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EVALUATION OF BAD FAITH IN TRADEMARK APPLICATIONS UNDER TURKISH TRADEMARK LAW[*]

By Uğur Aktekin,[**] Selin Bilik,[***] and Bilge Ayperi Kemer[****]

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I. INTRODUCTION

The phenomenon of bad faith in trademark applications is a recurring issue in trademark law. Although trademarks, by their very nature, serve the function of distinguishing the goods and services of one undertaking from those of its competitors, not every application for registration necessarily corresponds to an honest commercial purpose. In practice, some applications are filed for reasons that are contrary to the principle of good faith, such as for the purpose of obtaining an unjust advantage, restricting the activities of competitors, or instrumentalizing the trademark registration system. In both European Union and Turkish trademark law, bad faith applications continue to be a significant concern, with the contours of what constitutes bad faith being defined through both regulations and statutes, and a growing body of jurisprudence. This article first explains the concept of bad faith within the framework of Turkish trademark law and provides examples of how bad faith has been examined in Turkish judicial decisions. Second, this article reviews the procedural rules for determining bad faith and the consequences of a finding of bad faith. And third, this article concludes with a comparative analysis of bad faith under European Union ("EU") law, to provide a more comprehensive assessment of the subject.

II. DEFINITION AND LEGAL NATURE OF THE CONCEPT

Turkish trademark law currently lacks a clear, statutory definition of what constitutes bad faith. In general, bad faith could be said to refer to acting with a motive that is contrary to the principle of honesty, and contrary to the purposes of trademark law, when seeking to register a trademark. Alternatively, bad faith could be understood as the absence of good faith in the registration process. Thus, one way to potentially clarify the boundaries of the concept of bad faith is to first examine the notion of good faith and its role in the trademark application process.

A. The Concept and Elements of Good Faith

The concept of good faith is regulated under Turkish Civil Code, Law No. 4721 ("TCC"), and constitutes a fundamental principle requiring parties to act in good faith when exercising their rights and fulfilling their obligations.[1] Article 3 of the TCC refers to "situations in which the law attributes a legal consequence to good faith."[2] Despite using that language, the TCC does not provide a

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1 Article 2 of the Turkish Civil Code No. 4721.

2 Article 3 of the Turkish Civil Code No. 4721.

definition of what constitutes good faith. However, in the established jurisprudence of Turkish courts, good faith has come to be understood as the state in which a person, despite exercising all due diligence required by the circumstances, is unaware of the existence of an obstacle for acquiring a right, or of the occurrence of another legal consequence.[3] Good faith is based on the principle of acting honorably, correctly, and honestly. The fact that this reference to good faith appears among the general provisions of the TCC indicates that it constitutes a fundamental principle applicable throughout private law.

Where a law requires good faith, a person may benefit from the protection afforded by that law if the person is unaware of an existing obstacle or deficiency in acquiring a right, or of the occurrence of a legal consequence, and has exercised the level of diligence expected under the circumstances. The standard of diligence expected from a person is assessed objectively, considering various factors such as the development, characteristics, and circumstances of the specific case, and by determining whether a person of average intelligence, acting honorably and honestly under the same conditions, would have exercised the same level of diligence.[4]

Article 3 of the TCC accepts good faith as a rule, presuming that individuals act morally and honestly when acquiring rights, thereby conferring a presumption in favor of good faith. The presumptive nature of good faith is particularly significant when it comes to the burden of proof, as it means that the party asserting the absence of good faith bears the responsibility of proving their claim.[5]

The principle of honesty, regulated under Article 2 of the TCC, is related to the principle of good faith, and requires that a person act honorably, correctly, and honestly.[6] While the principle of good faith relates to the *acquisition* of a right or the attainment of a legal result, the principle of honesty relates to the *exercise* of a right, but like good faith, the principle of honesty is a fundamental legal principle that must be considered in all areas of law.[7]

As discussed below, there are situations in which the law attaches legal consequences to the absence of good faith, and to a person not acting in good faith, that is, to acting in bad faith, where

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3 M. Kemal Oğuzman & Nami Barlas, Medeni Hukuk, Giriş Kaynaklar Temel Kavramlar 249 (24th ed. 2018).

