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TRADEMARK INFRINGEMENT IN AZERBAIJANI, TURKISH AND EUROPEAN UNION LAW: EVOLVING LEGAL STANDARDS AND JUDICIAL APPROACHES

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Abstract

This research analyzes the essence and main elements of trademark infringement, with particular attention to contemporary theoretical approaches in Azerbaijani, Turkish and European Union doctrine. The study aims to assess how the scope of trademark protection has developed beyond the traditional function of indicating commercial origin and the risk of consumer confusion. A comparative doctrinal and case-law analysis is employed, focusing on relevant decisions of the Court of Justice of the European Union, the Supreme Court of the Republic of Azerbaijan and the Supreme Court of Türkiye. The analysis demonstrates that contemporary trademark protection may extend to the protection of distinctive character, reputation and other functions of a mark, including advertising, investment and communication functions, where the relevant legal conditions are satisfied. Particular attention is given to the protection of marks with a reputation and to emerging forms of infringement in the digital environment, including domain-name registration, keyword advertising and the marketing of potentially infringing or counterfeit goods through online platforms. The study also considers specific issues concerning trade name use, comparative advertising, parallel imports and the transit of goods. The comparative analysis of selected CJEU, Azerbaijani and Turkish Supreme Court decisions illustrates the practical application of these approaches and the continuing effort to balance trademark protection with freedom of competition and legitimate commercial activity. The study contributes to the understanding of modern trademark infringement by demonstrating its increasingly multifunctional character and its adaptation to digital and global commercial practices.

Keywords: trademark infringement, trademark functions, marks with a reputation, online marketplaces, likelihood of confusion, keyword advertising, cybersquatting, judicial practice.

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I. Introduction

The growing economic significance of intellectual property assets has strengthened the role of trademarks in commercial activity. Trademarks perform not only a source-identifying function but may also embody reputation, consumer trust and significant economic value. This development has contributed to the expansion and diversification of the legal issues surrounding the use and protection of trademarks. The expansion of trademark functions, digital commercial practices and the increasing importance of reputed marks have complicated the determination of when a third-party use constitutes infringement and when it remains within the boundaries of legitimate competition.

This complexity is also reflected in the development of modern approaches to trademark infringement. The classical approach primarily focuses on the use of identical or similar signs and the likelihood of confusion as to the commercial origin of goods or services. The contemporary approach, while retaining these traditional standards, adopts a broader functional perspective by recognizing that trademark protection may, in certain circumstances, extend to functions other than the indication of origin, including advertising, investment and communication functions. This development raises important questions concerning the scope of exclusive trademark rights and the need to balance trademark protection with legitimate commercial activity and freedom of competition.

The comparison between Azerbaijani, Turkish and European Union trademark law is justified by the substantial convergence of certain legal frameworks and concepts and by the relevance of EU trademark principles to the development of contemporary trademark law in Azerbaijan and Türkiye. The comparative analysis is conducted on the basis of functionally equivalent legal rules and concepts, particularly those governing the scope of trademark rights, likelihood of confusion, the protection of trademarks with a reputation, digital uses and the limitations of exclusive trademark rights. By examining how functionally comparable rules are interpreted and applied in the three legal systems, the study seeks to identify both areas of convergence and points of divergence and to clarify the legal uncertainty concerning the extent to which trademark protection may be expanded beyond the traditional likelihood-of-confusion framework without unduly restricting legitimate commercial activity and competition.

II. Theoretical and legal approaches to trademark infringement

2.1. Doctrinal positions on trademark infringement

Trademark infringement refers to the unlawful interference with the protected interests of a trademark owner, resulting from the unauthorized use by third parties of the exclusive rights granted to the trademark owner by law [3, s. 111]. Trademark rights grant the owner exclusive rights to use the mark, benefit economically from it, and prevent unauthorized use by third parties. Therefore,

trademark infringement does not only mean the unauthorized use of an identical or similar mark. It also encompasses unlawful acts that weaken the distinctiveness of the mark, unfairly benefit from its reputation, or harm its economic value. Indeed, today, trademark rights are considered not only an individual intellectual property right but also contribute to the protection of fair competition and consumer confidence.

While there is no common definition of trademark infringement in legal doctrine, the vast majority of authors explain this concept as the unauthorized interference with the exclusive rights granted to the trademark owner. The classical approach considers the fundamental element of trademark infringement to be the use of the trademark in commercial life without the consent of the trademark owner [25, p. 306]. However, under contemporary European Union trademark law, unauthorized use alone doesn't constitute a sufficient legal test for all forms of infringement. In particular, three distinct legal grounds can be identified: (i) the use of an identical sign in relation to identical goods or services; (ii) the use of an identical or similar goods or services where there is a likelihood of confusion; and (iii) the use of an identical or similar sign in relation to goods or services where the trademark has a reputation and the use, without due cause, takes unfair advantage of, or is detrimental to, its distinctive character or repute.

Within this framework, contemporary EU trademark law also places particular emphasis on the functions protected by the trademark. A mark is considered an economic asset that, in addition to its source identification function, also fulfills advertising, investment, and communication functions, the protection of which may become relevant depending on the type of infringement and the circumstances of the use. Importantly, actual material damage is not, as a general matter, a necessary element for establishing trademark infringement; the assessment of such damage arises primarily at the remedial stage, particularly in determining compensation.

As per Yikar, the legitimate use represents a significant constraint on trademark rights and can only be asserted when the disputed use would typically infringe upon the owner's exclusive rights under Article 7 and could potentially violate Article 29(1)(a) of the Industrial Property Code, although such use is deemed lawful if conducted honestly and in line with standard trade practices as outlined in Article 7(5) [39, p. 73–74].

Sabih Arkan argues that this monopoly right held by the trademark owner must be balanced with the freedom of commercial life, but that unauthorized economic use may constitute infringement where the applicable conditions are satisfied, subject to relevant legal defences and limitations [30, p. 307, 308]. He also explains the special protection regime that applies to well-known trademarks, stating that unauthorized use of these trademarks provides an unfair advantage [29, p. 104]. Arkan's approach to the limits of trademark rights naturally raises the

question of under what conditions infringement occurs. At this point, it is argued that the decisive criterion in determining infringement is “trademark use”.

Contemporary Turkish doctrine asserts that trademark infringement necessitates the utilization of a trademark, indicating that the mark must be employed concerning goods or services in a way that fulfills its distinguishing role; additionally, its application in advertising, internet domain names, or business documents may also be considered trademark use if it serves that purpose [19, p. 53–54].

From the perspective of national legal frameworks, particularly in Azerbaijan, intellectual property rights and trademark protection are built upon a dual-nature doctrine where exclusive rights balance individual monopoly with public interest and fair competition. Under Azerbaijani intellectual property doctrine, intellectual property rights are considered an independent institution that complements traditional property rights. The protection granted to trademark owners represents exclusive economic (commercial) rights, which are time limited and non-economic (personal) rights. The exclusivity of trademark rights reflects the owner’s legal monopoly and control over the mark. However, this legal protection is governed by a fundamental legal principle: no person may use an intellectual property object without the right holder’s consent, and any unauthorized use constitutes an infringement.

At the same time, Azerbaijani doctrine emphasizes the “duality principle” of intellectual property. A protected mark exists both as an intangible object and as a tangible good or product in commercial circulation. Legal protection strictly attaches to the intangible asset itself, rather than the physical medium. Furthermore, exclusive rights are subject to statutory limitations and exceptions (such as the doctrine of exhaustion of rights) to maintain a social contract and balance between the interests of right holders and society. Thus, unauthorized use must be carefully evaluated within these statutory bounds to determine whether an actual infringement has occurred [12, p. 41, 42].

