

**INTELLECTUAL
PROPERTY LAW 2023**
THE YEAR IN REVIEW

MOROĖLU ARSEVEN

CONTENTS

I.	CANCELLATION OF TRADEMARK DUE TO NON-USE. HOW WILL PRACTICE OF THE TURKISH PATENT AND TRADEMARK OFFICE LOOK LIKE? _____	4
II.	WITHIN THE SCOPE OF COMBATING GREENWASHING, GUIDELINE ON MISLEADING ENVIRONMENTAL CLAIMS IN ADVERTISEMENTS HAS BEEN PUBLISHED _____	6
III.	A REVIEW OF THE NOVELTY OF DESIGNS IN CANCELLATION ACTIONS REGARDING TPTO'S DECISIONS _____	8
	III.I. Legal Process _____	9
	III.II. Assessments _____	9
IV.	THE EFFECT OF CONTRACTUAL LIABILITY WITHIN THE CONTEXT ON THE EVALUATION OF CRIMINAL INTENT DURING PROSECUTION STAGE OF CRIMES UNDER COPYRIGHT LAW: _____	12
	VI.I. Legal Process _____	12
	VI.II. Assessments _____	13
V.	RECENT DEVELOPMENTS IN PRELIMINARY INJUNCTION REQUESTS _____	14
VI.	RECENT DEVELOPMENTS IN SEARCH AND SEIZURE OF COUNTERFEIT GOODS _____	16
VII.	ALTERNATIVE METHOD IN THE RESOLUTION OF INTERNET DOMAIN NAME DISPUTES: TRABIS _____	18
VIII.	EVALUATION OF THE CONCEPT OF EXHAUSTION OF RIGHTS AND DETERIORATION IN VEHICLE SPARE PARTS _____	20
IX.	UNDERSTANDING THE PRIOR USE EXCEPTION IN PATENT LAW IN TÜRKIYE _____	24
	XI.I. What Are the Conditions of Prior Use Exception? _____	25
	XI.II. What Are the Limitations of Prior Use Exception? _____	25
	XI.III. Practice in Turkish Law _____	27
	XI.IV. Conclusion _____	27
X.	CONSTITUTIONAL COURT FOUND THE ADVERTISEMENT BOARD'S AUTHORITY TO BLOCK ACCESS TO WEBSITES WAS UNCONSTITUTIONAL AND ANULLED THE BASIS REGULATION _____	28
XI.	2023 FROM THE BOARD OF ADVERTISEMENT'S EYES: _____	30
XII.	DEVELOPMENTS IN TRADEMARK REGISTRATION PROCESSES IN NORTHERN CYPRUS TURKISH REPUBLIC IN 2023 _____	32

Introduction

In an era where change is constant, the Turkish Intellectual Property Law syncs with the dynamic nature of the legal developments in 2023. As Moroğlu Arseven, we evaluated the past year by bringing together 12 articles regarding these current developments. We will continue to share the most recent developments with you in 2024.

I. CANCELLATION OF TRADEMARK DUE TO NON-USE. HOW WILL PRACTICE OF THE TURKISH PATENT AND TRADEMARK OFFICE LOOK LIKE?

In 2023, the most buzzworthy topic in the IP community in Türkiye was undoubtedly the transfer of the authority to cancel trademarks due to nonuse from courts to the Turkish Patent and Trademark Office ("TPTO"). This amendment took effect on January 10, 2024. The fact that no guidance has been published and no explanation has been made on this issue has brought about sectoral discussions and preliminary comments. Question marks have increased, but the answers are not clear yet.

Pursuant to Article 26 of the Industrial Property Law ("IPL"), it is possible to cancel a trademark due to nonuse if the trademark has not been seriously used without a justifiable reason within five years from the date of registration, or if such use has been discontinued for five years without interruption.

A The fact that trademark cancellation claims for nonuse were examined by the courts made them a part of the judicial system. However, now that the relevant request can be evaluated by the TPTO, it turns into an administrative process. This creates fundamental differences in terms of the procedure to be followed and the assessment of the merits. Three differences are pointed out here:

- In nonuse cancellation cases before the court, the determination of the use of the trademark was made by experts appointed by the court. The file was evaluated by multiple experts, both in terms of trademark law and the sector to which the trademark at issue was related. This examination could even take place more than once if the parties objected or if the court deemed it necessary. In the post-amendment period, however, it has not yet been clarified which unit will carry out the examination and what procedure will be followed in cases before the TPTO.
- Some of the most crucial documents to demonstrate proof of use of a trademark are invoices, product labels, dated catalogs and trade books. The caveat, however, was that these documents could contain trade secrets, which the trademark holders certainly strive to protect even while submitting them to the court. Now that the amendment has taken effect, it remains to be seen how the process will be handled before the TPTO and what measures will be taken to ensure the confidentiality of the documents. It is also unclear how documents whose evaluation requires additional competence will be examined. This is because the examination of commercial books and assessing whether the relevant records constitute evidence require special legal knowledge. However, this could lead to ambiguity when the case at issue requires knowledge other than IP, thus posing the question of how the TPTO will address such matters.

Before the IPL came into force in January 2017, the request for the cancellation of a trademark due to nonuse could only be made by filing a lawsuit before the competent court. The IPL, however, originally granted the power to cancel a trademark due to nonuse to the TPTO upon the request of those with a legal interest, but envisaged a transition period, too. The transition period granted by the IPL expired on January 10, 2024, and as of this date, trademark cancellation claims for nonuse are to be heard before the TPTO.

The novelty of this practice in Türkiye will certainly lead to some issues especially since no regulation or guideline/information letter has been published by the TPTO yet. Some of the vital issues that this amendment could bring about are as follow:

- While it is possible to appeal a court decision at a higher court (Regional Court of Appeal / Court of Cassation), a practice already in place during the IPL period, it is not clear whether it will be possible to lodge an appeal at the Board of Appeals when the review period of the TPTO begins. Obviously, while it is possible to apply to the Board of Appeals even in trademark opposition files, it is expected that there will be a right to apply to the Board of Appeals in the examination that will lead to the loss of rights in this way. In the absence of this, it may be possible to file a lawsuit before the Ankara Intellectual and Industrial Rights Law Court to request the annulment of the decision.

B On the other hand, nonuse cases are subject to a written procedure in accordance with the Code of Civil Procedure ("CCP"). The parties are required to file two petitions: a statement of claim, a response, a counter-response, and a rejoinder. While it is obvious that the TPTO, as an administrative authority, will not be obliged to follow a procedure subject to the CCP, it is expected to adopt a similar examination procedure for ease of implementation.

C In the cases before the court, if the defendant - the trademark owner - was not at their specified address, they could be notified in other ways in accordance with the Notification Law. Considering that the trademarks for which cancellation is requested must have been registered for at least 5 years, the address of the trademark owner registered in the TPTO might not be an up to date one. In this case, it has not been clarified whether the same practice will be applied by the TPTO.

D It is obvious that the judicial system in Türkiye is overburdened. Therefore, transferring the duty and authority to examine files such as trademark cancellations to the TPTO could alleviate the burden on courts. On the other hand, nobody can deny that the workload of the TPTO is high, too. Although the TPTO itself admits that there are opposition files that are concluded quite quickly, there are other opposition cases that might take between 1-10 months. Considering that the examination of a matter that will terminate the trademark right should be carried out meticulously, it remains to be seen how long these processes will last.

E Another positive outcome will be the fact that, compared to the litigation processes, the modified system will incur lower costs for legal beneficiaries.

This amendment is a significant reform in the Turkish industrial property law. Since no preliminary guidelines have been published yet, and there will not be any precedent in this regard even after its publication, it is not possible to predict how the implementation will take place. The first days of 2024 will be closely monitored by the IP community, and it will take some time for the system to settle.