4 *Id.* at 259.

5 1 Jale G. Akipek, Turgut Akıntürk & Derya Ateş Karaman, Türk Medeni Hukuku, Başlangıç Hükümleri: Kişiler Hukuku 148 (9th ed. 2012).

6 Oğuzman & Barlas, *supra* note 3, at 248.

7 *Id.* at 263.

such person is denied a right or benefit afforded to persons acting in good faith.[8]

B. The Period Before the Industrial Property Code No. 6769

In the context of Turkish trademark law, the (now abolished) Decree-Law No. 556 on the Protection of Trademarks ("Decree Law") dated 1995 was the first to enact bad faith as a ground to oppose trademark applications.[9] The Decree Law clearly established the right to oppose a bad faith application, but did not establish bad faith as a separate ground for invalidity. Article 44/2 of the Decree Law provided that, in the event of a trademark being declared invalid, any damages arising from the invalidity must be compensated by the bad faith applicant. However, it was left unclear as to whether bad faith was a separate ground for invalidity, until this debate was finally settled by a decision of the General Assembly of Civil Chambers of the Court of Cassation[10] ("General Assembly") dated July 16, 2008, and numbered 2008/11-501 (Merits), 2008/507 K. (Decision).

In the General Assembly decision, while the question of whether bad faith trademark applications constitute a ground for invalidity was debated, the Court of Cassation addressed the matter within the framework of the general provisions of the Decree Law, while also considering the principle of honesty set out in the TCC.[11] With

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8 Akipek, Akıntürk & Karaman, *supra* note 5, at 153.

9 Article 35 of Decree Law No. 556.

10 Under the Turkish judicial system, civil disputes are first heard by the courts of first instance. Their judgments may be appealed to the regional courts of appeals. Decisions of the regional courts of appeals are, where permitted by law, subject to further review by the Court of Cassation, which is the highest court of appeal in civil and criminal matters. Where a court of first instance resists a reversal decision of the Court of Cassation, or where there is a disagreement between different chambers of the Court of Cassation in circumstances prescribed by law, the matter may be referred to the General Assembly of Civil Chambers of the Court of Cassation, whose decision is binding in that case.

11 In its judgment, the Court stated as follows: "Indeed, under Article 35/1 of Decree Law No. 556, bad faith at the time of filing a trademark application may, in itself, be invoked as a ground for opposition. Likewise, the subsequent filing of an invalidation action on the same ground is consistent with the purpose of the Decree Law. This is because the provisions set out in Articles 35/1 and 42/1-a of Decree Law No. 556 essentially constitute specific applications of Article 2 of the Turkish Civil Code. Accordingly, taking into account the particular circumstances of each case, a trademark registration that is clearly found to have been made in bad faith should be declared invalid. Even though bad faith is not expressly listed as an independent ground for invalidation under Article 42 of Decree Law No. 556, the same conclusion should be reached pursuant to Article 2 of the Turkish Civil Code, which embodies a general legal principle, since bad faith cannot be afforded legal protection. Such an interpretation is also consistent with the spirit and purpose of the Decree Law. In light of the foregoing factual and legal considerations, and given that the defendant's trademark was found to have been registered in bad faith, the Court held that the first instance court correctly declared the

this decision, and in numerous subsequent rulings, the Court of Cassation consistently confirmed that bad faith should be regarded as a ground for invalidity on its own.[12]

On January 10, 2017, the Industrial Property Code Law No. 6769 of December 22, 2016 ("IPC") entered into force, fully harmonized with EU law, and prepared in consideration of EU Regulation No. 2015/2424, amending EU Trademark Regulation No. 207/2009 and the new Trademarks Directive No. 2015/2436.[13]