2.2. Remedies and compensation for reputational harm to trademarks

Under Azerbaijani law, the economic consequences of intellectual property infringement are addressed through general rules on compensation for damage. Article 6 of the Law of the Republic of Azerbaijan “On the Enforcement of Intellectual Property Rights and the Fight against Piracy” provides that, in determining the damage caused by the unlawful use of intellectual property, consideration may be given to the income obtained by the infringer, the expenses incurred by the right holder in restoring the infringed rights, including attorney’s fees, and the income that the right holder could have obtained through lawful use. However, the provision does not expressly recognize damage to trademark reputation as an autonomous category of compensation. Rather, the economic consequences of such harm may be

relevant to the assessment of compensable damage where they can be demonstrated in financial terms. In addition, Article 8 of the same Law allows the court, upon a reasoned request of the right holder, to order the dissemination or publication of information concerning the judicial decision at the infringer's expense. Such a measure may also contribute to restoring the public perception of the infringed intellectual property right [22].

Under Article 150(2) of the Industrial Property Code, damage to trademark reputation caused by the poor quality or inappropriate marketing of infringing goods or services gives rise to a specific claim for compensation in addition to ordinary pecuniary and non-pecuniary damages [13]. Çolak regards trademark reputation as an economic asset and emphasizes that such reputational harm is particularly significant in the case of well-known marks serving as symbols of quality [7, p. 815, 818, 820].

Bozgeyik links damage to trademark reputation with a decrease in the mark's economic worth, emphasizing that reputation encompasses, among other factors, customer perception, loyalty, and demand for the mark, and that its degradation may jeopardize the right holder's enduring economic interests [4, p. 186–187]. Uzunalli, further illustrating this approach, draws attention to the economic consequences that a decrease in mark reputation may have, particularly in terms of licensing relationships. However, it is necessary to legally separate the basis of the infringement from the calculation of compensation. While the damage to a mark's reputation constitutes the substantive ground for infringement, its impact on future licensing or sales value is strictly a matter of proving and calculating damages. The author states that the purpose of commercial reputation compensation is to compensate for the risk of a decrease in the future licensing or sales value of the brand, and is therefore purely monetary in nature. Uzunallı demonstrates that in cases where the licensee damages the brand's image by violating the terms of the contract, both breach of contract and trademark infringement occur simultaneously [35, p. 435]. However, it is not possible to say that there is complete consensus in legal doctrine regarding the legal nature of damage to mark reputation. While some authors emphasize the economic aspect, others draw attention to the connection between reputation and personal value.

Hamdi Yasaman and Sinan Yüksel state that a mark's reputation is the trust and image its owner (individual or legal entity, merchant) has earned in the market. The authors note that any decrease or damage to this reputation essentially constitutes grounds for a claim for moral damages. Furthermore, they believe that the reputation of luxury brands, particularly those targeted by consumers with "upward social mobility" is more easily damaged [38, p. 1182–1184].

When these assessments are considered together, Turkish legal doctrine clearly separates the determination of trademark infringement from the

calculation of compensation. While the commonly accepted point regarding infringement is the protection of the trademark owner's exclusive rights, the approaches to compensation are divided into three distinct categories. In addition to standard claims for material damages (economic loss) and moral damages, Article 150(2) of the Industrial Property Code (SMK) introduces a specific, third category: an additional compensation for damage to the trademark's reputation [13]. This distinct claim arises if the infringer damages the reputation by producing or marketing the subject goods or services in a poor or inappropriate manner.

Annette Kur critically analyzes the European Court of Justice's "trademark functions" doctrine in the context of harmonizing European Union trademark law. The author argues that the requirement that, in cases of dual identity, infringement can only be established if the trademark's origin function is impaired, along with its advertising, investment, and quality assurance functions, creates theoretical contradictions [20, p. 30-32].

Ansgar Ohly similarly argues that, in German doctrine, damage and weakening of brand image (*Verwässerung*) constitutes purely economic harm in terms of economic function and protection limits, and that economic criteria should be used in calculating this damage [24, p. 931, 932, 934]. The author also criticizes the excessive broadening of the scope of trademark protection, arguing that trademark law should not be interpreted in a way that unnecessarily restricts freedom of competition.

In conclusion, while Azerbaijani, Turkish and European Union legal doctrines recognize that trademark infringement extends beyond mere unauthorized use, their analytical frameworks diverge significantly. First, regarding grounds of infringement, EU law centers on the judicial "functions doctrine" and the necessity of proving impairment to specific trademark functions, whereas Turkish doctrine relies primarily on protecting the exclusive statutory monopoly balanced against commercial necessities. Azerbaijani law, in turn, primarily addresses the economic consequences of infringement through general rules on compensation for damage, without expressly recognizing damage to trademark reputation as an autonomous category of compensation. Turkish doctrine approaches reputational harm through a tripartite remedial structure – distinguishing material loss, moral injury and autonomous compensation for loss of reputation. Ultimately, all three systems underscore that while strong reputational protection is essential in modern commerce, it must not be expanded so broadly as to restrict legitimate freedom of competition and fair use.

III. Contemporary approaches to trademark infringement

3.1. Protection of well-known trademarks and types of infringement

The classic approach to trademark infringement has primarily focused on whether the use of an identical or similar sign on the same or similar goods and services as a registered trademark creates a likelihood of confusion for consumers. However, the globalization of economic activities, the increasing commercial value of trademarks, and the development of digital communication technologies have necessitated a reassessment of the traditional boundaries of trademark protection. Today, trademark infringement is not limited to the presentation of physical products on the market or traditional forms of commercial use but can also occur through digital tools such as domain names, search engine advertising, social media platforms, e-commerce sites, and online marketplaces. Therefore, in contemporary trademark law, the concept of infringement is considered not only in terms of protecting the trademark's source function, but also in terms of protecting the trademark's distinctive character and reputation.

The protection of well-known trademarks is one of the most important areas where trademark law deviates from the traditional understanding of protection. This is because a well-known trademark goes beyond being merely a sign indicating the commercial origin of specific goods or services; it gains a high level of recognition, reputation, and economic value among consumers. Therefore, the consequences of infringement against a well-known trademark can extend beyond a classic likelihood of confusion.

One of the fundamental pillars for the special international protection of mark with a reputation is Article 6bis of the Paris Convention for the Protection of Industrial Property [26]. This provision obligates countries of the Paris Union to refuse registration or cancel the registration and prohibit the use of an identical, imitation or translation of a trademark recognized by the competent authority in the relevant country, specifically when used for identical or similar goods where it is likely to cause confusion. The WIPO's Paris Convention guidelines also state that even the imitation of an essential part of a well-known trademark may be considered within the scope of protection [37].

This protection is further enhanced by Article 16 of the World Trade Organization's TRIPS agreement. Specifically, TRIPS Article 16.2 stipulates that the degree of knowledge or recognition of the mark in the relevant sector of the public should be taken into account when determining well-known trademarks within the scope of Article 6bis of the Paris Convention, while Article 16.3 allows for the protection of well-known trademarks in relation to different goods and services where the use of the trademark would indicate a connection between the goods or services and the owner of the registered trademark and the interests of the owner are likely to be damaged by such use [1]. Thus, the basis of well-known trademark protection lies not only in preventing direct confusion between two

signs for the consumer, but also in preventing harm to the interests of the trademark owner where the conditions of Article 16.3 are satisfied.

A similar approach is reflected in Azerbaijani legislation. Under Article 25 of the Law of the Republic of Azerbaijan “On Trademarks and Geographical Indications”, the proprietor of a well-known trademark may seek the prohibition of a mark consisting of a reproduction, imitation, transliteration or translation of the well-known mark where it is liable to create a misleading impression. Furthermore, Article 32 provides that the use of a well-known trademark registered in Azerbaijan in relation to any type of goods or services constitutes an infringement where such use causes damage to the proprietor. Thus, Azerbaijani law, similarly, extends the protection of well-known trademarks beyond cases of direct consumer confusion and provides protection against unauthorized use that may harm the interests of the trademark proprietor [23].