II. WITHIN THE SCOPE OF COMBATING GREENWASHING, GUIDELINE ON MISLEADING ENVIRONMENTAL CLAIMS IN ADVERTISEMENTS HAS BEEN PUBLISHED

Tackling the adverse effects of the climate crisis has become a top priority for both governments and companies. The public's awareness about environmental matters, especially sustainability, has increased greatly and companies attempt to reflect the importance of this issue through their environmentally friendly products and services. Recently, there have been increasing numbers of a malpractice called "greenwashing," a deceitful marketing strategy employed by companies to falsely claim their products or services contribute greatly to the protection of the environment to attract more customers.

Monitoring this trend closely, the Board of Advertisement issued a Guideline on Advertisements Containing Environmental Declarations ("Guideline") at the end of 2022 to tackle such misleading claims. It provides guidance to all persons, institutions, and organizations about compliance of their environmental statements and visuals in their commercial advertisements and practices.

The Guideline specifies an environmental claim as a statement or visual in a commercial advertisement or practice which indicates that a good or service provides environmental benefits or does not have a negative impact on the environment during its composition, production, supply to the market, use or disposal processes. The Guideline holds advertisers, advertising agencies and broadcasting organizations individually responsible for environmental claims.

The principles in the Guide are similar to those in its counterpart in the European Union. Three months after the Guideline was published in Türkiye, the European Commission published the Proposal for a Directive of the European Parliament and of the Council on Substantiation and Communication

of Explicit Environmental Claims (Green Claims Directive). The Proposal states that consumers are willing to contribute to a greener and more circular economy, but such active and effective participation is hindered by lack of trust in the credibility of environmental claims and an increase in misleading advertisement practices regarding the sustainability of products. The Proposal sets forth regulations on two main topics: preventing greenwashing based on ambiguous or inadequately substantiated claims and ensuring the use of reliable and transparent environmental labels.

In 2023, the Board of Advertisement in Türkiye had greenwashing on its radar and in several decisions addressed cases containing environmental claims.

The following are decisions the Board issued after the adoption of the Guideline:

- At a meeting dated 14.02.2023 and numbered 330, the Board examined the information and documents in the file 2022/6001 regarding an advertisement titled "Flat Packaging: An environmentally friendly idea." The Board held that flat packaging of the products resulted in the use of fewer vehicles for the shipping of the products, subsequently reducing fuel usage and carbon emission, and concluded that the advertisement was not contrary to the Law and the Regulation.

- At another Board meeting dated 10.01.2023 and numbered 329, in the file 2022/4415, the Board accepted the objection against its initial decision upon assessing the information, documents and test results submitted as proof of the following claims: "Biodegradable Ingredients", "It is made of 25% recycled plastic. (...) We aim to prevent the production of 70 tons of pure plastic on average with our bottles made of 25% recycled plastic.", "100% recyclable packaging". The objection, however, was rejected in terms of the comparative environmental claim "More Sensitive to Nature". In its first decision, the Board had contended that the statements in the promotions were "environmental claims." However, the Board pointed out that it was not clear whether the products were compared with the advertiser's previous products under the same brand or with the competitors' products. The Board added that the presented evidence should provide in a comparative manner the overall environmental impact of the detergents throughout the whole or a part of their life cycle. In the decision subject to the opposition, the Board ruled that the advertisements were also in violation of Articles 7, 9 and 17 of the Regulation.

The year 2023 saw policymakers in Türkiye and other parts of the world taking first steps towards regulating against greenwashing. Regulators are expected to define greenwashing more clearly and

impose heavier repercussions on corporations for their exaggerated and misleading green claims to ensure that consumers will receive enhanced and accurate information about products and services.

III. A REVIEW OF THE NOVELTY OF DESIGNS IN CANCELLATION ACTIONS REGARDING TPTO'S DECISIONS

In 2023, the Court of Cassation General Assembly of Civil Chambers ("the General Assembly") rendered two decisions regarding novelty examination in designs. In both decisions, the General Assembly considered that the novelty assessment should be made ex officio without being limited to the information and documents in the file, even in the actions filed against the decisions of the Turkish Patent and Trademark

Office ("TPTO"). In 2013, the General Assembly had held that the novelty assessment in design should be limited to the information and documents in the file, since the cancellation actions filed against the TPTO's decisions consisted of an administrative review. The fact that the General Assembly has changed its view after 10 years is of great importance.



III.I. Legal Process

In the case regarding the decision of the General Assembly numbered 2021/943 E. and 2023/288 K. and dated 29.03.2023, the plaintiff's design application was opposed by a previous design owner for lacking novelty and distinctiveness. The "TPTO" accepted the opposition. The plaintiff requested the annulment of the TPTO's decision. Following an expert examination, it was determined that the design application could be considered new and distinctive within the scope of the information and documents available in the opposition file. However, in the research conducted by the expert regarding absolute novelty, it was argued that the application had previously been presented to the public and was therefore devoid of novelty.

The Ankara 1st Civil Court of Intellectual and Industrial Property Rights ruled that since the subject matter of the lawsuit was the annulment of the decision of the TPTO, the examination was limited to the review of propriety and a decision should be made by examining the evidence submitted during the opposition phase. Accordingly, the lawsuit was accepted on the grounds that ex officio evidence search could not be made except for the evidence submitted regarding the absolute novelty criterion.

The TPTO appealed the decision. During appeal, the 11th Civil Chamber of the Court of Cassation argued that the Decree Law No. 554 ("Decree Law"), which has since 2017 been replaced with the Industrial Property Law No. 6769 ("IPL"), accepted the condition of absolute novelty, and in that context, an ex officio examination had to be made without being limited to the evidence in the file. The appeals court, therefore, ruled that the decision of the first instance court had to be reversed. Upon the first instance court's resistance, the case was examined by the General Assembly.

In the same month, in the decision of the General Assembly numbered 2021/975 E. and 2023/143 K. and dated 01.03.2023, the process subject to the case proceeded in a similar manner. However, the court of first instance continued to resist the reversal decision rendered by the 11th Civil Chamber of the Court of Cassation, contending that it had been made without an expert examination regarding absolute novelty.

The General Assembly reversed the decisions, underlining that the novelty examination by the

TPTO both upon opposition to the registration of the design under the Decree Law and during the application under the "IPL" is an absolute novelty examination. It added that the TPTO was not limited to the documents submitted by the opponent and the novelty of a design was a matter of public order.

On the other hand, since the distinctiveness element does not affect public order, it was stated that ex officio examination was not required. Since it was not possible to analyze the element of novelty and distinctiveness with general knowledge or experience or with the legal knowledge required by the profession of the judge, it was also stated in the decisions that the examination had to be conducted by an expert.

III.II. Assessments

In accordance with the IPL and its abolished predecessor the Decree Law, designs must be new and possess a distinctive character to mature into registration.

Novelty means the design has not been made available to the public anywhere in the world before the priority date, if any, or the application date, if not. Under the repealed Decree Law, registration decisions were granted after a formal examination without examining the novelty of the designs. In contrast, Article 64/6 of the IPL explicitly stipulates that the examination of novelty must be conducted ex officio by the TPTO.

Distinctiveness is the difference between the general impression made by a design on an informed user and the general impression made by any prior design filed or publicly displayed before the latter design. To examine distinctiveness, the application must be opposed or an invalidity action must be filed after registration.

In the 2023 Design Review Guidelines updated by the "TPTO", it is stated that the absolute novelty review by experts is conducted on the following sources, using keywords and design images:

- Design databases ("TPTO", EUIPO, WIPO etc.)
- Internet search engines (Google, Yandex, Yahoo etc.)
- Social media accounts (Facebook, Instagram, Pinterest, YouTube, Twitter, etc.)
- Design libraries (Shutterstock, Behance etc.)
- E-commerce platforms,
- Networks, news, blogs,
- Websites of the applicant.