C. The Period After the Entry into Force of the Industrial Property Code No. 6769

Although prior to the entry into force of the IPC, bad faith in filing a trademark application was not expressly regulated as a ground for invalidity under the Decree Law, it had already been recognized as an independent ground for invalidity under the prevailing view of Turkish legal scholars[14] and the established precedent of the General Assembly as mentioned above. Reflecting this development, the IPC introduced explicit provisions on bad faith as grounds for both opposition and invalidity. Specifically, Article 6/9 of the IPC establishes bad faith as a ground for opposition, and Article 25 of the IPC establishes that a trademark registration may be declared invalid in cases enumerated in Article 6 (which includes where an application has been filed in bad faith).[15] Not only is bad faith a basis for opposition and invalidation, but under Article 25/6 of the IPC, even registrations that can otherwise be immune from challenge, due to having coexisted with a plaintiff's

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disputed trademark invalid by applying Article 2 of the Turkish Civil Code.*"* (Translated from the original Turkish.)

12 *See, e.g.*, decision dated April 30, 2025, and numbered 2024/11-489 (Merits), 2025/266 (Decision), the General Assembly of Civil Chambers of the Court of Cassation; decision dated June 17, 2021, and numbered 2017/11-25 (Merits), 2021/778 (Decision), the General Assembly of Civil Chambers of the Court of Cassation; decision dated November 20, 2018, and numbered 2017/1345 (Merits), 2020/3605 (Decision), the 11th Civil Chamber of the Court of Cassation; decision dated March 1, 2021, and numbered 2020/1726 (Merits), 2021/1838 (Decision), the 11th Civil Chamber of the Court of Cassation; and decision dated September 18, 2024, and numbered 2023/4672 (Merits), 2024/6496 (Decision), the 11th Civil Chamber of the Court of Cassation.

13 Uğur Çolak, Türk Marka Hukuku 4 (5th ed. 2023).

14 Sabih Arkan, Marka Hukuku 158 (1998); Ünal Tekinalp, Gül Okutan Nilsson, & Feyzan Hayal Şehirali Çelik, Tekinalp Fikri Mülkiyet Hukuku 452 (4th ed. 2005); 2 Hamdi Yasaman et al., Marka Hukuku 556 Sayılı KHK Şerhi 878 (2004).

15 Under Turkish trademark law, TURKPATENT examines trademark applications both ex officio and upon opposition. During ex officio examination, TURKPATENT considers only the absolute grounds for refusal. By contrast, relative grounds for refusal, which includes bad faith, are examined only if any interested person files a timely opposition after publication of the application. Where an opposition is filed but rejected, or where no opposition is filed at all, the registration may nevertheless subsequently be challenged through an invalidation action before the competent IP court, including on the ground that the application was filed in bad faith.

mark for five or more years, can be susceptible to invalidation if the registration is found to have been registered in bad faith.[16]

Although the IPC has established bad faith as a legal ground both for opposition and for invalidation, it does not provide a definition of the concept of bad faith. Nevertheless, trademark applications that generally violate the principle of good faith or the purpose and function of a trademark are considered to be filed in bad faith, particularly in cases where the applicant submits a trademark application with no intention of using the trademark, but merely to reserve it, to trade it, or for purposes of extortion.[17] Similarly, bad faith has been defined as the use of trademark protection obtained through registration in a manner contrary to its purpose,[18] or as registrations that violate the rules of commercial honesty, carried out to usurp another's trademark or to unfairly benefit from the reputation of another's trademark, whether well-known or not.[19] In its decision dated July 16, 2008, the General Assembly suggested use of a similar definition, when it held that applying to register a trademark for purposes of reservation of rights, trademark trading, or extortion is bad faith.

In addition to the issues presented due to the lack of a single, precise definition, proving bad faith can be particularly difficult because the concept involves a subjective assessment of the applicant's internal state of mind.[20] Given that, external factors must be used as proxies of the applicant's intent at the time of filing.

