pirated goods because of its geographical position – being one of the major EU countries for the transit of goods to mainland Europe – and its long tourist season with a significant number of visitors, a number that set a record in 2022 reaching 27.8 million visitors.

Counterfeit and pirated products are carried by every means of transport within the Greek territory; however, sea transport plays a leading role in channelling counterfeits into the Greek market as the greatest volume of counterfeits arrives at the ports of Piraeus and Thessaloniki via container ships. The Third Customs Office of Piraeus and the First Customs Office of Thessaloniki continue to record the largest volume of detentions in terms of both number of items detained and estimated value.

Eleftherios Venizelos Airport Customs also recorded a significant number of detentions, as small parcels and consignments, mostly originating from internet sales, are usually transported by air.

The customs offices at the Greek land borders (ie, those of Kipoi, Evros; Promahona, Serres; and Kakavia, Ioannina) recorded significant detentions in terms of number of items detained.

## Legal framework

The most important pieces of legislation applicable in Greece for enforcement against counterfeiting include:

- the Trademark Law 4679/2020, which implements the EU Trademark Directive (2015/2436/EC) and the EU enforcement of the IPR Directive (2004/48/EC);
- Law 2121/1993 on copyright, related rights and cultural issues, as amended;
- Law 2417/1996 on the ratification of the Hague Agreement concerning the international deposit of industrial designs, Presidential Decree 259/1997 on implementing the provisions of said agreement and Presidential Decree 161/2002 implementing the EU Designs Directive (98/71/EC) and the EU Community Designs Regulation (6/2002);
- Law 1733/1987 on technology transfer, inventions and technological innovation, as amended, and Law 3966/2011, implementing the IPR Directive (2004/48/EC);
- the Unfair Competition Law 146/1914;
- the Criminal Code;
- the Code of Criminal Procedure;
- Regulation (EU) No. 608/2013 of the European Parliament and of the Council concerning customs enforcement of IP rights and the Commission implementing EU Regulation 1352/2013, as amended by EU Regulations 582/2018 and 1209/2020 (Regulation 608/2013); and
- Law 4712/2020 (as amended and in force by Law 4753/2020), which amends Law 3377/2005 on the restructuring of trade, sets out rules on the establishment and operation of an inter-agency market control unit and regulates the seizure and destruction of pirated or counterfeit goods in the market.

## Border measures

Regulation 608/2013 is directly applicable in Greece. Since no national border law exists, it sets out the domestic customs intervention procedure.



The Union Customs Code outlines the basic principles regarding clearance and control of goods crossing the external border of the European Union, complementing the regulation.

Regulation 608/2013 contains only procedural rules for customs authorities and does not affect national IP substantive law or the laws of member states regarding criminal procedures.

Customs authorities suspend the release of suspected counterfeit goods following a national or EU application for action (AFA) by the right holder or an authorised party (eg, an exclusive licensee). The applications are granted for one year and can be renewed for a further year. All AFAs are registered by customs in the EU database, COPIS.

As of 13 December 2021, rights holders (or their legal representatives) file and manage their AFAs electronically using the IP Enforcement Portal (IPEP). All information related to AFAs, including the AFA-granted decision, are notified electronically to rights holders (or their legal representatives) through their IPEP account. Notably, the Greek Customs Authority plans to stop sending hard copies related to the annual extension of the AFA to the holder's legal representative.

In addition to the recordation and management of AFAs, IPEP enables rights holders to provide customs authorities (and other enforcement agencies) with information to assist in identifying counterfeits. In particular, it may contain the contact details of rights holders and additional product information and materials (eg, photographs of genuine and counterfeit products) that can help customs authorities in their inspections.

Customs authorities may intervene *ex officio*, and without any active customs intervention decision, when they suspect that the goods may infringe an IP right. In that case, a national AFA for customs intervention should be submitted within four working days of the notification of the suspension of the release or detention of the goods; otherwise, the goods will be released.

Immediately after the suspension of release of the goods, customs authorities inform the right holder and the holder of the goods of the actual or estimated quantity and the nature of the seized goods, including any related available photographs. The right holder is entitled to inspect the goods *in situ* or, alternatively, a related sample may be obtained.

The right holder has 10 working days (three working days for perishable goods) from the customs notification to confirm, in writing, the infringing nature of the goods to the customs authorities and to consent to their destruction. If confirmation is not timely submitted to the customs authorities, the goods will be released.

If the declarant or the holder of the goods consents to the destruction, or in the absence of any objection by that person or entity, the seized items will be destroyed at the expense of the decision holder (the simplified procedure).