The research being worldwide and absolute testifies to its comprehensiveness. While these sources can only reveal public presentations made on the internet, it is unlikely that experts have the necessary technical background. For example, it is certain that research using keywords is limited to several languages, if not only Turkish. For this reason, designs may be registered even though they are not new, and the registration decisions may be appealed.

Before the IPL came into force, a design would receive protection following an absolute novelty examination and its registration could only be challenged by third-party oppositions at the TPTO or invalidation actions at courts. The caveat is that in cancellation actions brought against final decisions of the TPTO, the court's jurisdiction is limited to the propriety of the proceedings, not the actual merits.

Ten years ago in 2013, The General Assembly ruled in a case that the decision rendered by the TPTO had been made within the framework of the grounds and

documents in the file and that the review had been limited to the legality of the decision. The General Assembly held at the time that it would not be appropriate to wait for the ex officio investigation and examination of designs made available to the public anywhere in the world in the annulment proceedings.

In 2023, however, The General Assembly reversed the decision it had rendered in 2013, stating that the novelty criterion had a direct impact on public order, and therefore, should be fulfilled ex officio and at every stage by both the TPTO and the courts and should not be limited to the information and documents in the file. It also pointed out that the research had to be conducted by an expert.

Thanks to the decisions of The General Assembly, the incomplete examination of the first instance courts has been prevented and it is expected that experts will be explicitly assigned to conduct an absolute novelty examination.



IV. THE EFFECT OF CONTRACTUAL LIABILITY WITHIN THE CONTEXT ON THE EVALUATION OF CRIMINAL INTENT DURING PROSECUTION STAGE OF CRIMES UNDER COPYRIGHT LAW:

Within the scope of an investigation conducted by the Istanbul Public Prosecutor's Office, the plaintiffs (a songwriter and a composer) filed a complaint under Law No. 5846 on Intellectual and Artistic Works ("IAWL") against a technology company for using a portion of a video clip in its YouTube page, claiming infringement of their moral and immoral rights. The Prosecutor's Office ruled that based on the content of the contract between the media company and the technology company, as well as the agreement

between the media company and the singer, and an expert report in favor of the technology firm (in a civil case for the same dispute), the element of intent was not established.

The ruling carries significance as liability clauses in promotional services agreements have a strong impact on the examination of intent, which is the moral element of infringement of financial and moral rights regulated under IAWL.

IV.I. Legal Process

In the dispute at issue, the technology company facing civil and criminal actions is a global company and works with media planning firms for all kinds of marketing, advertising, and promotional activities with a "turnkey business" approach. Within the scope of the agreement between the technology company and media firm involved in the dispute, the media firm sealed a promotional services contract with a singer on behalf of the technology company.

The agreement stipulated that the tech company's products be used in a video clip for one of the singer's songs. The singer pledged that she possessed all the rights and authorizations over the musical work to establish the specified relationship, that she had obtained the necessary permissions, and that the videos did not infringe the intellectual rights of a third party.

To market her work with the tech company's followers on social media, the singer requested that a video containing footage from the music video be prepared and shared on the tech company's YouTube page.

After posting the video, the composer and the lyricist of the musical work in question filed a complaint against the tech company under IAWL and lodged a lawsuit demanding damages for the infringement of their IP rights.

As a result of an expert examination conducted in the compensation case, it was determined that the tech company was not at fault in regards with the financial and moral rights, considering that there was a contractual provision stating that the singer held the IP rights and that there was no obligation to register the transfer of copyrights in any registry within the scope of the practice.

Eventually, the case against the tech company did not go to trial because the expert report and the examination of liability clauses in the agreement found the element of intent on the part of the company was absent.

IV.II. Assessments

In violation of moral, financial and related rights arising from intellectual and artistic works, the perpetrator must commit the act intentionally in order to be punished, and it is seen that there is no moral element other than intent within the scope of the crimes regulated in Article 71 of IAWL. To establish intent, the person must be aware of all the components of the action and seek the result. The absence of this element results in the inability to punish intentional offenses in terms of criminal law.

In the case of musical works, in particular, many persons including the holders of related rights, may have rights to the musical work and the performing artist alone may not be able to exercise rights such as reproduction, dissemination, and communication of the performance to the public without obtaining the author's permission.

In practice, the follow-up and confirmation of rights transfers and licenses take a long time and global companies, which are often far from the relevant sector, do not have the necessary network to ensure this confirmation. In this context, it is necessary to have detailed provisions regarding the liability for infringement of rights arising from the work in separate contracts between the media company on one side and the global companies and artists on the other. Most of the time, even these agreements may not prevent global companies from having criminal allegations levelled against them, but agreements may also enable them to avoid liability, as in the case at hand.

V. RECENT DEVELOPMENTS IN PRELIMINARY INJUNCTION REQUESTS

A preliminary injunction ("PI") is a temporary legal protection and is granted without requiring the claimant to prove the right on which the claim is based to the full extent of proof. Basically, a request for a PI is granted in cases where it will likely become significantly difficult or impossible to obtain the rights due to a change in the current situation, or where it is likely that serious damage will be caused due to a delay. A preliminary injunction may be requested either from the court where the merits of the lawsuit are pending or from the competent and authorized court prior to filing the lawsuit.

In cases related to intellectual and industrial rights, PI requests and decisions are of great importance. Obtaining a timely PI is a critical step to stop the possible material and moral damage to the rights holder, whose intellectual and industrial rights are used unlawfully, and to prevent the existing damage from growing further.

The approach of the Intellectual and Industrial Property Law Courts towards requests for PIs has recently changed. As a rule, it is sufficient for the party requesting a PI to approximately prove that the case is justified on the merits. However, in 2023, the judges generally did not grant a PI upon the filing of the lawsuit, and when they did, they granted them after the examination of the merits of the case by an expert committee and depending on the outcome of the committee's report.

In the light of the developments above, the Intellectual and Industrial Property Law Courts tend to either reject requests for a PI at the initial stage or grant one after significant progress has been made in the case. In addition to this, considering the potential damages might occur due to PI the amount of security that should be deposited increased significantly in 2023. Even the courts have started

to demand a security deposit when examining a PI application on the prevention of the transfer of the trademark to third parties.

In our opinion, the recent practice developed by the courts both contradicts the spirit of the preliminary injunction protection and limits the judges' duties and authorities defined by law. Pursuant to Code of Civil Procedure, a judge may, even without hearing the opposing party, decide on the injunction based on the information and documents available in the file. Disregarding this, especially in cases where there is a risk of serious material and moral damage to the rights holder in a short period of time, such as infringement actions, the courts' decision to wait for the results of the expert reports before issuing a PI may postpone the decision for months or at times for years. Eventually, when the PI decision arrives, the rights holder has already suffered irreversible damage and must deposit high security amounts to implement the injunction decision.

VI. RECENT DEVELOPMENTS IN SEARCH AND SEIZURE OF COUNTERFEIT GOODS

In 2023, a report by the European Commission on Türkiye's status as a candidate country for joining the European Union stated that despite strong evidence presented by rights holders, search and seizure requests were rejected and prosecutors and judges demanded unreasonable additional evidence. The report underlines the fact that Türkiye is the second largest consignor of counterfeit goods to the European Union and needs to take necessary measures to address this matter. As for Türkiye itself, demand for counterfeit products has been increasing in recent years because of the rapid depreciation of the Turkish lira and the consequent rise in inflation and the decline in purchasing power. The problems encountered in search and seizure procedures, which are the fastest and most effective solutions against counterfeit products, continue due to inconsistent practices and the demand for evidence exceeding "reasonable suspicion".