III. TYPICAL APPEARANCES AND ELEMENTS OF BAD FAITH IN TURKISH TRADEMARK LAW PRACTICE

As detailed above, the concept of bad faith has no statutory definition in Turkish law, and is instead defined in accordance with the views of legal scholars and the well-established precedents of the Court of Cassation. In the General Assembly's decision cited above dated July 16, 2008, the General Assembly also explained that the existence of bad faith must be determined considering the specific circumstances of each case. The General Assembly's decision provides a non-exhaustive list of examples of when bad faith might be found, including the following: filing an application to unfairly benefit from another's trademark; filing an application solely for warehousing purposes without any genuine intention to use the mark; filing an application for the purpose of trademark trafficking; and filing an application for extortionary purposes.

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16 IPC § 25/6.

17 Fatih Bilgili, Marka Hukukunda Hakkın Kötüye Kullanılması, 28 (2006).

18 Sabih Arkan, *supra* note 14, at 158.

19 Uğur Çolak, *supra* note 13, at 1206.

20 Egemen Işık, Marka Hukukunda Sessiz Kalma Yoluyla Hak Kaybı, 167 (2017).

Similarly, the 11th Civil Chamber of the Court of Cassation, in its decision numbered 2019/1285 E. (Merits) and 2019/8003 K. (Decision), has explained that evaluating whether an application has been filed in bad faith must always involve looking at the particular circumstances of the case. The Court provided examples to illustrate the appearances of bad faith, including applications filed not for the purpose of using the trademark but to disrupt others' trade, and applications filed to extort money from others or engage in blackmail.

Over time, within a growing body of judicial decisions, certain typical circumstances have emerged that, although they do not constitute per se bad faith, are factors to consider and guide the determination of bad faith.[21] To be clear, the presence of one or more such typical factors in a specific case does not give rise to a presumption of bad faith, just as their absence does not mean that bad faith is not present. Instead, what must be primarily assessed is the applicant's intent—and whether such intent is contrary to honest commercial practices—and such determination can only be made by evaluating the specific circumstances, which may serve as proxies for intent in each individual case. Within this framework and without being limited in number, the following factors have been exemplified for the purpose of guiding the determination of bad faith.

A. Similarity Between the Contested Trademark and Earlier Rights

The degree of similarity between the trademarks constitutes an important factor in the determination of bad faith applications. However, the way this factor is examined varies depending on the specific characteristics of the dispute. Unlike the traditional assessment of likelihood of confusion, which has as its objective the prevention of consumer confusion, the examination of bad faith focuses on preventing harm to third-party rights. Therefore, similarity between the trademarks is only one of several factors considered in determining the existence of bad faith.

Although a high degree of similarity is not technically required for the assessment of bad faith, in practice, bad faith filings are mostly direct imitations of legitimate trademarks.[22] In other cases,

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21 *See, e.g.*, decision dated June 12, 2013, and numbered 2011/11371 (Merits), 2013/12306 (Decision), the 11th Civil Chamber of the Court of Cassation; decision dated October 4, 2022, and numbered 2021/2835 (Merits), 2022/6619 (Decision), the 11th Civil Chamber of the Court of Cassation; decision dated September 28, 2020, and numbered 2019/4412 (Merits), 2020/3605 (Decision), the 11th Civil Chamber of the Court of Cassation; and decision dated January 14, 2025, and numbered 2024/1534 (Merits), 2025/72 (Decision), the 11th Civil Chamber of the Court of Cassation.

22 Decision dated October 9, 2024, and numbered 2023/5150 (Merits), 2024/7244 (Decision), the 11th Civil Chamber of the Court of Cassation; and decision dated June 11, 2024, and

applications might seek to "circumvent" the original trademark through minor alterations to its literal elements, such as the omission or addition of letters or the rearrangement of characters. Bad faith applications might also cover marks that imitate the distinctive color combinations or graphic style of a legitimate trademark.[23] While, similarity of the marks does not, by itself, establish bad faith, a high degree of similarity is an important factor in the overall assessment, as it may indicate that the applicant was aware of the earlier mark and intentionally sought to take advantage of it. Therefore, it is not merely the case that bad faith applications often involve similar marks; rather, the similarity itself may support a finding of bad faith when considered together with the other circumstances of the case.