In Turkish law, this approach is clearly seen in Article 7/2-c of the Industrial Property Law. According to this article, the use of any sign that is identical or similar to a registered trademark is considered prohibited, regardless of whether the goods or services are identical, similar, or different, if without due cause, it unfairly benefits from or damages the trademark’s reputation due to the level of reputation the trademark has reached in Türkiye, or impairs its distinctive character [13].

This provision highlights three fundamental aspects of trademark infringement: free-riding, tarnishment of the trademark’s reputation, and dilution/blurring of the trademark’s distinctive character. Therefore, trademark infringement can occur even when there is no likelihood of confusion in the classical sense, in the context of well-known trademarks.

Unfair exploitation refers to a situation where a third party takes advantage of the recognition and appeal of a well-known trademark for their own commercial purposes. Direct deception of the consumer is not necessarily the basis of the infringement. A third party’s use of the economic and advertising value of a well-known trademark for marketing their own products or services can lead to the trademark owner’s investment in the brand being misused by someone else.

In contrast, damage to brand reputation refers to the harm to a well-known brand’s positive public image as a result of its association with low-quality, negative, or inconsistent goods and services. Damage to distinctive character, on the other hand, is the erosion of a brand’s power to evoke a single commercial source in the consumer’s mind due to the independent use of similar or identical signs by third parties. In this respect, contemporary trademark law considers a trademark not only as a misleading sign but also as an independent entity with economic value.

Indeed, EU trademark law provides for the right of the registered trademark owner to prevent the use of identical or similar signs in a way that is likely to create confusion, as well as protection, particularly for trademarks with a reputation, against uses that unfairly benefit from or damage the distinctive character or reputation of the trademark. Article 10 of EU Trademark Directive 2015/2436 constitutes one of the fundamental provisions of this protection system [11].

Therefore, in contemporary trademark law, it is insufficient to reduce the assessment of infringement solely to the question of “would the consumer confuse the two trademarks?”. The level of recognition of the trademark, its distinctiveness, its reputation, the third party’s intention for use, and the economic impact of that use on the trademark must also be considered together. However, these criteria should be assessed differently depending on the type of infringement.

3.2. Trademark infringement in the digital environment

Digitalization has significantly expanded the scope of trademark rights and added new forms of infringement to traditional trademark infringement models. The use of an identical or similar trademark online can apply not only to the sale of physical products, but also to domain name registrations, keyword usage in search engines, social media accounts, e-commerce platforms, and online advertising.

In this context, one of the most characteristic examples of trademark infringement in the digital environment is domain names and cybersquatting practices. Since the domain name has become one of the basic digital identities that enable the consumer to reach the business or brand over the internet, malicious registration of well-known brands as domain names creates a significant brand protection problem.

According to WIPO, cybersquatting is one of the primary areas of online disputes, referring to the malicious registration or use of a domain name with the intent to benefit from another’s trademark or trade reputation [33, paras. 170-177]. The Uniform Domain Name Dispute Resolution Policy (UDRP), adopted by ICANN, provides an important international mechanism for resolving such disputes, with WIPO serving as one of the accredited dispute-resolution providers under the UDRP [34]. Under the UDRP, a complainant must establish three cumulative elements: that the domain name is identical or confusingly similar to a trademark in which the complainant has rights; that the registrant has no rights or legitimate interests in the domain name; and that the domain name has been registered and is being used in bad faith.

Specifically, the conversion of a trademark into a domain name with minor spelling changes constitutes a special form of cybersquatting called typosquatting. As stated in Section 1.9 of the WIPO Overview 3.0, a domain name consisting of a common, obvious, or intentional misspelling of a trademark is considered

confusingly similar to the relevant mark under the first UDRP element, as it contains sufficiently recognizable aspects of the trademark [36].

Another significant aspect of digital brand infringement is the use of keywords in search engines (keyword advertising). When a business uses another business's brand name as a keyword to trigger search engine ads, such use does not in itself constitute trademark infringement; the relevant inquiry is whether the advertisement creates the impression in the consumer that the advertiser has an economic or commercial connection with the brand owner, it raises concerns about the limits of trademark rights [27, p. 96]. Therefore, when detecting trademark infringement in the digital environment, not only the mark itself but also the way the mark is presented to the internet user and the function of the advertisement should be considered.

The issue becomes more complex with regard to e-commerce platforms. This is because the infringement stems not only from the unauthorized use of the brand by the product seller, but also from the extent to which platforms bear responsibility if they are aware of the infringement. The sale of counterfeit or imitation products on online marketplaces, in particular, necessitates that brand owners consider legal mechanisms not only against the infringer but also against platforms and other digital intermediaries [15, p. 53-54, 68]. Therefore, today, trademark protection has evolved from the classic "right holder-infringer" relationship into a multi-faceted structure involving platforms, search engines, domain name registrars, and other digital actors.

3.3. Specific forms of trademark infringement

While trademark infringement classically manifests as the direct use of a trademark on a product or service, today the use of a trademark in different areas such as business names, trade names, advertising activities, comparative advertising, counterfeit product trade, and parallel imports also brings the boundaries of trademark law into question.

In Turkish law, Article 29 of the Industrial Property Law explicitly regulates acts constituting trademark infringement. According to this article, using a trademark in the forms specified in Article 7 of the Industrial Property Law without the permission of the trademark owner, imitating the trademark or a mark indistinguishable from it, selling, distributing. Otherwise putting into the commercial sphere importing, exporting, holding for commercial purposes, or offering to make a contract for products bearing a trademark used through infringement, provided that the person knew or ought to have known that the mark was imitated, as detailed under Article 29(1)(c), and expanding rights granted through a license without authorization or transferring these rights to third parties under Article 29 (1)(ç) are considered trademark infringement [13].

In this context, the use of a trademark as a trade name or business name refers to its use not only on the product but also as an element defining the business's

commercial identity. In determining whether such use infringes the trademark owner's rights, it is important to consider whether the mark serves a function of indicating a commercial source to the consumer and whether its use is connected to commercial activity [5, p. 46, 47].

Another specific form of infringement arises in the field of comparative advertising. While the primary purpose of comparative advertising is to provide consumers with information by comparing the products or services of competing businesses, the use of a competitor's trademark can, in some cases, conflict with exclusive rights under trademark law [32, p. 347]. Therefore, in comparative advertising, a balance must be struck between the protection of trademark rights and the freedom of commercial communication and competition.

Counterfeit trademark goods are one of the types of trademark infringement that can lead to the most serious economic consequences. Under the TRIPS Agreement, “counterfeit trademark goods” are defined as goods, including packaging, bearing without authorization a trademark that is identical to, or cannot be distinguished in its essential aspects from, a trademark validly registered for such goods, and which thereby infringes the rights of the trademark owner under the law of the country of importation [1]. The sale, distribution, marketing, import, export, and possession for commercial purposes of products bearing counterfeit trademarks are also considered trademark infringement under certain conditions [21, p. 38-41].

Parallel imports and the exhaustion of trademark rights are of particular importance in terms of balancing the exclusive rights of the trademark owner with the free movement of goods. The fact that goods placed on the market by the trademark owner are subsequently imported and reintroduced to the market by third parties from a different country necessitates determining the boundary between the principle of exhaustion, which prevents the absolute exercise of trademark rights, and the legitimate interests of the trademark owner [31, p. 29-32]. Therefore, although parallel imports are not a direct case of counterfeiting, they constitute one of the important areas of debate in contemporary trademark law in terms of the scope and limits of trademark rights.