Under Turkish criminal legislation, criminal judgeships of peace are authorized to issue search and seizure orders. Within the scope of anti-

counterfeiting actions, complaints are filed with the Chief Public Prosecutor's Offices which, upon examination, forward them to criminal judgeships of peace with a request for search and seizure. The Code of Criminal Procedure requires the existence of reasonable suspicion to conduct a search. Pursuant to Article 6 of the Regulation on judicial and preventive searches, reasonable suspicion is defined as the suspicion generally felt in the face of concrete events according to the course of life.

While assessing search and seizure requests, the most important evidence sought in proving reasonable suspicion is the counterfeit product and any receipt or invoice sample certifying where the product was purchased. However, businesses that sell counterfeit products consciously refrain from issuing receipts or invoices, and when they do so, it does not bear any information about the brand of the product. In such cases, it is advisable to purchase the product through a notary public. After the notary visits the store and receives the product, the product is sealed, and a notarized report is rendered. Some prosecutor's

offices and criminal judges of peace require that this process be carried out by a notary public even in the presence of a receipt or invoice.

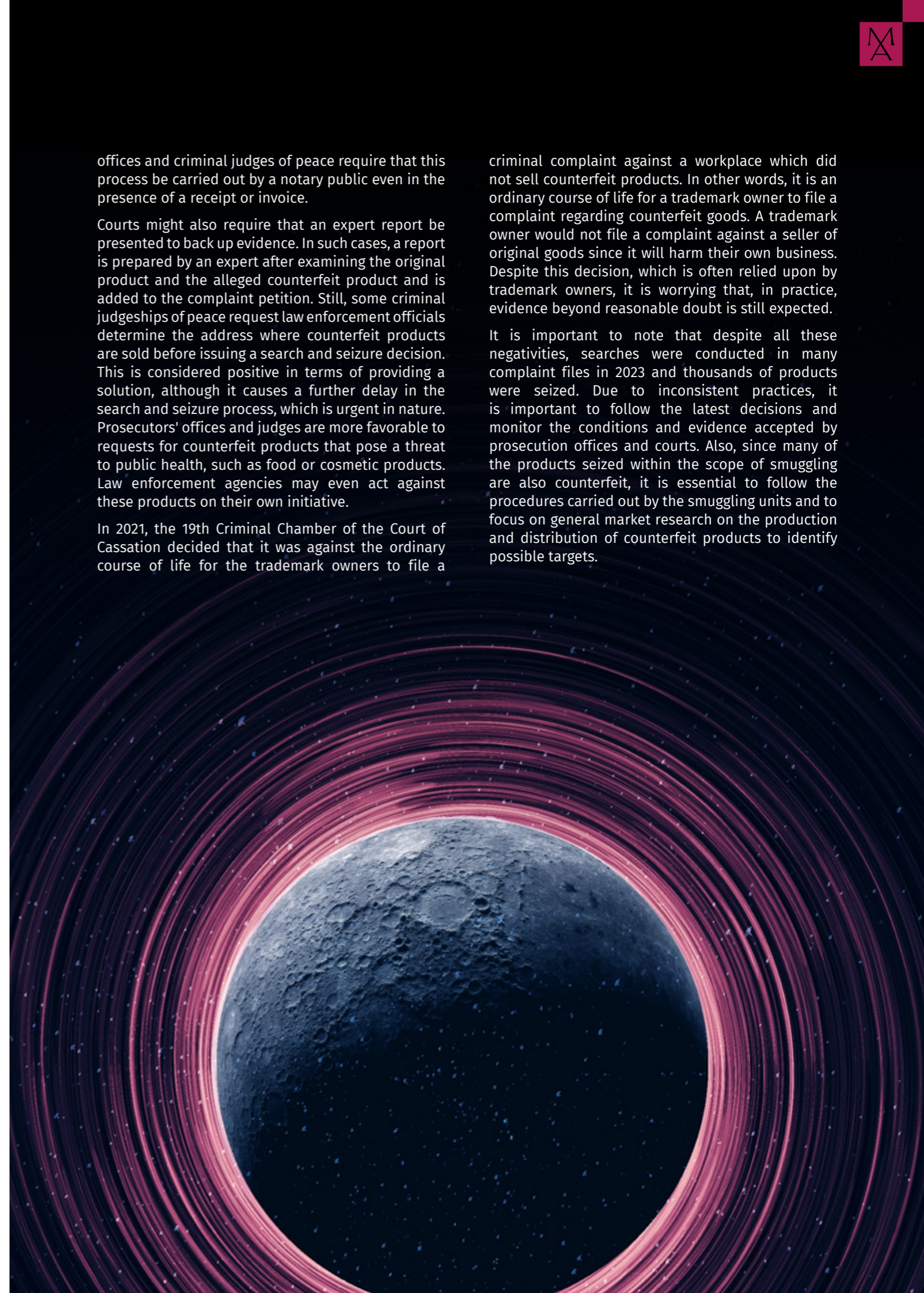
Courts might also require that an expert report be presented to back up evidence. In such cases, a report is prepared by an expert after examining the original product and the alleged counterfeit product and is added to the complaint petition. Still, some criminal judgeships of peace request law enforcement officials determine the address where counterfeit products are sold before issuing a search and seizure decision. This is considered positive in terms of providing a solution, although it causes a further delay in the search and seizure process, which is urgent in nature. Prosecutors' offices and judges are more favorable to requests for counterfeit products that pose a threat to public health, such as food or cosmetic products. Law enforcement agencies may even act against these products on their own initiative.

In 2021, the 19th Criminal Chamber of the Court of Cassation decided that it was against the ordinary course of life for the trademark owners to file a

criminal complaint against a workplace which did not sell counterfeit products. In other words, it is an ordinary course of life for a trademark owner to file a complaint regarding counterfeit goods. A trademark owner would not file a complaint against a seller of original goods since it will harm their own business. Despite this decision, which is often relied upon by trademark owners, it is worrying that, in practice, evidence beyond reasonable doubt is still expected.

It is important to note that despite all these negativities, searches were conducted in many complaint files in 2023 and thousands of products were seized. Due to inconsistent practices, it is important to follow the latest decisions and monitor the conditions and evidence accepted by prosecution offices and courts. Also, since many of the products seized within the scope of smuggling are also counterfeit, it is essential to follow the procedures carried out by the smuggling units and to focus on general market research on the production and distribution of counterfeit products to identify possible targets.

The problems encountered in search and seizure procedures, which are the fastest and most effective solutions against counterfeit products, continue due to inconsistent practices and the demand for evidence exceeding "reasonable suspicion".



VII. ALTERNATIVE METHOD IN THE RESOLUTION OF INTERNET DOMAIN NAME DISPUTES: **TRABIS**

Pursuant to Article 7/3 of the Industrial Property Law ("IPL"), if a trademark used on different goods and services is similar or identical to a registered trademark or to one for which an application has been filed, the trademark holder is entitled to initiate an action against the alleged infringer. Acts of trademark infringement on the internet manifest in many forms but one which stands out is the use of an identical or similar trademark as a domain name. In this context, the use of a trademark in an internet domain name may constitute infringement of the trademark right depending on the nature of the use, the word used in the domain name and the scope of the website.

As of 14 September 2022, an alternative dispute resolution mechanism called TRABIS has been introduced for disputes involving domain names with the .tr extension.

- The disputed domain name is similar or identical to a trademark, trade name, business name or other identifying marks owned or used in commerce,
- The respondent/registrant has no legal right or connection to this domain name,
- The domain name has been registered or is being used in bad faith.