If the declarant or holder of the goods objects to the destruction of the seized items, the decision holder should initiate litigation proceedings to determine whether an IP right has been infringed. The initiation of proceedings should be notified to customs authorities to prevent the release of the seized goods. In those cases, the goods remain detained under customs authorities' supervision until the finalisation of litigation proceedings.



In most cases, seized goods found to be counterfeit are destroyed under the simplified procedure. Greece had consistently applied the simplified procedure under the previous Regulation 1383/2003. Pursuant to Regulation 608/2013, customs authorities regularly apply the implied consent rule in all cases when the declarant or holder of the goods has neither confirmed their agreement to the destruction nor notified their opposition of it.

Customs authorities also impose administrative fines on infringers, based on the relevant provisions of the Greek Customs Code. Criminal or civil proceedings are not initiated *ex officio* by Customs authorities within the context of Regulation 608/2013.

Regulation 608/2013 did not set out any provisions intended to render *Philips/Nokia* (C-446 and 495/09) ineffective or, at least, mitigate its impact.

Nevertheless, the Trademark Law introduced a provision – already included in the EU Trademark Regulation (2017/1001) – extending trademark protection to the cross-border transit of goods: trademark owners may prevent third parties from bringing goods coming from third countries into Greek territory, as well as when those goods are not released for free circulation in Greece and placed in all customs situations, even if the goods are not destined for circulation in the Greek market.

This entitlement of trademark owners applies to infringing marks that are identical to or that cannot be distinguished in their essential aspects from the registered mark. Entitlement lapses if the holder of the goods, who is involved in the relevant customs proceedings, provides evidence that the trademark owner is not entitled to prohibit the use of the trademark in the country of final destination. This facilitates the seizure of counterfeit goods that are stated to be in transit, putting the onus of proving that the goods are not infringing on the holder of the goods.

Customs authorities tend to be more sophisticated when proceeding with detentions, as there has been a significant increase in seizures of products that infringe other types of IP rights besides trademarks, such as industrial designs and copyrights. A key factor in this trend is the training initiatives that have taken place in recent years, which appear to have broadened the awareness of customs officials on what constitutes a counterfeit/pirated good, beyond trademark infringement.

Nevertheless, the *Philips/Nokia* principles are still relevant in areas not related to trademark law, raising in some cases severe obstacles to the seizure of counterfeits that constitute clear infringements of copyrighted works.

## Market actions

Protection of IP rights and the fight against counterfeiting demand both defence at the borders and surveillance within the national territory.

Law 4712/2020 aims to lay down a consolidated and strong control mechanism through the creation of an inter-agency structure for controlling the market (an interdepartmental market control unit known as DIMEA), its emphasis being on the tackling of illicit trade in goods and services in the internal market.

The control bodies of this inter-agency unit (ie, the police, the municipal police, the Financial and Economic Crime Unit of the Ministry of Finance, and the



coastguard and customs authorities) may seize and destroy counterfeit or pirated goods that have entered the Greek market. These agencies conduct inspections *ex officio* or upon request of the right holder in flea markets, warehouses, stores, motor vehicles and any indoor or outdoor trade area. The counterfeit or pirated goods seized by the enforcement agencies (excluding customs authorities) may be destroyed immediately through any available means, provided that the holder of the goods consents to their seizure and destruction.

Where the holder of the goods objects to their seizure, the following procedure applies:

- The goods are stored.
- A seizure report, indicating the quantity of the seized items and the infringed IP right, is issued and notified to both the holder of the goods and the right holder.
- The right holder obtains a sample of the seized items and submits, within 10 days, a declaration on whether an IP right has been infringed.
- The competent authority, within 30 days of the issuance of the seizure report, and taking into account the right holder's declaration, concludes whether an IP right has been infringed. If such finding has not been issued within the 30-day deadline or no IP infringement has been confirmed, the seizure is lifted.
- When the competent authority concludes that infringement has occurred, the finding is notified to both the holder of the goods and the right holder, and within three days of the notification the seized items are destroyed. The right holder bears the costs of the destruction.

The inter-agency market control unit is authorised to impose administrative fines of up to €100,000 on the infringers, depending on the quantity of the seized items. The infringer is entitled to file a recourse action against the fine notice within 30 days of its issuance, whereas the decision on the recourse is issued within 30 days of its filing.

Although there were concerns regarding the effectiveness of Law 4712/2020 – mainly owing to the seizure–destruction procedure, the complex organisational structure of the enforcement agencies and the heavy administrative fines – the inter-agency market control unit proved to be a valuable ally in tackling counterfeiting. Monthly reports on the number and kinds of seized goods are also notified to the brand owners' representatives.