Finally, *the transit of goods and border measures* highlight the international trade dimension of trademark infringement. With the development of global supply chains, the fact that counterfeit products are not only offered for sale in the target country but also transported in transit between different countries has become a significant risk for trademark owners [2, p. 4, 6]. In this regard, Directive (EU) 2015/2436, Article 10(4), entitles the proprietor of a registered trademark to prevent third parties from bringing goods, in the course of trade, into the Member State where the trademark is registered, without those goods being released for free circulation, where the goods originate from third countries and bear, without authorisation, a trademark that is identical or essentially indistinguishable from the

registered trademark [11]. Similarly, Regulation (EU) 2017/1001, Article 9(4), confers the same right on the proprietor of an EU trademark in respect of goods originating from third countries and entering the Union without being released for free circulation [28]. These provisions are particularly significant because they extend trademark protection to goods in transit, even where the goods aren't intended to be placed on the market in the territory concerned.

Therefore, trademark protection is supported not only by infringement lawsuits filed in national courts, but also by border measures implemented by customs authorities.

Thus, under contemporary trademark law, the determination of infringement can't be confined solely to the existence of a likelihood of confusion on the part of consumers. The protection of the reputation and distinctive character of mark with a reputation, the emergence of new forms of use in the digital environment, as well as specific circumstances such as counterfeit goods, parallel imports, and goods in transit, demonstrate that the assessment of infringement requires the comprehensive consideration of such factors as the nature of the trademark, the context of its use, the benefit derived by the third party from such use, and the impact on the legitimate interests of the right holder. Consequently, the contemporary approach regards a trademark not merely as a means of indicating the commercial origin of goods or services, but also as a legal object possessing independent economic and reputational value, thereby extending the boundaries of trademark protection beyond the traditional criterion of likelihood of confusion.

IV. Trademark infringement in light of court decisions

The modern development of trademark law has necessitated a reassessment of the criteria for classic infringement. As a result of globalization, the rapid development of digital technologies and the widespread use of electronic commerce, new legal problems have emerged regarding the use and protection of trademarks. In this process, the precedents formed by both the Court of Justice of the European Union and national courts play an important role in determining the boundaries of application of trademark law. In particular, decisions on the protection of the origin function of a trademark, prevention of unfair advantage of the reputation of well-known marks, keyword advertising, the liability of online platforms and infringements occurring in the digital environment have formed the main directions of modern approaches. In this regard, the analysis of the case law of Azerbaijan, Türkiye and the allows us to identify the most relevant development trends in trademark law and the modern criteria applied in the assessment of infringement.

The practical application of the approaches outlined above can best be ascertained through an analysis of the case law developed by the Court of Justice

of the European Union and the courts of Azerbaijan and Türkiye. These judgments clearly demonstrate the contemporary developments in trademark law, the criteria for assessing trademark infringement, and the practical application of legislative provisions.

The cases were selected based on their relevance to contemporary forms of trademark infringement and their significance in clarifying the applicable legal criteria. Particular attention was given to decisions that have contributed to the development of judicial approaches concerning the functions of trademarks, mark with a reputation, keyword advertising and infringements in the digital environment.

4.1. Case Law of the Supreme Court of the Republic of Azerbaijan
Case 1. AFFA v. “Defendant” LLC [9]

The judgment of the Commercial Chamber of the Supreme Court of the Republic of Azerbaijan (dated 30 June 2021) constitutes one of the significant precedents in the judicial practice concerning intellectual property and the legal protection of trademarks. The dispute arose from the use, by a construction company, of a trademark (logo) registered in the name of claimant, the Association of Football Federations of Azerbaijan (AFFA), in a commercial advertisement without any licence or sponsorship agreement. Specifically, in order to promote the sale of apartments constructed by the defendant, a player of the national football team was featured in the advertisement, in which the claimant’s trademark was clearly displayed on the player’s clothing.

The principal legal issue examined by the courts concerned whether the use of the trademark could be regarded as unlawful where the parties operated in different fields of activity under the Nice Classification. The appellate court dismissed the claim on the grounds that the parties provided services in different fields, that the construction company did not operate under the claimant’s logo, and that the primary purpose of the advertisement was the sale of residential property. However, this narrowly construed approach failed to consider the risk of unfair exploitation of the trademark’s commercial reputation and the potential for consumers to form misleading associations.

The Supreme Court quashed the appellate court’s judgment and established an important doctrinal position concerning the scope of trademark use. The Court held that, irrespective of whether the parties operate within the same field of activity, the display of a trademark in advertising constitutes “use” within the meaning of the applicable legislation. The unauthorized display of a trademark that enjoys a high degree of recognition and is known to a broad range of consumers in an advertisement may create an unfair association in the minds of consumers and, indirectly, result in the exploitation of the claimant’s reputation in connection with a different business activity. The judgment thus reaffirmed that the exclusive right in a trademark isn’t confined solely to the

goods and services covered by its registration, but also precludes, in the absence of a licence agreement, the use of the trademark's reputation and recognition value for promotional purposes in other fields of a commercial activity.

Case 2. Villeroy & Boch A.G. v "Defendant" LLC [10]

The dispute arose from a claim brought by Villeroy & Boch A.G. (Claimant 1) and its sole authorised distributor in Azerbaijan for tableware products, a closed joint-stock company (Claimant 2), against a limited liability company (Defendant), seeking an injunction prohibiting the importation and sale of the relevant goods and compensation in the amount of AZN 150,000 for the damages allegedly caused. Although the Defendant had entered into a distribution agreement with Villeroy & Boch A.G. concerning only the sale of bathroom and sanitary products, it imported tableware products from third countries and sold them without authorisation. While the court of first instance dismissed the claim, the appellate court prohibited the Defendant from importing and selling the relevant products but rejected the claim for damages on the ground that the amount of the alleged loss had not been sufficiently substantiated.

The Supreme Court dismissed the Defendant's cassation appeal and upheld the judgment of the appellate court, establishing several fundamental legal positions. First, the Court interpreted the principle of exhaustion of trademark rights (national exhaustion) pursuant to Article 25(3) of the Law of the Republic of Azerbaijan "On Trademarks and Geographical Indications". According to the judgment, the trademark proprietor's right to prohibit third parties from using the mark in relation to the relevant goods remains in force until those goods have been placed on the market in the Republic of Azerbaijan by the trademark proprietor itself or with its consent. Since the right to sell the disputed goods (tableware) in the Republic of Azerbaijan was lawfully granted exclusively to Claimant 2, and the manufacturer had not transferred such right to the Defendant's importation and sale of those products from third countries, rather than directly from the manufacturer, was characterised as the unauthorized placing of the goods on the market in the Republic of Azerbaijan. On this basis, the appellate court's injunction was found to be lawful and well-founded.

Furthermore, the Supreme Court clarified issues concerning the procedural standing of the parties and the limits of the right to engage in free entrepreneurial activity. The Defendant's argument that Claimant 2, not being the proprietor of the trademark, lacked standing to seek a prohibition on the sale of the products was rejected by the Supreme Court as formalistic and unfounded. The Court reasoned that Villeroy & Boch A.G., as the actual proprietor of the trademark, was itself a claimant in the proceedings. Accordingly, the claim for an injunction was directly connected to the trademark proprietor, whereas the claim for compensation for the damages incurred was brought by the distributor (Claimant 2). The Court also rejected the argument that the prohibition on sales

unlawfully restricted the Defendant's right to free entrepreneurial activity. The judgment reaffirmed that activities carried out in violation of the exclusive intellectual property rights of another party do not fall within the scope of protection afforded by the right to engage in free entrepreneurial activity.