These three conditions can be briefly summarized as (i) the similarity criterion, (ii) the right or legitimate interest criterion and (iii) bad faith criterion. The evaluation criteria are in line with the dispute resolution policies of the WIPO Arbitration and Mediation Centre. Indeed, in practice, it is observed that the "DRSPs" refer to the Uniform Domain Name Dispute Resolution Policy (UDRP) Case Law and Selected UDRP Questions.

In the new system, objections to domain names are examined and resolved by arbitrators or arbitral tribunals appointed by Dispute Resolution Service Providers ("DRSP") in accordance with Article 23 of the Internet Domain Name Regulation. There are currently two "DRSPs": the "Information Technologies & Internet Security Association" ("BTİDER") and the "Tobbuyum Mediation & Dispute Centre" ("TOBBUYUM"). They have been in operation for over a year. In this article, we will examine important disputes handled by the DRSPs, as well as the decisions issued and published on BTİDER and TOBBUYUM pages.

Pursuant to Article 25 of the Internet Domain Name Regulation, three main elements are required for a successful complaint at the "DRSP":

When these conditions and the assessments based on them are analyzed, it is obvious that neither the conditions nor the assessments depart from the trademark law criteria applied by the Turkish Patent and Trademark Office ("TPTO"):

A Firstly, in the similarity criteria, it is observed that the complainant makes a comparison between the alleged trademark and the domain name in terms of essential and common elements. In this context, the core element of the domain name, i.e. the essential element in trademark law, is determined and the similarity between the phrase claimed by the complainant as a "trademark" is evaluated. It should be noted that, although the trademark registration documents submitted by the complainant are important, other trademark uses by the complainant, such as the registered trade name, are also within the scope of the assessment.

In this respect, the complainant's allegations of similarity are evaluated more comprehensively by considering not only the registered trademark but all kinds of uses that constitute a trademark.

B In terms of the right or legitimate interest criteria, a legal connection is sought between the domain name owner and the complainant. It is often considered to be difficult for the complainant to prove a negative case, even though s(he) is supposed to prove that there is no legal connection between the parties. In cases where the complainant's deprivation of the domain name appears to be justified at the first glance (prima facie), the burden of proof shifts to the complainant.

Therefore, in terms of the justified or legitimate interest criteria, both parties have the burden of proof and the arguments and allegations that are rebutted by the complainant are particularly important.

C In the Regulation on Internet Domain Names, bad faith is defined by giving examples in a non-limited number, and is assessed according to the concrete case, except for the cases listed. In this sense, by including the phrase "allocation or use in bad faith" within the scope of the Regulation, the bad faith criterion is regulated in a two-way manner.

Therefore, it is observed that in their assessment of the bad faith criteria, the "DRSP" considers the manner and content of the use of the internet domain name, as well as the types of arguments and documents submitted by the complainant. In one decision, the arbitrators compared the complainant's scope of activity with the scope of the domain name use whereas in another decision, bad faith assessment was conducted on the basis of a document stating that the consumer shopping

through a domain name had confused the domain name with the complainant's trademark.

Briefly, although the dispute evaluations of the "DRSPs", which became operational with TRABIS, did not deviate from the principles of trademark law, they brought a broader and more practical perspective to these principles. Undoubtedly, new perspectives will be developed in 2024 in terms of disputes regarding internet domain names.



VIII. EVALUATION OF THE CONCEPT OF EXHAUSTION OF RIGHTS AND DETERIORATION IN VEHICLE SPARE PARTS:

The principle of exhaustion is regulated under Article 152 of the Industrial Property Law No. 6769 ("IPL"). Pursuant to this provision, once a product covered by intellectual property rights is placed on the market by, or with the permission of, the rights holder, relevant IP rights are exhausted and can no longer be exercised by the rights owner. In other words, when the product enters the market under such circumstances, the resale or otherwise commercialization of the product does not constitute an infringement of the IP rights. Although the exhaustion principle seemingly limits the owner's rights, it is in line with the economic purpose of intellectual property law and encourages economic development and competition.

On the other hand, the exhaustion rule is not definitive and has its exceptions. Namely, the trademark right holder may oppose the further consented sale of the goods where they have been "altered" or "deteriorated" by the authorized third parties before reaching the ultimate consumers. In this context, the concept of "alteration" means changing the original nature of the goods by external interference, and the concept of "deterioration" refers to a decline in the goods' distinctive traits, rendering them of poor quality and unusable.

Recently, foreign automotive companies have noticed a spike in the trade of airbag covers alone. Airbags, like seat belts, are used to reduce the risk of severe head and upper body injuries in collisions of a certain severity. The control unit to which airbags are connected detects and evaluates the collision. It then activates all relevant safety systems in accordance with the type and severity of the accident. The smart system can distinguish between the strong concussion caused by a crash and the shocks from hitting a stone or a deep pothole, and thus prevent the airbags from being deployed unnecessarily.

In the event of a real collision, the airbag control unit ignites a gas generator when a collision equivalent to the trigger value is registered by the collision sensors. The deployed airbags envelop both the head and the upper body and distribute the loads over as large an area as possible. At the end of the collision, the gas is completely discharged, and the airbag deflates in just 120 milliseconds.

In this respect, since the airbag system functions with all its parts together, automotive companies always offer such products as a set, i.e. as a whole. This set includes various parts including the airbag covers, the cushion, the chemicals that enable the cushion to deploy in case of an accident, the cables that enable the installation, and the digital parts (i.e. the electronic assembly that communicates with other parts in order to ensure the proper functioning of the airbag in case of a possible risk). By doing this, companies hope to eliminate any and all risks that could endanger the users' lives. Examples of such risks include replacing the cover alone without changing the cushion in post-accident repairs or installing the cover incorrectly, which could result in the airbag malfunctioning in the event of a serious collision. Companies are aware that the failure of one part of the airbag system can have a detrimental impact on public health.

In technical terms, the airbags can only be removed from the vehicle by a trained and qualified technician; otherwise, the clip and the cover may be damaged, and the airbags cannot be folded back into place after they have deployed. In addition, when the airbags have deployed, it is acknowledged that 1) the airbag cover will have stretched fabric and ripped seams, preventing a safe reuse, 2) replacing any part of the airbag will cause the system to stop working as intended, 3) repair and replacement are governed

by extremely strict rules and 4) even the slightest problem could seriously endanger public safety and health.

In order to prevent the sale of the airbag covers separately, automotive companies always supply the airbag components to their distributors as a whole, as a set, and do not even assign separate part numbers to the individual components of the airbag system. Even if the airbag system parts are supplied individually by first or second tier suppliers, separate quality control processes are conducted at each stage, leading to the destruction of those that fail to meet the criteria. After the individual products that meet the quality control criteria are supplied, the entire airbag system is assembled by a certain first tier supplier and supplied to the automotive company AS A WHOLE AIRBAG SYSTEM WITH ALL ITS ELEMENTS.

Subsequently, the entire airbag system, including all its components, receives a product code and serial number as a single unit, and is either installed in a vehicle or supplied as spare parts. As is evident, airbag systems are treated differently from any spare part and are subject to maximum control due to their close relationship with safety.

In 2023, two major automotive companies were forced to take legal action when they came across airbag covers bearing their brands. The covers had initially been seized under customs procedures.

The companies filed criminal complaints before the Public Prosecutor's Offices and requested a preliminary injunction before the intellectual and industrial law courts. The seized products remained in the customs during the criminal procedures. However, they were released following expert reports prepared in the file, and a non-prosecution decision upon a narrow examination into whether the products were genuine. Despite these, the car companies managed to obtain a preliminary injunction on the products and the civil litigation process started.