## **Criminal prosecution**

According to Article 45 of the Trademark Law, various acts of intentional trademark infringement constitute criminal offences. Criminal prosecution does not take place *ex officio*, but rather following the filing of a related criminal complaint by the right holder.

The infringer may be sentenced to imprisonment of at least six months and fined no less than €6,000. Professional and commercial-scale infringements are considered to be aggravating circumstances, and a minimum of two years' imprisonment and a fine from €6,000 to €30,000 is imposed for the unlawful use of identical marks for identical or similar products, when particularly high profits are sought or very significant damages are threatened and the infringement is on a commercial scale, or when the infringer is a professional offender.



Under Article 66 of the Copyright Law, copyright infringement is a criminal offence, which is prosecuted *ex officio*. Infringers are liable to imprisonment of no less than one year and a fine from €2,900 to €15,000. If the financial gain sought or the damage caused is particularly great, the offender may be sentenced to a minimum of two years' imprisonment and a fine from €6,000 to €30,000. Imprisonment of up to 10 years and a fine from €15,000 to €60,000 is imposed if the infringer acts by profession, on a commercial scale or is considered a serious threat to the protection of copyright and related rights.

In cases of IP infringement and counterfeiting, general criminal law provisions (eg, those regarding forgery, fraud and the acceptance and distribution of illicit goods) may also be applicable, depending on the circumstances of the case. Criminal provisions are also included in the unfair competition legislation.

Design, patent and plant variety infringement are not criminalised under Greek law.

### Civil enforcement

Greek IP legislation has fully implemented the EU Enforcement of IPR Directive (2004/48/EC).

In cases of IPR infringement, action may be pursued before the civil courts.

### Main infringement actions

In the context of main infringement actions, the right holder may request:

- permanent cessation of the infringing activities;
- refrainment from future infringing activity;
- destruction, confiscation or withdrawal of the infringing products;
- moral and material damages; and
- publication of the judgment in the press or online, at the infringer's expense.

Remedies under the first three points are also available against intermediaries.

In many cases, courts may caution the losing party with a penalty for each breach of the judgment.

When calculating damages, the negative economic consequences suffered by the right holder – including loss of profits and profits made by the infringer – are taken into account. Damages may also be calculated based on hypothetical royalties.

Petition for injunction: The right holder may file a petition for injunction before the competent first-instance court. Injunctive measures are ordered, provided that the element of urgency is prevalent in the circumstances of a particular case.

Temporary restraining order: When filing the petition for injunction, the right holder may also apply for a temporary restraining order, which is granted in cases where the petitioner proves the existence of a *prima facie* serious infringement as a matter of exceptional urgency. *Ex parte* proceedings are possible in this context but rare in practice.



## Mediation

Law 4640/2019 has initiated a compulsory initial mediation session prior to the hearing of a case before the courts that arises from patent, trademark and industrial design infringement. That session, along with proof of the lawyer's compliance with the obligation to inform the client in writing about the option of mediation, have become a prerequisite for the admissibility of a main infringement action by virtue of the new provisions.

## Anti-counterfeiting online

The boom in digital markets has created a more fertile ground for the online sale of counterfeit goods. In addition to traditional online tools (ie, the creation of e-shops and e-commerce marketplaces), counterfeiters are exploiting the power of social media, which undeniably influence consumer habits, to push counterfeits into the market. A common practice is to create a social media page and/or account where supposed branded products are promoted through stories, reels, video/image uploads and consumers are invited to purchase these supposed branded goods at bargain prices via direct messages. Consideration should also be given to the e-commerce feature available on the most popular social media platforms where counterfeits may be traded through fake/ghost accounts.

The trend of online shopping is reflected in the buying habits of Greek consumers, since, according to the PayPal E-Commerce Index Deep Dive: Greece report for November 2022, 76% of Greek consumers shop online at least weekly, with an average spend of €333 per month, while 54% have made a purchase via a social or streaming platform in the past six months. Interestingly, according to EUIPO's Operation Fake Star Analysis Report, in November 2022, Greece's Financial Police Division dismantled a criminal organization, that had distributed 23,000 shipments of counterfeit goods with a value of more than €1.5 million through social media profiles and websites. The bigger the market is the more highly developed tactics are used by bad actors to market counterfeits online. Current trends such as hidden links and NFT platforms appear to be in a premature stage in Greece.

Under local provisions, whenever rights holders become aware of online infringing activity, they may request the blocking of access to the illicit content provided online under Articles 11 and 13 of Presidential Decree 131/2003 (implementing the e-Commerce Directive (2000/31/EC)).