4.2. Case Law of the Turkish Court of Cassation ("Yargıtay")

Case 1. Judgment of the 11th Civil Chamber of the Court of Cassation, Case No. 2021/204 E., Decision No. 2022/3802 K. ("Johnny Bravo") [16]

The 11th Chamber of the Court of Cassation, in Decisions No. 2021/204 and No. 2022/3802, addressed trademark confusion, the protection of weakly distinctive marks, and third parties' references to cultural objects. The plaintiff had provided pastry, bakery, and food and beverage services under the "Bravo" trademark since 1998 and claimed that the defendant's use of "Johnny Bravo" in the same sector infringed its trademark rights and constituted unfair competition. The defendant argued that the signs were neither identical nor confusingly similar and that "Johnny Bravo" had distinctive elements of its own. The first-instance court dismissed the claim, and the Izmir Regional Court of Justice upheld the decision. The case was then reviewed by the 11th Chamber of the Court of Cassation.

The Court found that "Bravo", as a common expression of praise and appreciation, had weak distinctive character and could not be regarded as highly distinctive. The use of "Coffee/Art" in special fonts, together with the image of the Johnny Bravo cartoon character and the expressions "JB" and "Johnny Bravo" on the cafe's menus and signs, was insufficient to create a likelihood of confusion with the plaintiff's trademark. The Court concluded that the defendant's use referred to publicly recognized cartoon character rather than exploiting the reputation or distinctive character of the plaintiff's trademark. However, this finding was limited to infringement of the plaintiff's "Bravo" trademark rights and did not determine whether the use infringement of the use infringed copyright, third-party trademark rights, or other intellectual property rights. Accordingly, it should not be interpreted as establishing generally that such use constitutes a lawful cultural reference.

As a result, the 11th Judicial Circuit of the Court of Cassation upheld the decisions of the first instance and appellate courts, finding them consistent with procedural and substantive law. The decision may be regarded as an example of Court of Cassation case law of practical significance for determining the distinctive features of a registered trademark as compared with signs used by third parties, assessing the likelihood of confusion based on the overall impression conveyed to consumers, and defining the scope of legal protection afforded to trademarks with a low degree of distinctiveness. It also provides a legal framework for referring to other cultural and popular culture image in cases where there is no likelihood of confusion for the consumer, while clarifying the

limits of legal protection for trademarks with low distinctiveness. However, this conclusion should be understood as being limited to the specific claimant's trademark and the overall impression at issue in the case, rather than as constituting a general authorization for the use of popular culture objects.

Case 2. Judgment of the 11th Civil Chamber of the Court of Cassation, Case No. 2021/979 E., Decision No. 2022/2930 K [17]

The decision of the 11th Civil Chamber of the Court of Cassation, numbered 2021/979 E. and 2022/2930 K. (the "PRESTIJ" case), is of particular significance in terms of the use of a registered trademark as the dominant element of a composite sign, the unfair exploitation of a brand's reputation and the assessment of the consequences caused by low-quality goods. The dispute arose between the claimant's registered "PRESTIJ" trademark, registered for falling within Class 31, and the signs "MANAV PRESTIJ" and "MANAV PRSTJ" used by the defendant in connection with animal feed products. The claimant argued that such use was likely to create confusion, that the defendant sought to obtain an unfair advantage from the reputation of its trademark, and that the sale of low-quality products damaged the image and reputation of the "PRESTIJ" brand.

The defendant, on the other hand, argued that the word "PRESTIJ" was not used independently but in conjunction with the word "MANAV", that it lacked sufficient distinctiveness when considered on its own, and that the claims for pecuniary and non-pecuniary damages were unfounded. However, the court of first instance found that the defendant had committed trademark infringement and engaged in unfair competition. Taking into account the nature and duration of the infringement, the court ordered the defendant to pay the claimant TRY 48,165.56 in pecuniary damages and TRY 20,000 in non-pecuniary damages, to withdraw the infringing products from the market, to cease the infringing acts, and to publish the judgment in a newspaper.

On 7 April 2022, the 11th Civil Chamber of the Court of Cassation dismissed all of the defendant's objections and upheld the decision of the lower court. Rather than establishing a new judicial doctrine or formulating an independent legal test, the Court of Cassation considered the lower court's assessment of the evidence and its legal conclusions to be correct. Consequently, the findings on the merits of the case remained legally effective through the Court of Cassation's affirmation of the lower court's judgment.

This decision demonstrates that the addition of another word to a trademark, such as "MANAV", or minor alteration in spelling, such as "PRSTJ", does not automatically eliminate the likelihood of confusion. Similarity must instead be assessed in the context of the overall commercial impression created by the signs. The court's award of non-pecuniary damages also demonstrates that the harm caused to a brand's reputation by low-quality products may be taken into consideration. The case further highlights the importance of

distinguishing between the establishment of trademark infringement and the legal remedies available in response, including the cessation of the infringement, the withdrawal of infringing goods from the market, and the award of damages.

Case 3. Judgment of the 11th Civil Chamber of the Court of Cassation, Case No. 2015/15727, Decision No. 2017/2810 [18]

The judgment of the 11th Civil Chamber of the Court of Cassation, E. No. 2015/15727 and K. No. 2017/2810, is a precedent of particular significance in trademark infringement and unfair competition proceedings with regard to the fundamental principles of civil procedure, namely the principle of being bound by the parties' claims, procedural vested rights, and the rule that a court may not, of its own motion, grant a legal remedy that has not been sought by the claimant. In the present case, the plaintiff's counsel, asserting that the plaintiff was the owner of the registered trademark, sought a determination and prevention of the defendant's acts constituting trademark infringement and unfair competition, as well as the cessation of such acts and the collection and destruction of the products subject to the infringement. The defendant sought dismissal of the action, arguing that the marks were not sufficiently like create a likelihood of confusion.

In accordance with the Court of Cassation's previous decision of reversal, the first-instance court, upon rehearing the case, found that the dominant elements of the two marks were identical and that the defendant had used the mark outside the class for which it was registered, namely in hotel services under Class 43, and therefore could not benefit from the afforded by the registered trademark. The court accordingly established the existence of trademark infringement and unfair competition. However, despite the absence of any such request in the plaintiff's statement of claim, the court also ordered the invalidation and removal from the register of the trademark registered in the defendant's name. Following the defendant's appeal, the 11th Civil Chamber of the Court of Cassation examined the case file and made a significant procedural-law assessment. The Chamber emphasized that the plaintiff had sought only the determination and prevention of trademark infringement and unfair competition and that, both before the previous reversal and in the appeal petition, the action had been characterized solely as an action for prevention of infringement. The Court of Cassation held that the first-instance court's compliance with the previous reversal had created a procedural vested right in favor of the defendant and that the court could not order the invalidation of the defendant's trademark more than the relief sought and in violation of that procedural vested right.

Consequently, although the 11th Civil Chamber of the Court of Cassation rejected the other grounds of appeal concerning the determination of infringement and unfair competition, it found the invalidation order contrary to procedural law and legislation because it violated the principle of being bound

by the parties' claim, and accordingly reversed the judgement in favor of the defendant. The decision clearly demonstrates the vital importance of correctly defining the type of action and the relief sought in trademark invalidation produces independent legal consequences and confirms that a court may not grant relief beyond the claimant's request.

4.3. Case Law of the Court of Justice of the European Union

Case 1. Interflora Inc. and Interflora British Unit v Marks & Spencer plc and Flowers Direct Online Ltd. [14]

The judgment of the Court of Justice of the European Union in Case C-323/09 *Interflora v Marks & Spencer* of 22 September 2011 further clarified previous legal approaches in the field of the use of trade marks as keywords in internet search engines. According to this judgment, the trade mark owner has the right to prevent a competitor from using that trade mark as a keyword in an internet advertising service without its consent to advertise the same goods or services, provided that such use adversely affects one of the functions of the trade mark (Paragraph 34). The court establishes that the origin, advertising, and investment functions must be evaluated under separate tests.