The backbone of the plaintiffs' arguments at two different IP courts was the fact that the airbag covers were put on the market without their consent or the sub-producers' permission and even if they were original, the principle of exhaustion could not be applied within the scope of Article 152/1 of the IPL. The plaintiffs also contended that the products had been offered for sale in a different form than they should have been, and had thus been deteriorated, leading to a decline in their quality. They further

argued that they did not have any commercial link with the defendants or the companies that had imported the products and claimed infringement.

The defendant, on the other hand, stated that they had bought the original products from a supplier abroad and had a purchase invoice. They argued that the trademark rights of the plaintiffs had been exhausted since the products were subject to parallel import, and that there were many sellers who sold "airbag covers" separately in a similar manner. Furthermore, they claimed that the expert reports prepared during the investigation stage before the Public Prosecutor's Offices for the same products had verified that the products were genuine, and that Public Prosecutor's Offices had already dropped the case.

During the ongoing proceedings, on-site examinations were conducted by the judge and the expert committee on the products and at the authorized service centers of the plaintiff's automotive companies and genuine airbag units were compared with the "airbag covers" claimed to be original.

In the expert report prepared following these examinations, it was stated that the defendant, unlike the plaintiffs, offered only airbag covers for sale, and that there were no commercial links between the supplier of the products and the plaintiffs. The report required the products should be examined in terms of imitation in an equipped laboratory because of explosive materials in the airbag system. In terms of public safety and health, the report stated that only the cover could be replaced in cases requiring simple repair, adding, however, that replacing the entire airbag unit in case of an accident could pose a risk.

The report concluded that if the products in question are manufactured by the plaintiffs or their authorized producers, they should be genuine; otherwise, they are not genuine and may constitute infringement of the plaintiffs' rights. The report did not reach a conclusion in favor or against any party and left the final discretion to the courts.

After evaluating the parties' arguments and the expert committee's assessment, the courts ruled that the defendants' actions constituted infringement of trademark right. The judges held that the defendant had failed to provide any evidence showing it had supplied the products from the plaintiffs or their sub-producers, and therefore failed to prove that these products had been produced by these companies. Therefore, the defendant's arguments claiming

parallel import or exhaustion of the trademark rights were rejected. At the same time, by stating that the individual replacement of the airbag cover may endanger public safety, it was concluded that the separate sale of "airbag cover" was different from the airbag's original form and, pursuant to Article 152/2 of the IPL, amounted to "alteration".

When the decisions in question are analyzed, it is seen that both courts made a detailed assessment in the triangle of infringement of the trademark rights, exhaustion of the trademark rights and technical risks, including public health, too. The courts did not adhere to the incomplete assessments made within

the scope of the criminal proceedings and analyzed the issue in a more comprehensive manner through experts. In addition, the courts concluded the matter within the scope of Article 152 of the IPL by arguing that the authenticity of the products at hand did not make any difference in terms of the concrete dispute. Although the court decisions have not yet been finalized, the position to be taken by the Regional Courts of Appeal will also be decisive at this point. In any case, these judgements are important as they will set a precedent in terms of Turkish law.

Since the airbag system functions with all its parts together, automotive companies always offer such products as a set, i.e. as a whole.

IX. UNDERSTANDING THE PRIOR USE EXCEPTION IN PATENT LAW IN TÜRKIYE

Patents are a crucial component of intellectual property protection because they foster innovation and creativity while defending the rights of inventors. Patents grant exclusive rights to inventors or innovators for a limited period. The patent holder has various rights and privileges regarding the invention during the protection time, which they can utilize to either commercially exploit it or license it to others. Another aspect of these privileges is the right to prevent third parties from using the invention.

The scope of the exclusive rights is evidently set according to certain exceptions and limitations to strike a balance between the interests of the right holder and those of the public. For example, mandatory licensing as well as research and Bolar exemptions are applied to protect the inventor's rights while ensuring that competition and access to necessary technologies are safeguarded as major public interests.

Another such example is the "prior use exception," which is regulated in Article 87 of the Industrial Property Rights Law numbered 6769 ("IP Law"). In the context of Turkish patent law, this article seeks to clarify the prior use exemption, its relevance, and its ramifications.

Article 87 stipulates that the patent applicant or the patentee shall not have the right to prevent persons

who have been using or have taken serious and real measures to use the invention in good faith in Türkiye on or before the application date from continuing to use the invention in the same way or from starting to use it in accordance with the measures taken.

However, such persons' activities regarding the invention may be to the extent that the activities meet the reasonable needs of the business they own. The right arising from prior use cannot be extended by granting a license and this right can only be transferred together with the business.

This typically occurs when the third party was secretly using the invention in the course of its business prior to the filing date or priority date of the application or before making significant preparations to do so. In practice, for a variety of business and economic reasons, inventors may opt not to pursue patent protection for each and every innovation. This could occur, for instance, if the innovator lacks the funds to file for patent protection or adopts a business strategy that prioritizes confidentiality over patent protection.

The prior use exception aims to enable these third parties to continue using the invention based on the investments they have made in relation to it.

IX.I. What Are the Conditions of Prior Use Exception?

The prior use exception provides a restricted right with a limited scope and specific requirements that must be satisfied since it is an exception to the exclusive rights granted to a patent owner. While

some of these conditions are obvious, others are contested.

These requirements can be listed as follows:

1. The use or serious and real measures to use the invention should be taken before the application or priority date of the patent:

It must be noted that even if the IP Law mentions the application date of the patent to determine the timing of the prior use, it is reasonable to interpret this as the application date or priority date, if any.

As to the issue of which acts constitute "use", it is noted that use means the commercial exploitation of the invention by the prior user, which would otherwise constitute an infringement of the patent.

However, the regulation itself does not describe the concept of serious preparations for the use, nor does it provide any examples, meaning these conditions must be evaluated on a case-by-case basis. Still, these preparations can basically be defined as adequate preparations to put the invention into practice and use it. For example, solid activities such as preparing workshop drawings and models as well as final contracts with the manufacturer can be deemed as serious preparations. On the other hand, purely experimental or non-embodied preparatory activities such as laboratory tests would not be considered as serious measures.

2. The use must take place in Türkiye:

The legislators have limited the scope of prior use territorially, meaning it must occur in Türkiye. For example, a foreign company's prior use abroad cannot provide an exception to their subsidiary in Türkiye.

3. The use or the measures taken must be committed in good faith:

Good faith in the context of prior use exceptions means that the invention should be developed by the prior user independently from the patent owner and without knowing the content of the invention claimed in a patent application. For example, if an employee in a technology company possesses the technical information related to the invention subject to the patent due to his position, their use of the invention during their employment will not be in good faith. Since bad faith requires a subjective examination, a case-by-case examination must be conducted. As a general rule, it can be concluded that the prior user is not acting in good faith if they have been provided with information by the patentee in any way without the intention of disclosure to the public and for purposes such as discussing and evaluating the invention.

IX.II. What Are the Limitations of Prior Use Exception?

As stipulated in Article 87, the exceptions are limited, and the actions of the prior user are only allowed to the extent that the reasonable needs of the entity are met. But what is "a reasonable need" and is it subject to interpretation?

Put simply, the use is a reasonable need for an enterprise if it is essential for the normal existence of that enterprise. Unlike other jurisdictions, the legislator has chosen the term "reasonable" to prevent the prior user from making excessive use of the invention. However, the concept of "reasonable need" must be determined separately for each concrete case.

Considering the concept of reasonable need, one may question whether the type or amount of use can change over time. Unfortunately, unlike many jurisdictions, the IP Law remains silent on this question and leads us to the issue of whether any changes can be considered within the scope of being the reasonable need of an entity.

It is generally accepted that the prior user is not bound by the type of prior use as long as these changes are not fundamental and do not alter the nature or type of the enterprise. For example, a prior user who has only been selling the product but has also had serious preparations for manufacturing it can start

producing the product. However, if a company has only been using the invention for its own business, it cannot start to mass-produce and sell it to third parties within the scope of prior use exception.

