

## Cyprus Administrative Court rules Customs officials are authorized to investigate IP breaches

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### Executive summary

In a recent case 281/2017, the Cyprus Administrative Court held that Customs authorities are entitled to seize and/or confiscate counterfeit goods or those deemed as such and initiate proceedings for intellectual property (IP) breaches. This also applies for goods that have already cleared customs and have been placed in the market.

This Alert summarizes the Court's decision.

### Detailed discussion

#### Facts of the case

The defendant is a market leader in the domestic toy retailing industry and its principal activities relate to the distribution and retailing of children's toys, baby items, and stationery as well as home items.

Further to a complaint by an IP right holder, the defendant was subject to a customs inspection at its premises, during which time a number of toys were seized as they were deemed counterfeit and in breach of the IP rights.

The defendant appealed to the Administrative Court claiming that the customs' inspection and subsequent seizure of the goods constituted an unauthorized administrative act and therefore the goods should not have been seized from the appellant's premises.

### The Court's decision

The Administrative Court affirmed that the Customs Department is duly authorized and has the power to seize and/or confiscate goods based on suspicion of IP rights' breaches.

The Court held that the seizure and/or confiscation of goods after customs clearance and prior to the judicial declaration regarding confiscation, is of a civil nature, not administrative, and therefore it is outside the jurisdiction of the Administrative Court. The appeal was therefore dismissed at this level.

### Implications for businesses

The decision clarifies the importance of IP rights, including royalties, copyrights and trademarks and the powers of Customs officials which go beyond the customs clearance stage, and can also extend to the stage that the goods are placed for consumption in the market in the context of protection against breaches.

Such rights are also important for Customs Valuation purposes. Under the law, in determining the customs value of imported goods, royalties and license fees that the buyer pays, must be added to the actual price paid or payable for the imported goods.

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