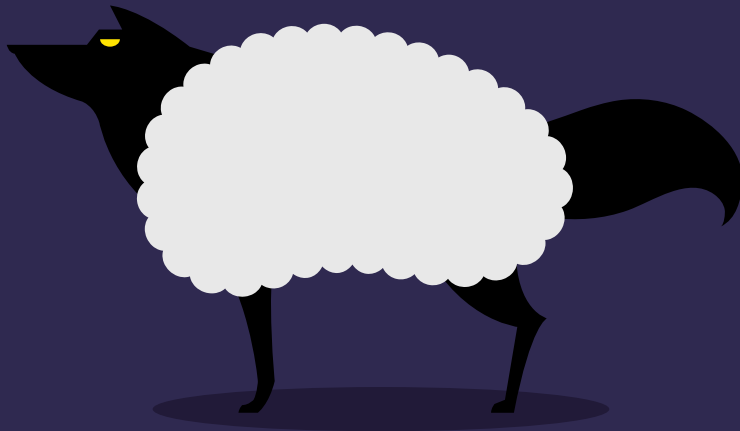


ANTI-COUNTERFEITING AND ONLINE BRAND ENFORCEMENT 2022

A Global Guide



Greece

Dr Helen G Papaconstantinou and Partners
Fotini Kardiopoulis and Stavroula Politi





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A 2 Coumbari Str., Kolonaki, 10674 Athens, Greece
T +30 210 3625757, +30 210 3626624
F +30 210 3626742, +30 210 3605873

www.hplawfirm.com

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Dr Helen G Papaconstantinou and Partners



Authors

Fotini Kardiopoulis and **Stavroula Politi**

lockdowns have skyrocketed online shopping, making e-commerce the number one counterfeits trade channel.

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.

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.

As of 13 December 2021, rights holders (or their legal representatives) should file or manage their AFAs electronically using the IP Enforcement Portal (IPEP). IPEP is free of charge, secure and multilingual. All information related to AFAs, including the AFA-granted decision, are notified electronically to rights holders (or their legal representatives) through their IPEP account.

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.

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. This 10-day period can be extended by a further 10 working days upon a justified request by the


Fotini Kardiopoulis

Partner

f_kardiopoulis@hplaw.biz

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

She was awarded with the 2021 and 2020 Certificate of Excellence in 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 from the Law School of the University of Athens and the London School of Economics and Political Science and is admitted to practise before the Supreme Court and the Council of State.


Stavroula Politi

Associate

s_politi@hplaw.biz

Stavroula Politi joined the firm in 2020 after working for another law firm since 2014. She is a qualified lawyer and a member of the Athens Bar Association. She 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 IP law, mainly focusing on cases related to trademarks and anti-counterfeiting. She has represented various international corporate clients in protecting their IP rights before the local enforcement authorities.

right holder. 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.

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



The numbers for 2021 are impressive since more than 285,000 counterfeit items were seized and destroyed by DIMEA, while the fines imposed for counterfeiting amount to €2,847,550

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.

Nevertheless, the *Philips/Nokia* principles are still relevant in areas not related to trademark law, raising in practice 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 during its first year of operation. Its control bodies monitor the internal market on a regular basis and investigate any information of counterfeiting activity that is brought to their attention. Monthly reports on the number and kinds of seized goods are also notified to the brand owners' representatives. The numbers for 2021 are impressive since more than 285,000 counterfeit items were seized and destroyed by DIMEA, while the fines imposed for counterfeiting amount to €2,847,550.

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:

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

Remedies under points (1) to (3) 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

Under covid-19 lockdowns, physical shops and stores have been forced to remain closed, and customers have been avoiding public places. This led to an unparalleled growth of e-commerce, which, in turn, created more fertile ground for the online sale of counterfeit goods. In addition to traditional online tools (ie, the creation of e-shops and online marketplaces), counterfeiters have been taking advantage of social media to channel counterfeits into the market. A common practice is to create a social media page where consumers may purchase branded goods at bargain prices via direct messages.

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 admin-

istrators 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 Hellenic 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.

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. 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. =

**Dr Helen G Papaconstantinou and Partners**

2 Coumbari Street

Athens 10674

Greece

Tel: +30 210 3626624

Fax: +30 210 3626742

www.hplawfirm.com