The amount may also be changed as long as it is reasonable because there are not any quantitative limitations set forth by the law.

Therefore, the general rule should be to allow the prior user to continue “in the same manner” or according to the preparations which had been undertaken until then and within the framework of reasonable need.

It is also open to debate whether the prior user would be entitled to modify the use and whether they are bound by the sole embodiment of the invention that they possessed at the time they qualified for the prior use exception. In this context, it is clear that the right of prior use may not be interpreted so narrowly that the prior user cannot make economically reasonable use of it. As stated in a decision of the Federal Court of Justice in Germany¹, it must be remembered that a patent's technical teaching may also cover alternatives that realize the invention's technical and commercial benefits in different ways quantitatively or qualitatively. In any instance, granting access to all these alternatives to the prior user at the expense of the patent holder does not necessarily make sense given that the prior user has only acknowledged and used some of these alternatives. Therefore, it would be reasonable not to allow further embodiments if they utilize an additional advantage of the patented invention that was not obtained by the previously used application.

Another limitation to the prior use exception is that it provides a right that cannot be licensed and can only be transferred with the transfer of the enterprise. However, situations where the enterprise has only been partially transferred or the transfer happens through liquidations are not regulated.

One may also consider whether an enterprise that has more than one production facility and consists of units located in geographically different places can be considered a single enterprise and whether it is possible to consider the use of the invention, which is currently used only in one or some of these facilities, in other facilities in line with the needs of that enterprise and thus within the scope of prior use exception. All these units can be accepted as one enterprise if the headquarters and other business units are in one organization and receive orders and instructions from the headquarters.

IX.III. Practice in Turkish Law

Unfortunately, there are not many precedents with respect to the prior use exception to shed light on the ambiguous matters.

Still, in one of the decisions of the Court of Appeal, the concept of prior use exception was examined. The plaintiff alleged their patented automatic tea withering machine was used by the defendant in various factories and claimed infringement of their patent rights.

The defendant, on the other hand, argued that they had drawn projects for the machine and installed and processed it in the factory prior to the filing date of the patent.

The first instance court accepted that the defendant's activities were sufficient to benefit from the prior use claim and that serious measures had been taken to use the invention. The decision was upheld by the Court of Appeal.

The Court of Appeal considered that the defendant, a state-owned enterprise, could continue using the invention in other facilities although the prior use had taken place only in one of their factories.

State-owned enterprises, like their private counterparts, have a legal personality, meaning they can have multiple workshops or factories operating in the same field in different locations. For this reason, the use of the invention in factories different from the one where it was first used was also considered to be within the scope of prior use exception since all factories belonged to a single enterprise.

There are pending cases before the Istanbul Intellectual and Industrial Property Rights Civil Courts yet to be resolved. Upon the courts' decisions, the principle of prior use exception may be further clarified in Turkish practice.

IX.IV. Conclusion

The prior use exception in Turkish patent law provides a crucial mechanism to protect the interests of parties who, in good faith, have been using the invention before the application date of a patent. Still, this exception should be interpreted carefully and not too broadly to encourage the over-exploitation of the patent or to override the patent rights.

Since the law itself includes subjective terms such as “reasonable” and does not regulate issues like

modifications to the embodiment of the invention, further clarification either through a guideline or a regulation is needed. Once the pending cases before the Istanbul Intellectual and Industrial Property Rights Civil Courts are resolved, they may include further clarification as to how this exception must be applied.

¹German Federal Court of Justice, decision of 14 May 2019 – Schutzverkleidung, X ZR 95/18. Published by OUP and CH Beck on behalf of GRUR International, 69 (2), 2020, 168–173

X. CONSTITUTIONAL COURT FOUND THE ADVERTISEMENT BOARD'S AUTHORITY TO BLOCK ACCESS TO WEBSITES WAS UNCONSTITUTIONAL AND ANULLED THE BASIS REGULATION

One of the developments in 2023 that had the most profound impact on advertising law and practices was the annulment decision given by the Constitutional Court for some regulations. The decision was dated 13.09.2023, numbered 2022/70 E. and 2023/152 K. and published in the Official Gazette numbered 32352 on 27.10.2023. The Constitutional Court annulled the regulation which gave the Advertising Board the authority to block access to websites/ contents in terms of advertisements that were contrary to the legislation. Within the scope of the cancellation decision, which will come into force nine months after the date of the publication, i.e. July 27, 2024, the court ruled that the relevant regulation was contrary to the principle of proportionality, stating that more measurable regulations had to be made first. Over this long period of time, the legislator is expected to make a more measurable law that includes different protective mechanisms.

Sanctions can be imposed by the Advertising Board against advertisements that are not carried out in accordance with the law and principal decisions, especially the Law on Consumer Protection and the Regulation on Commercial Advertising and Unfair Commercial Practices. The scope of the authority to impose sanctions was expanded with the regulation published in the Official Gazette dated 01.04.2022 and numbered 31796. Thus, the Advertising Board had the power to block access to the publication, a section, or a part of the publication, or alternatively the entire website if such partial blocking was not technically possible. These decisions can be appealed before the Criminal Judgeships of Peace, whose decisions can also face another appeal. However, since these decisions are administrative, like the other decisions of the Board, they many encounter the remedy of

cancellation. This is because different remedies have been foreseen for the same type of decision.

Later, an application for annulment was filed before the Constitutional Court against the regulation in question, to argue that i) There is no clear, explicit, and comprehensible criterion limiting the authority of the Board to block access, ii) In the event of a total blocking of access, other content owners on the relevant website may be victimized, iii) In this case, there would be a restriction of fundamental rights and freedoms, but there is no limitation that guarantees this, iv) The fact that the objection procedure against access blocking decisions is different from the objection procedure for other sanctions arising from the same act will cause problems in practice.

Based on the evaluation of the Constitutional Court, it is thought that it restricts fundamental rights such as freedom of expression and freedom to work and establish enterprises, but the rules in this respect must be specific, accessible, and foreseeable so as not to allow any arbitrariness. In this respect, it has been determined that the sanction in question is not an unfavorable means of protecting the consumer from misleading advertisements.

The Constitutional Court emphasized that "public authorities have the obligation to choose not only the most convenient but also the most appropriate means to achieve the legitimate aim of the restriction when it interferes with fundamental rights and freedoms". According to the regulation in the current version of the Law, it may be possible to completely block access to the relevant section without taking any other measures. It is considered that this may lead to the complete abolition of the exercise of freedom of expression and the freedom to work and to establish



The Constitutional Court emphasized that "public authorities have the obligation to choose not only the most convenient but also the most appropriate means to achieve the legitimate aim of the restriction when it interferes with fundamental rights and freedoms".

private enterprises. Instead, in accordance with the principle of proportionality, alternative methods that may make it possible to achieve the objective with a lighter restriction or may cause less damage should be taken into consideration.

In the case at issue, the Constitutional Court decided to cancel the sentences that had been issued. In addition, the cancellation decision will enter into force nine months after the publication of the decision in the Official Gazette to prevent the legal gaps that may arise during this period.

Consequently, the Constitutional Court did not find the main purpose and the practice of the Board in this respect completely wrong but underscored the fact that they should be evaluated within the scope of the principle of proportionality. The fact that the legislator has been given such a long period of time to make a new regulation is an indication of this.

At this stage, it is expected that the legislator will develop a relatively more limited and predictable method to achieve the same basic objective and protect consumers. Also, how the process will take shape is eagerly awaited.