The court accepts that the function of indicating the origin of a trademark is violated when the advertisement displayed on the basis of a keyword does not allow a reasonably informed and attentive internet user to determine, or only with difficulty, whether the goods and services in the advertisement originate from the trademark owner or from a third party (Paragraph 44). If the advertisement creates in the consumer the impression that there is some economic relationship between the parties or gives rise to uncertainties as to the origin, this is considered to be a violation of the function of origin (Paragraph 45).

At the same time, the court noted that, taking into account the characteristics of the advertising service, the use of the keyword by a third party does not adversely affect the advertising function of the trademark (Paragraph 54). Thus, the fact that the trademark owner is forced to pay a higher price or increase its advertising activities due to the competitor's advertising does not in itself mean a violation of the advertising function, since this is an integral part of a healthy competitive environment and not every practice inherent in competition damages this function (Paragraphs 57-58). However, the investment function of the mark is considered to be violated when the competitor's actions substantially interfere with the owner's efforts to acquire or preserve a reputation for attracting and retaining consumers (Paragraph 62).

In terms of trade marks with a reputation (Paragraph 68), if a competitor uses the sign without due cause (Paragraph 70) and takes unfair advantage of the distinctive character or reputation of the trademark (free-riding) by using the trademark as a keyword without consent, or is detrimental to that distinctive

character (dilution) or reputation (tarnishment), the trademark owner has the right to prevent this (Paragraph 70, 72, 89). However, if the advertisement simply presents consumers with an alternative product or service, such use is acceptable within the framework of fair competition and cannot be prohibited provided that it is without offering a mere imitation of the trademark owner's products, without causing dilution or tarnishment, and without adversely affecting the functions of the trade mark with a reputation.

Case 2. Coty Germany GmbH v Amazon Services Europe Sàrl and Others [8]

The judgment of the Court of Justice of the European Union in Case C-567/18 *Coty Germany v Amazon* constitutes a significant precedent regarding the liability of online marketplace operators and warehouse-keepers for trademark infringement. The dispute arose when a third-party seller offered bottles of "Davidoff" perfume, for which Coty held the trademark rights, on the Amazon platform. These infringing goods were stored in a warehouse operated by Amazon companies under the "Fulfillment by Amazon" scheme, and Coty sought to hold Amazon liable for stocking these goods without consent. The core legal issue referred to the Court was whether a platform operator that stores goods on behalf of a third-party seller, without having knowledge of the trademark infringement, can be considered as "stocking" those goods for the purpose of offering them or putting them on the market under Article 9(2)(b) of Regulation No 207/2009 and Article 9(3)(b) of Regulation 2017/1001.

The Court adopted a restrictive approach to the concept of "using" a trademark within the meaning of the regulations, establishing that such use involves active behaviour and direct or indirect control over the act constituting the use. According to the Court's assessment, merely creating the technical conditions necessary for a third party to use a sign, such as providing a storage service, does not mean that the service provider itself is using the sign. The Court emphasized that for the storage of goods to be classified as trademark use, the economic operator providing the storage must independently pursue the aim of offering the goods or putting them on the market. Consequently, because Amazon merely stored the goods on behalf of the third-party seller without offering them for sale or intending to do so, it did not use the sign in its own commercial communication. The Court ultimately ruled that a person who stores trademark-infringing goods on behalf of a third party without awareness of the infringement and without pursuing the aim of offering or marketing the goods themselves, does not stock them for the purpose prohibited by the trademark regulations.

Case 3. Christian Louboutin v Amazon Europe Core Sàrl and Others [6].

The judgment of the Court of Justice of the European Union in Joined Cases C-148/21 and C-184/21 *Christian Louboutin v Amazon* addresses a complex issue of trademark infringement liability for operators of hybrid online marketplaces. The dispute arose when Christian Louboutin, the proprietor of an

EU trademark for a specific red colour applied to the outer sole of high-heeled shoes, alleged that Amazon used signs identical to his trademark without consent. Amazon operates online sales websites where it offers goods directly in its own name while simultaneously providing a sales platform for third-party sellers. Advertisements for red-soled shoes that were placed on the market without the proprietor's consent regularly appeared on these websites. The core legal question referred to the Court was whether the operator of such an online sales website incorporating an online marketplace could be regarded as using an infringing sign itself under Article 9(2)(a) of Regulation (EU) 2017/1001, when the infringing goods are offered by third-party sellers.

In its assessment, the Court reiterated that the concept of “using” under Article 9(2) involves active behaviour and direct or indirect control over the act constituting the use. While earlier case law established that merely creating the technical conditions necessary for the use of a sign does not automatically constitute use by the marketplace operator, the Court distinguished Amazon's “hybrid” business model. The Court established a perception-based test, stating that it is necessary to assess whether a well-informed and reasonably observant user of the website establishes a link between the operator's services and the sign in question. Such a link exists if the commercial communication gives the user the impression that the marketplace operator is marketing the goods bearing the sign in its own name and on its own account.

The Court identified several critical factors that contribute to creating this impression in the mind of the consumer. Specifically, the uniform method of presenting advertisement, where the operator's own offerings and those of third-party sellers are displayed together without a clear distinction as to their origin, plays a significant role. Furthermore, the practice of displaying the operator's own logo as a renowned distributor on all advertisements, coupled with presenting certain offerings as “bestsellers” or “most sought after”, blurs the lines of origin and strengthens the impression that the operator itself is selling the goods. The Court also highlighted that offering additional services to third-party sellers, such as dealing with user questions, stocking the goods, shipping them, and managing returns, further reinforces the association between the operator's services and the infringing sign. Ultimately, the Court ruled that under these specific circumstances, the marketplace operator may be regarded as itself using the identical sign, thereby expanding the scope of direct liability for hybrid e-commerce platforms in trademark law.

V. Conclusion

The comparative analysis demonstrates that trademark infringement can no longer be understood solely through unauthorized use and the traditional likelihood-of-confusion standard. The trademark has evolved from a sign

identifying commercial origin into a multifunctional economic asset embodying reputation, distinctiveness, consumer trust, advertising value, and investment. This development has correspondingly broadened the interests capable of receiving legal protection, but it does not justify unlimited exclusivity. The central legal task is therefore to distinguish genuine interference with protected trademark interests from uses that remain within legitimate competition and commercial freedom. Against this background, the comparison of Azerbaijani, Turkish and European Union law reveals substantial convergence despite differences in analytical structure. EU law increasingly adopts a function-oriented approach, examining which function of the mark is affected by the challenged use, whereas Turkish law remains more closely anchored in the statutory framework of exclusive rights while recognising the need to reconcile those rights with legitimate commercial interests. Azerbaijani law similarly operates within a statutory framework of exclusive trademark rights, while the emerging judicial approach demonstrates the importance of assessing the nature of the use and its actual effect on protected trademark interests. This balance is particularly evident in the protection of marks with a reputation: dilution, tarnishment and free-riding may constitute actionable interference even in the absence of conventional confusion, yet the existence of reputation alone can't render every third-party reference unlawful.

This approach is reinforced by the case law examined, which shows that infringement must ultimately be determined through a contextual assessment of the challenged use. CJEU jurisprudence on keyword advertising, the manner of use, consumer perception, and the degree of involvement of the relevant actor, together with Azerbaijani and Turkish judicial practice similarly emphasises distinctiveness, overall consumer perception, good faith, reasonable reliance, and procedural limits on judicial relief. The comparative examination of Azerbaijani, Turkish and EU law demonstrates that, despite differences in doctrinal frameworks and judicial approaches, these principles acquire particular significance in the digital environment, where domain names, cybersquatting, social media, and online marketplaces have expanded the forms of potentially infringing conduct without altering the underlying legal inquiry: technological novelty alone cannot establish liability unless the use constitutes legally relevant interference with a protected trademark interest. The same principle applies to comparative advertising, counterfeit goods, parallel imports, and goods in transit, where trademark protection must coexist with legitimate competition and international commerce.