B. Similarity of Goods and Services

Turkish trademark jurisprudence shows that the similarity of the goods and/or services at issue may also constitute an important factor in the assessment of bad faith. However, in certain cases, such as where the earlier trademark enjoys a high level of recognition, bad faith may be established even if the goods or services are neither identical nor similar.

Within the framework of the duty to act as a prudent merchant, parties operating in the same business sector are expected not to adopt trademarks that are identical or confusingly similar to those of their competitors. Similarity of goods and services is not a legal prerequisite for establishing bad faith, nor does similarity of goods or services necessarily mean bad faith will be found. Similarity of goods and services can be a helpful guiding factor, particularly in cases where use is intended in the same or related sectors. However, even where the goods and services differ, and the parties operate in entirely unrelated sectors, a trademark may still be found to have been filed in bad faith. For example, in its decision, 2023/3736 E. (Merits) and 2024/6195 K. (Decision), the 11th Civil Chamber of the Court of Cassation stated that the mere fact that the goods and services for which registration is sought are different does not, in itself, rule out the existence of bad faith.

C. Assessment of the Likelihood of Confusion

The existence of a likelihood of confusion between the trademark application and the prior trademark may also be a factor, depending

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numbered 2022/7488 (Merits), 2024/4919 (Decision), the 11th Civil Chamber of the Court of Cassation.

23 Decision dated June 1, 2020, and numbered 2019/4443 (Merits), 2020/2514 (Decision), the 11th Civil Chamber of the Court of Cassation; and decision dated May 3, 2023, and numbered 2021/8694 (Merits), 2023/2674 (Decision), the 11th Civil Chamber of the Court of Cassation.

on the circumstances of the individual case. However, the existence of a likelihood of confusion is not a prerequisite for the determination of bad faith.

The determination that a trademark application has been filed in bad faith is directly related to the applicant's subjective intent, which is inconsistent with the principles of honest commercial conduct. Likelihood of confusion does not necessarily require there to be an intent contrary to the principles of honest commercial conduct, and therefore, the existence of a likelihood of confusion between the trademarks does not necessarily indicate the presence of bad faith, nor does the absence of such likelihood imply that the application was made with honest intent. In the assessment of bad faith, the focus lies not on an analysis of similarity between the two marks, but on the examination of factual circumstances that reveal the applicant's true intent when filing its application. For example, as discussed below, the knowledge of the applicant,[24] the origin of the prior mark,[25] and evidence that the applicant came up with the mark independently,[26] may all speak to whether a subsequent application was filed for reasons contrary to the purposes of trademark law, even if they might not speak to whether consumers will be confused by the two marks.

It is precisely because of this fundamental distinction that, in the Court of Cassation precedents, a likelihood-of-confusion analysis is not conducted when examining an allegation of bad faith, unless the plaintiff explicitly invokes it as a relative ground for refusal. Bad faith functions as an independent scrutiny mechanism that assesses whether the trademark has deviated from its essential function.

D. Applicant's Knowledge or Presumed Knowledge of the Existence of an Earlier Trademark

In Turkish trademark law practice, situations in which the applicant knew, or ought to have known, that the trademark for which registration is sought was already being used by another is one of the primary starting points in determining bad faith. Where the parties are competing businesses operating in the same sector, a strong factual presumption arises that the applicant was aware of the competitor's trademark, by virtue of the obligation to act as a prudent merchant under the TCC. In such cases, courts may characterize the application as one that cannot be explained by honest commercial practices, but that is instead aimed at

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24 *See infra* § III.D.

25 *See infra* § III.E.

26 *See infra* § III.F.

obstructing competitors or obtaining an unfair advantage, and may therefore conclude that the application was filed in bad faith.

In its "CeBIT" decision dated July 5, 2011, and numbered 2009/8200 E. (Merits), 2011/8270 K. (Decision), the 11th Civil Chamber of the Court of Cassation considered the registration of well-known or highly distinctive trademarks, where the applicant operated in the same sector as the owner of such well-known or highly distinctive trademarks, without a reasonable justification for the applications in question, as indications of bad faith.