Regarding online copyright infringement, Article 66e of the Copyright Law established a new, fast, extrajudicial process that is a kind of administrative 'notice and takedown' procedure for online copyright infringement. Under this provision, any primary or secondary rights holders, including collective management organisations, whose rights have been infringed may submit an application before a committee set up *ad hoc* for this purpose (the Committee for the Notification of Copyright and Related Rights Infringement on the Internet).

If the committee finds that copyright infringement is taking place, it invites the notification recipients (ie, the internet service providers (ISPs) and, possibly, the hosting provider and the administrators or owners of the website) to either remove the infringing content or disable access to the content, as described in the





application, by using the most appropriate technical means, depending on the features of the infringement at issue.

Rights holders may apply for an injunction against intermediaries (ie, ISPs) whose services are used by a third party to infringe a copyright or related right (Article 64A of the Copyright Law).

Law 4712/2020 has also established a new directorate that is responsible for monitoring e-commerce within the realm of the interdepartmental market control unit. Its activities include investigating information and complaints relating to the online illicit trade of goods, in collaboration with all available enforcement agencies. In cases of established online infringement, the directorate may instruct the Greek Telecommunications and Post Commission to deactivate the relevant websites. It may also involve the Department of Electronic and Cyber Crime of the Greek Police for further investigation.

In cases of online sale of counterfeit goods, the above criminal and civil measures apply, depending on the circumstances of the case.

### **Preventive measures/strategies**

As a first line of defence, rights holders should register and update their IP rights in Greece. Registration of IP rights with Customs and maintaining customs intervention decisions is also important.

The appointment of a local contact who will also devise a tailor-made anti-counterfeiting overall strategy is also recommended since this will facilitate communication with the authorities and expedite procedures.

Rights holders must regularly monitor the unauthorised use of their IP rights, both offline and online. Structured internet searches and frequent market investigations may provide them with useful insight into the Greek market. A well-planned investigation strategy in which targets of interest have been identified (offline and/or online) and test purchases have been made may in some cases bear fruits if combined with appropriate enforcement measures.

Rights holders should cooperate with and assist the enforcement agencies in their fight against counterfeiting. Training initiatives are important in this respect since authorities are often unfamiliar with certain IP rights (eg, plant variety rights) and the characteristics of genuine and fake goods, their provenance and trade routes.

The use of technologies such as anti-counterfeit packaging and track-and-trace systems can also discourage counterfeiters.

Further, educating consumers and raising awareness about the concept of IP and its value, the significance of IP protection, the damage caused by related infringements and the contribution of IP and brands to economies and society may also play a key role in the prevention of counterfeiting.

Rights holders should be proactive, vigilant and determined and must use all available remedies against counterfeiting. In practice, enforcement agencies are keener on cooperating with active right holders, who will take action even for a single piece of counterfeit product, since continued seizures and market actions build stronger relationships with enforcement bodies and deliver results in terms of quantities. In addition, counterfeiting activity is most often the result



of calculated risks to increase financial gain, meaning that the certainty and severity of consequences are significant in the context of this rational calculation. As a result, counterfeiting can be deterred more readily than other types of criminal or infringing behaviour, and counterfeiters may have second thoughts when they know that they will be confronted by a right holder with zero tolerance.



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Fotini Kardiopoulis is a partner at HP&P, heading the anti-counterfeiting department. Since 1998, she has been handling a broad range of IP matters, with an emphasis on trademarks, geographical indications, copyright and plant breeders' rights and has extensive experience in IP consulting, offline and online enforcement and litigation, devising and implementing anti-counterfeiting programmes and in border enforcement.

She was awarded the 2022 and 2021 Certificate of Excellence on Anti-Counterfeiting (Greece) by Advisory Excellence, as well as the 2022 and 2021 Anti-counterfeiting Law expert award by Corporate INTL and Leaders-in-Law, respectively.

She graduated with first-class honours from the Law School of the University of Athens, holds an LLM from the London School of Economics and Political Science and is admitted to practise before the Supreme Court and the Council of State.



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Stavroula Politi joined HP&P in 2020 after working for another law firm since 2014. She is a qualified lawyer and member of the Athens Bar Association.

Ms Politi graduated from the Aristotle University of Thessaloniki with a law degree and obtained an MSc in Business from Alba Graduate Business School.

From the beginning of her career as an attorney, she specialised in intellectual property law, mainly focusing on cases related to trademarks and anti-counterfeiting. In the context of her activity has represented various international corporate clients for the protection of their IP rights before the local enforcement authorities.