XI. 2023 FROM THE BOARD OF ADVERTISEMENT'S EYES

Like every year, the Board of Advertisement continued to inspect advertisements in 2023 and impose sanctions on practices that violated the provisions of Law No. 6502 on the Protection of Consumers and the Regulation on Commercial Advertisement and Unfair Commercial Practices. Although the inspections were multifaceted, the decisions taken on certain issues indicate more clearly the basic perspective and expectations in terms of compliance with the legislation.

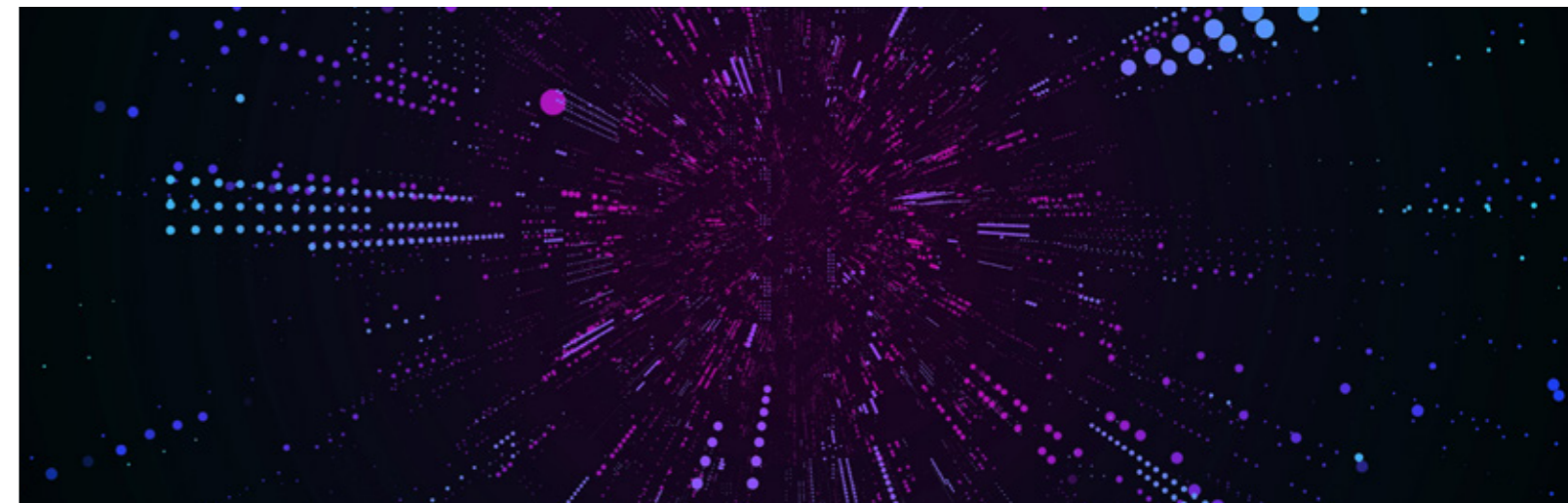
One of the topics on the agenda of the Board of Advertisement is "disguised advertisements". Many well-known names in Türkiye and even many news agencies have faced sanctions for this malpractice. For instance, in the case numbered 2023/7312, in an article published by a news agency on its website, the Board decided to suspend the advertisement and impose an administrative fine of 347.128-TL. The Board argued that the promotion of the relevant product was a disguised advertisement of the product and the article, therefore, went beyond both purposes of providing news and enlightening/informing the consumers.

Today, it is an undeniable fact that advertising through brand ambassadors/influencers on social media platforms is highly effective. Such ads continued to remain on the radar of the Board of Advertisement in 2023 and important steps were taken in terms of advertising activities carried out on social media. One such example was the audit conducted on the brand ambassador/influencer in the file numbered 2023/7315. The Board considered that although the social media accounts of the brands whose products were promoted had been tagged in the relevant post and thus consumers were directed to the brands, the post did not contain any phrases specifying an

advertisement or cooperation. For this reason, the Board ruled that the advertisement was implicit and decided to impose an advertisement suspension penalty.

Yet, another point where the impact of the internet is underscored is the authority of the Advertisement Board to block access to content/websites. With its decision dated 13.09.2023 and numbered 2022/70 E. and 2023/152 K. and published in the Official Gazette numbered 32352 dated 27.10.2023, the Board had been exercising such authority. These came before the Constitutional Court's decision which annulled the authority of the Advertisement Board to block access to websites. As a matter of fact, the Board of Advertisement resorted to this power to block access to certain websites, a significant portion of which contained psychic/magic/phantasm promotions. The Board of Advertisement decided to block access to these websites on the grounds that their ads had exploited the consumers' religious beliefs, fears, and superstitions. Case No. 2023/6589 and Case No. 2023/6592 are examples of such decisions. In another case, the Board determined that the expressions used in the advertisements examined in the file numbered 2023/5862 violated the regulations on health declarations and decided to block access to the websites in addition to the penalty of stopping the advertisements. In yet another case in the file numbered 2023/6967, electronic cigarettes were promoted and sold in a website by using their images accompanied with demand-generating statements on their taste and aroma. The Board ruled to block access to the entire website.

It is possible to categorize some of the large-scale inspections under the heading of "health claims". In these decisions, certain statements in the promotions



are accepted as health claims. Health claims in promotions are subject to certain conditions under the legislation now in force. When these conditions are not met and/or the necessary permissions have not been obtained, the advertisements have been suspended and - depending on the nature of the advertisement - administrative fines have been imposed. One such example is the file numbered 2023/7947. In the advertisements of a product the following statement was included: "Specially formulated with pantothenic acid, that contributes to normal mental performance." The Board held that the statement went beyond the health declarations permitted in the Guideline on the Use of Health Declarations in Food and Food Supplements and decided to suspend the advertisements. In the file numbered 2023/6336, however, the Board imposed an administrative fine of 347.128-TL on the advertiser.

The final category of decisions rendered in 2023 can be dubbed "unauthorized service". In this context, many service centers came under scrutiny and penalties were imposed on businesses that made advertisements and unfair commercial practices that falsely gave the impression to consumers that they were the authorized service of a well-known brand. In the file numbered 2023/7081, the enterprise in question had placed sponsored advertisements

on internet search engines to rank high to create the impression that it was an authorized service of a famous brand. Since there was no commercial relationship between the advertiser and the brand, an advertisement suspension penalty was imposed against the advertiser for misleading the consumers.

In 2023 many service centers came under scrutiny and penalties were imposed.

XII. DEVELOPMENTS IN TRADEMARK REGISTRATION PROCESSES IN NORTHERN CYPRUS TURKISH REPUBLIC IN 2023

The Northern Cyprus Turkish Republic ("NCTR"), a state recognized only by Türkiye, which provides economic, political, and military support to the tiny nation. However, contrary to common perception, it is governed independently by its democratic institutions. Naturally, this same applies to the world of commerce, namely brands and the trademark registration processes. Indeed, commercial trademarks in NCTR are protected under Chapter 268, Law No. 28/1995 on Commercial Trademarks, and the procedures related to trademark registration are administered by the Official Receiver's Office and the Registrar's Office of Trademarks.

Towards the end of 2023, a relevant draft law proposing amendments within the scope of the Trademarks Law ("Trademark (Amendment) Draft

Law") was presented to the parliament. However, the Parliament General Assembly sent the draft back to the Legal Committee for further evaluation and the rectification of technical errors.

Once the examination of the draft law is over, changes are expected to be made, particularly in the third section concerning registrability and validity of registration, as well as in the fourth section regarding the required procedures in the registration period.

The anticipated amendments will be a pressing issue for the IP community in NCTR in the first months of 2024.



Abdi İpekçi Caddesi 19-1
Nişantaşı, İstanbul, 34367

T: +90 212 377 4700
F: +90 212 377 4799

info@morogluarseven.com
www.morogluarseven.com

MOROĞLU ARSEVEN