Similarly, the 11th Civil Chamber of the Court of Cassation came to the same conclusion when, in its decision dated June 12, 2019, 2018/2693 E. (Merits) and 2019/4333 K. (Decision), the court upheld the first instance court's cancellation of the Re-Examination and Evaluation Board's ("Board") decision, which had rejected an opposition filed against the PRIMEOIL trademark based on the PRIMOL trademark. The first instance court ruling, upheld by the Court of Cassation, reasoned that because the applicant and trademark owner operated in the same sector, and because the plaintiff's mark was well-known, the applicant must have been aware of the trademark owner's rights, and the application was thus made in bad faith.

The applicant's knowledge of the trademark owner's rights is a key factor in determining bad faith under Turkish trademark law. A plaintiff's mark being well-known and the plaintiff and applicant operating in the same sector are two ways in which this knowledge can be shown. However, they are not the only ways, and some of the factors discussed below can also help to demonstrate when an applicant should be deemed to have known about the plaintiff's rights.

E. Origin and Use of the Disputed Trademark

In Turkish trademark law practice, the original creative origin of the word or logo for which a registration is sought, as well as its history of commercial use, are among the key factors in determining bad faith. Since applications made in bad faith may often aim to gain unfair advantage from the value built up in another's trademark, highly distinctive "coined trademarks" are often the targets of dishonest registration attempts. As a result, information on a trademark's originality, history, and creation story can shed light on whether an application is based on an honest commercial rationale or is potentially bad faith copying.

Accordingly, factors such as the creation process and history of use of the plaintiff's own trademark serve as significant evidence for establishing a claim of bad faith. For example, cases where the plaintiff's trademark consists of a highly original word or logo that has become closely associated with its proprietor make it difficult to accept that an applicant of a highly similar mark independently created such mark. Likewise, where the earlier trademark has been used extensively over many years in foreign markets, such long-standing use cannot simply be disregarded when assessing bad faith, and even alleged copying of a trademark that has not been registered in Türkiye can be evidence of bad faith.

As a consequence of global digitalization and the cross-border nature of markets, just because a trademark has not yet been registered in the Turkish market does not mean that it should not be protected against bad faith registrations. These protections afforded under Turkish trademark law are particularly fair and strategically important for preventing "extortionate registrations," namely, cases where trademarks that have become well-known abroad are registered in Türkiye to exploit registration gaps, with the aim of selling them to the rightful owner or obstructing their market entry.[27]

One example of how the origin and creation of a mark can play into a bad faith determination, even where the prior mark is not registered in Türkiye, comes from the 11th Civil Chamber of the Court of Cassation decision, numbered 2018/5813 E. (Merits), 2019/7065 K. (Decision). In this case, The plaintiff had first registered the MEZZO MIX trademark in International Class 32 in Germany in 1979, followed by registrations in Austria, Spain, and Switzerland. "Mezzo Mix" referred to a beverage that, especially in Germany, had gained a certain level of consumer recognition. The defendant registered the mezzo-mix.com.tr domain on November 1, 2013, and registered a total of seven trademarks containing the "Mezzo Mix" name, which not only copied the literal element, but also the color, shape, and font used by the plaintiff. Because the plaintiff could not prove that it had used, promoted, or registered the "Mezzo-Mix" name in Türkiye before the defendant, or that "Mezzo-Mix" was widely recognized by the relevant public of the Turkish market, the defendant's trademarks could not be invalidated on the grounds of prior rights, recognition, or likelihood of confusion. However, the Court found that, because the defendant had registered an exact copy of the plaintiff's trademark, the plaintiff had extensively used its registered trademark in Germany, and the defendant resided in Frankfurt both at the time of its application and when the registration was obtained, that defendant's application had been filed in bad faith.