The analysis of reputational harm likewise demonstrates the importance of maintaining a clear distinction between the legal basis of infringement and the subsequent assessment of compensable damage. The study therefore establishes that balance is a constitutive principle of contemporary trademark infringement law. Effective protection should extend beyond conventional

confusion where the distinctive character, reputation, or protected functions of a mark genuinely impaired or unfairly exploited, but such protection must remain subject to differentiated and context-sensitive limits. The appropriate direction of legal development is consequently not the unrestricted expansion of trademark exclusivity, but a coherent framework that protects the genuine economic and reputational value of trademarks while preserving legitimate language, competition, and commerce.

REFERENCES:

1. Agreement on Trade-Related Aspects of Intellectual Property Rights URL: https://www.wto.org/english/docs_e/legal_e/downloads_e/TRIPS_e.pdf (last access: 06.06.2026).
2. Alfadhel, Lolwa. Trademark Enforcement within the European Union: The Development of Provisions Concerning Counterfeit Goods in Transit (June 17, 2013). *Charlotte Intellectual Property Journal*, Vol. 1, Spring 2014, p. 1-32.
3. Aytuğar Bilge, Sultan Küçük. 6769 sayılı Sınai Mülkiyet Kanunu'na göre marka hakkına tecavüzden doğan itibar kaybı tazminatı. *İnönü Üniversitesi Hukuk fakültesi Dergisi – İnULR* 11(1): p. 110-125 (2020).
4. Bozgeyik Hayri, Marka Hakkının Korunması, 3rd ed, İstanbul 2024. 223 p.
5. Çakır Aytuğ Ceyhun, Özboyacı Alper, Demirkapı Ertan. Marka, ticaret unvanı ve işletme adının birbirleriyle karıştırılma tehlikesine karşı korunması. *Ticaret ve Fikri Mülkiyet Hukuku Dergisi*. Vol: 7, No: 1, 30 June 2021. p. 37-67.
6. Christian Louboutin v Amazon Europe Core Sàrl and Others. Joined Cases C-148/21 and C-184/21. [2022]. ECLI:EU:C: 2022:1016 URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62021CJ0148> (last access: 06.06.2026)
7. Çolak Uğur, Türk Marka Hukuku, 4th ed, İstanbul 2018, 1156 p.
8. Coty Germany GmbH v Amazon Services Europe Sàrl and Others. Case C-567/18. [2020]. ECLI identifier: ECLI:EU:C:2020:267 URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62018CJ0567> (last access: 06.06.2026).
9. Decision of the Commercial Chamber of the Supreme Court of the Republic of Azerbaijan, 30 June 2021, Case No. 2-2(102)-269/21

- URL: <https://www.scribd.com/document/846734072/3-269-30-06-2021> (last access: 06.06.2026).
10. Decision of the Commercial Chamber of the Supreme Court of the Republic of Azerbaijan, 07 February 2023, Case No. 2-2(102)-61/2023.
 11. Directive (EU) 2015/2436 of The European Parliament and of the Council of December 2015 to approximate the laws of the Member States relating to trade marks
URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2436> (last access: 06.06.2026).
 12. Imanov, Kamran. Intellectual Property at the Modern Stage: Protection and Enforcement of Rights. Baku, 2020, 48 p. (in Azerbaijani / İmanov Kamran, Əqli mülkiyyət müasir mərhələdə (hüquqların qorunması və təminatı). Bakı, 2020. 48 p.).
 13. Industrial Property Law No. 6769 of the Republic of Türkiye
URL: <https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=6769&MevzuatTur=1&MevzuatTertip=5> (last access: 06.06.2026).
 14. Interflora Inc. and Interflora British Unit v Marks & Spencer plc and Flowers Direct Online Ltd. Case C-323/09. [2011]. ECLI identifier: ECLI:EU:C:2011:604 URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62009CJ0323> (last access: 06.06.2026).
 15. Isabel Antón Juárez, Infringement of trademark right on ecommerce platforms: The performance of the platform and its impact on its liability. Cuadernos de Derecho Transnacional (Octubre 2020), Vol. 12, No. 2, p. 52-75.
 16. Judgment of the 11th Civil Chamber of the Court of Cassation, Case No. 2021/204 E., Decision No. 2022/3802 K. (“Johnny Bravo”) URL: <https://www.yargitaykararlari.com.tr/ictihatdetay-40458-11hukukdaireesi-Yargitay-11-Hukuk-Dairesi-2021-204-Esas-2022-3802-Karar-Sayili-Ilami.html> (last access: 06.06.2026).
 17. Judgment of the 11th Civil Chamber of the Court of Cassation, Case No. 2021/979 E., Decision No. 2022/2930 K URL: <https://www.ictihatlar.com.tr/ictihatdetay-39694-11hukukdaireesi-Yargitay-11-Hukuk-Dairesi-2021-979-Esas-2022-2930-Karar-Sayili-Ilami.html> (last access: 06.06.2026).
 18. Judgment of the 11th Civil Chamber of the Court of Cassation, Case No. 2015/15727, Decision No. 2017/2810 URL: <https://www.yargitaykararlari.com.tr/ictihatdetay-284837->

- 11 hukukdaresi-Yargitay-11-Hukuk-Dairesi-2015-15727-Esas-2017-2810-Karar-Sayili-Ilami.html (last access: 06.06.2026).
19. Kızıl Barçın Özkan, Marka Hakkına Tecavüz Halinde Verilecek İhtiyati Tedbirler, 1st ed., On İki Levha Yayıncılık, İstanbul, 2022, 225 p., ISBN: 978-625-432-236-5.
20. Kur Annette, The EU Trademark Reform Package—(Too) Bold a Step Ahead or Back to Status Quo? *Marquette Intellectual Property Law Review.* Vol. 19, No. 1, 2015. p. 16-38.
21. Kurt M. Saunders and Gerlinde Berger-Walliser, The Liability of Online Markets for Counterfeit Goods: A Comparative Analysis of Secondary Trademark Infringement in the United States and Europe. *Northwestern Journal of International Law & Business.* Vol. 32, No. 1. 2011. p. 37-92.
22. Law of the Republic of Azerbaijan “On the Enforcement of Intellectual Property Rights and the Fight against Piracy” URL: <https://e-qanun.az/framework/23895> (last access: 06.06.2026).
23. Law of the Republic of Azerbaijan “On Trademarks and Geographical Indications” URL: <https://e-qanun.az/framework/3293> (last access: 06.06.2026).
24. Ohly Ansgar, “Schadensersatzansprüche wegen Rufschädigung und Verwässerung im Marken- und Lauterkeitsrecht”, *GRUR Heft* 11/2007, p. 926-934.
25. Öksüz Mustafa, Marka Hakkına Tecavüzün Sonuçları, *Türkiye Barolar Birliği Dergisi.* Vol. September-October 2021, No. 156, p. 301-339.
26. Paris Convention for the Protection of Industrial Property URL: <https://www.wipo.int/en/web/treaties/ip/paris/index> (last access: 06.06.2026).
27. Rajinder Kaur, Rashmi K. Aggarwal, Teena Bagga and Jatinder Maan. Keyword Advertising and Trademark Infringement. *International Journal of Control Theory and Applications.* Vol. 10, No. 4, 2017. p. 93-106.
28. Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trade mark URL: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1001> (last access: 06.06.2026).
29. Sabih Arkan, Marka Hukuku Vol. 1, Ankara, 1997, 129 p.
30. Sabih Arkan, Ticari İşletme Hukuku, BTHAE Yayınları, 23. Basıdan Tıpkı Basım, Ankara 2017, (Ticari İşletme 2017), 469 p.