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27 *See, e.g.*, decision dated October 28, 2013, and numbered 2012/5652 (Merits), 2013/18916 (Decision), the 11th Civil Chamber of the Court of Cassation; decision dated October 20, 2010, and numbered 2009/387 (Merits), 2010/10560 (Decision), the 11th Civil Chamber of the Court of Cassation; and decision dated September 22, 2022, and numbered 2021/76 (Merits), 2023/244 (Decision), the 11th Civil Chamber of the Court of Cassation.

F. Copying of Well-Known or Distinctive Trademarks

As noted above, in Turkish trademark law, it may be concluded that a subsequent application has been filed in bad faith where the earlier mark was created in an original manner, possesses a high degree of distinctiveness, and would not be expected to have been selected coincidentally in the ordinary course of commercial life. In particular, defenses claiming that marks that are identical to another party's well-known trademarks—especially those distinctive trademarks classified as "coined trademarks," which are devoid of inherent meaning or strongly associated with a particular undertaking—were selected purely by chance are subject to strict scrutiny.

Within this framework, an applicant who claims to have adopted a mark that is the same or highly similar to another party's well-known or highly distinctive trademark by coincidence, and to have applied to register it independently without knowledge of the other party's rights, is required to provide concrete, consistent, and convincing explanations in support of that claim. Failing this, it may be inferred that the similarity in question stems from a deliberate choice by the defendant to copy the plaintiff, and that the application is incompatible with the principle of good faith.

In its decision dated May 5, 2014, and numbered 2013/11926 E. (Merits) and 2014/8450 K. (Decision), the 11th Civil Chamber of the Court of Cassation found that where an applicant applied to register a mark bearing close resemblance to a well-known trademark composed of a foreign term not commonly used in Türkiye, that the application had been filed in bad faith. By this reasoning, the Court confirmed that the distinctiveness and well-known status of the earlier trademark are factors to be considered when assessing the bad faith of the subsequent applicant.

In its decision dated April 2, 2013, and numbered 2011/5436 E. (Merits), 2013/6621 K. (Decision), the same Chamber addressed the shifting burdens when it comes to evidence of copying, holding that where an applicant applied to register a mark that was identical to a well-known, coined, and distinctive mark used by another party in the same industry, where that applicant was shown to know about the other party's trademark, and where the applicant could not provide convincing evidence that it independently came up with the mark, the applicant must have filed its application in bad faith.

G. Prior Relationship Between the Parties

The existence of a relationship between the parties can be another factor in determining bad faith. Any type of relationship between the parties could be relevant, including agency, distributorship, licensing, franchising, joint venture, and other commercial relationships, whether a prior, existing, or upcoming relationship, and even negotiations leading up to a relationship. In these situations, one party may become aware of the other party's trademark through the relationship and subsequently seek to register it in its own name. Turkish courts regard such circumstances as relevant in assessing bad faith, as the prior relationship may objectively demonstrate the applicant's knowledge of the earlier trademark and its intention in filing the application.

This is reflected in settled precedent of the Court of Cassation. For example, in the first instance court decision subject to the 11th Civil Chamber of the Court of Cassation's ruling dated March 5, 2013, 2012/3896 E. (Merits) and 2013/3986 K. (Decision), it was held that the defendant applicant acted in bad faith by filing a trademark application for a mark similar to the plaintiff's trademarks, thereby claiming to be the owner of the trademark, despite being only the exclusive licensee of the plaintiff's trademarks.

As another example, in the case subject to the 11th Civil Chamber of the Court of Cassation's decision dated January 25, 2016, 2012/6389 E. (Merits) and 2016/739 K. (Decision), products bearing the plaintiff's trademark had been sold to the defendant for a period of four years, and shortly after the defendant stopping purchasing such goods, the defendant filed a trademark application for the same mark on the same goods. Considering the parties' history, the court held that the defendant could not have selected the trademark by chance, and found that the application was made in bad faith. The Court of Cassation upheld the first instance court's decision.