31. Samuel Dobrin and Archil Chochia, The Concepts of Trademark Exhaustion and Parallel Imports: A Comparative Analysis between the EU and the USA. *TalTech Journal of European Studies* Vol: 6 (2016): No: 2 (October 2016). p. 28-57.
32. Semila Fernandes, A case study approach - an analysis of the infringement of trademark by comparative advertising. *Procedia - Social and Behavioral Sciences* (133) 2014. p. 346 – 357.
33. The Management of Internet Names and Addresses: Intellectual Property Issues. Final Report of the WIPO Internet Domain Name Process. Paras 170-177 URL:
<https://www.wipo.int/export/sites/www/amc/en/docs/report-final1.pdf> (last access: 06.06.2026).
34. Uniform Domain Name Dispute Resolution Policy URL:
<https://www.icann.org/en/contracted-parties/consensus-policies/uniform-domain-name-dispute-resolution-policy/uniform-domain-name-dispute-resolution-policy-01-01-2020-en> (last access: 06.06.2026).
35. Uzunallı Sevilay, Markanın Korunmasının Kapsamı ve Tazminat Talebi, Ankara 2012, 601 p.
36. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition URL:
<https://www.wipo.int/en/web/amc/domain-name-disputes/overview/3.0> (last access: 06.06.2026).
37. WIPO's Guide to the Paris Convention URL:
<https://tind.wipo.int/record/28637?v=pdf> (last access: 06.06.2026).
38. Yasaman, Hamdi & Sıtkı Anlam Altay & Tolga Ayoğlu & Fülürya Yusufoglu & Sinan Yüksel, Marka Hukuku 556 Sayılı KHK Şerhi Vol. II. İstanbul: Vedat Kitapçılık, 2004. Article 68, 1260 p.
39. Yıkar Mehmet Emin, Marka Hukukunda Dürüst Kullanım, 1st ed., On İki Levha Yayıncılık, İstanbul, 2025, XXI + 330 s. ISBN: 978-625-5878-62-5.

AZƏRBAYCAN, TÜRKİYƏ VƏ AVROPA İTTİFAQI HÜQUQUNDA ƏMTƏƏ NİŞANLARININ POZULMASI: İNKİŞAF EDƏN HÜQUQİ STANDARTLAR VƏ MƏHKƏMƏ YANAŞMALARI

NƏZRİN ƏLİYEVƏ*

Xülasə

Bu tədqiqat Azərbaycan, Türkiyə və Avropa İttifaqı hüquq doktrinasında əmtəə nişanının pozulmasının mahiyyətini və əsas elementlərini, xüsusilə müasir nəzəri yanaşmaları təhlil edir. Tədqiqatın məqsədi əmtəə nişanının hüquqi mühafizəsinin ənənəvi olaraq kommersiya mənşəyinin göstərilməsi funksiyasından və istehlakçının çaşdırılması ehtimalından kənara çıxaraq necə inkişaf etdiyini qiymətləndirməkdir. Bu məqsədlə Avropa İttifaqı Ədalət Məhkəməsinin, Azərbaycan Respublikası Ali Məhkəməsinin və Türkiyə Ali Məhkəməsinin müvafiq qərarlarına əsaslanan müqayisəli doktrinal və məhkəmə təcrübəsi təhlilindən istifadə edilmişdir. Təhlil göstərir ki, müasir əmtəə nişanı mühafizəsi müvafiq hüquqi şərtlər mövcud olduğu halda nişanın fərqləndirici xüsusiyyətinin, nüfuzunun və digər funksiyalarının, o cümlədən reklam, investisiya və kommunikasiya funksiyalarının qorunmasını da əhatə edə bilər. Xüsusi diqqət nüfuzə malik əmtəə nişanlarının mühafizəsinə və rəqəmsal mühitdə yaranan yeni pozuntu formalarına, o cümlədən domen adlarının qeydiyyatına, açar söz reklamlarına və potensial olaraq hüquq pozuntusu təşkil edən və ya saxta malların onlayn platformalar vasitəsilə satışa çıxarılmasına yönəldilmişdir. Tədqiqatda həmçinin firma adlarından istifadə, müqayisəli reklam, paralel idxal və malların tranziti ilə bağlı xüsusi məsələlər nəzərdən keçirilir. Avropa İttifaqı Ədalət Məhkəməsinin, Azərbaycan və Türkiyə Ali Məhkəmələrinin seçilmiş qərarlarının müqayisəli təhlili bu yanaşmaların praktik tətbiqini və əmtəə nişanlarının mühafizəsi ilə rəqabət azadlığı və qanuni kommersiya fəaliyyətləri arasında balansın təmin edilməsi istiqamətində davam edən hüquqi səyləri nümayiş etdirir. Tədqiqat müasir əmtəə nişanı pozuntusunun getdikcə çoxfunksiyalı xarakter aldığını və rəqəmsal və global kommersiya təcrübələrinə uyğunlaşdığını göstərməklə bu sahənin müasir inkişafının daha dərinədən başa düşülməsinə töhfə verir.

Açar sözlər: *əmtəə nişanının pozulması, əmtəə nişanının funksiyaları, nüfuzə malik əmtəə nişanları, onlayn marketpleyslər, istehlakçının çaşdırılması ehtimalı, açar söz reklamı, kiberskvotting, məhkəmə təcrübəsi.*

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НАРУШЕНИЕ ПРАВ НА ТОВАРНЫЕ ЗНАКИ В ЗАКОНОДАТЕЛЬСТВЕ АЗЕРБАЙДЖАНА, ТУРЦИИ И ЕВРОПЕЙСКОГО СОЮЗА: РАЗВИТИЕ ПРАВОВЫХ СТАНДАРТОВ И ПОДХОДОВ СУДЕБНОЙ ПРАКТИКИ

НАЗРИН АЛИЕВА*

Резюме

Настоящее исследование анализирует сущность и основные элементы нарушения прав на товарный знак, уделяя особое внимание современным теоретическим подходам, сформировавшимся в доктрине Азербайджана, Турции и Европейского союза. Цель исследования заключается в оценке того, каким образом объем правовой охраны товарного знака вышел за рамки традиционной функции обозначения коммерческого происхождения товаров или услуг и защиты от вероятности введения потребителей в заблуждение. В рамках исследования применяется сравнительный доктринальный анализ и анализ судебной практики с акцентом на соответствующие решения Суда Европейского союза, Верховного Суда Азербайджанской Республики и Верховного Суда Турецкой Республики. Проведенный анализ показывает, что современная правовая охрана товарных знаков при наличии соответствующих правовых условий может распространяться на защиту различительной способности, репутации и иных функций товарного знака, включая рекламную, инвестиционную и коммуникационную функции. Особое внимание уделяется охране товарных знаков, обладающих репутацией, а также новым формам нарушений в цифровой среде, включая регистрацию доменных имен, использование ключевых слов в рекламе и реализацию потенциально контрафактных или нарушающих права товаров посредством онлайн-платформ. В исследовании также рассматриваются отдельные вопросы, связанные с использованием фирменных наименований, сравнительной рекламой, параллельным импортом и транзитом товаров. Сравнительный анализ отдельных решений Суда Европейского союза, Верховных судов Азербайджана и Турции демонстрирует практическое применение указанных подходов, а также продолжающиеся попытки обеспечить баланс между охраной прав на товарные знаки, свободой конкуренции и осуществлением законной коммерческой деятельности.

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Исследование способствует более глубокому пониманию современного нарушения прав на товарные знаки, демонстрируя его все более многофункциональный характер и адаптацию к цифровым и глобальным коммерческим практикам.

Ключевые слова: *нарушение прав на товарный знак, функции товарного знака, товарные знаки, обладающие репутацией, онлайн-маркетплейсы, вероятность введения в заблуждение, реклама по ключевым словам, киберсквоттинг, судебная практика.*

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