H. Financial Demands

A demand for financial compensation by the applicant toward the prior rights holder may also be an indicator of the applicant's bad faith. Some trademark applications are filed speculatively, or solely for the purpose of extracting financial gain from third parties, and where it is apparent that an application was made primarily with a view to securing monetary benefit, based on the expectation that the trademark will later be needed or used by others, such conduct may support the finding of bad faith. This type of conduct reflects an abuse of the trademark system, transforming the registration mechanism into a tool for unjust enrichment, rather than a means of distinguishing goods or services.

This issue has been addressed in numerous decisions of the Court of Cassation. For example, in its decision dated February 13, 2019, 2017/3943 E. (Merits), 2019/1154 K. (Decision), of the 11th Civil Chamber of the Court of Cassation explained that when an application is filed, not with the intention of using the mark, but for purposes such as extortion, obtaining unjust financial gain, or obstructing the commercial activities of others, such applications are generally regarded as having been filed in bad faith.

Similarly, in the decision dated April 29, 2024, 2023/6222 E. (Merits), 2024/3331 K. (Decision), the 11th Civil Chamber of the Court of Cassation emphasized that bad faith may be found where a trademark is filed not for the purpose of use, but to extract money or engage in extortion.

I. Applicant's Pattern of Conduct

When assessing bad faith in trademark applications, the persistent behavior exhibited by the applicant can serve as an important indicator. Indeed, actions that can only be described as building a trademark portfolio of trademarks identical or similar to well-known third-party trademarks has been considered evidence of bad faith in recent decisions of the Court of Cassation.

For example, in its decision dated October 1, 2024, and numbered 2023/4997 E. (Merits), 2024/6960 K. (Decision), the 11th Civil Chamber of the Court of Cassation upheld the decision of the 20th Civil Chamber of the Ankara Regional Court dated July 3, 2023, and numbered 2021/837 E. (Merits), 2023/771 K. (Decision), finding that the applicant's attempts to register trademarks that were identical to the trademarks of third-party companies operating in the clothing sector abroad was significant evidence of bad faith. In this case, the defendant's history of applying to register marks owned by third parties was evidence of its bad faith in applying to register the plaintiff's mark.

Similarly, in its decision dated February 4, 2015, and numbered 2014/15654 E. (Merits), 2015/1254 K. (Decision), the 11th Civil Chamber of the Court of Cassation held that the defendant's registration of trademarks such as NIKE, ASICS, and CONVERSE, in addition to the trademark at issue, constituted evidence of bad faith.

IV. ABUSE OF THE TRADEMARK SYSTEM: BACK-UP APPLICATIONS

As illustrated by the examples above, the concept of bad faith generally targets and is meant to protect the rights of third parties. However, in some cases, bad faith may be directed at undermining the functioning of the trademark registration system itself, and protections against bad faith applications can be a means of protecting that system. This second type of bad faith application should be classified under the category of *bad faith directed against the trademark system*, as they do not primarily target a particular rightsholder, but instead exploit the protection afforded by the registration system in a manner contrary to the principle of good faith. Turkish trademark law has not yet developed this as a clearly defined and independent doctrinal category, but, in practice, these situations are more commonly described as "back-up applications."

In the case addressed by the 11th Civil Chamber of the Court of Cassation in its decision numbered 2015/9230 E. (Merits), 2016/3765 K. (Decision), the trademark owner filed the disputed application while revocation proceedings concerning its earlier trademark were still pending. The Court concluded that the new filing had been made in order to evade the potential adverse consequences of a possible revocation decision—in other words, to prevent the effective implementation of that decision by creating a "back-up" position. The application was therefore found to have been filed in bad faith. In that case, the trademark owner's attempt to re-register the same mark shortly before the conclusion of the pending revocation action, with the aim of neutralizing the legal effects of a possible cancellation, was characterized as a fraud on the law. The Court ultimately held that an application motivated by such a "back-up" strategy and intended to circumvent the legal consequences of a final revocation decision constituted a bad faith filing.

V. JUDICIAL AND PROCEDURAL PRINCIPLES IN THE DETERMINATION OF BAD FAITH

A. Burden of Proof in Establishing Bad Faith

Article 6 of the TCC provides that the party asserting a claim bears the burden of proving their claim. Article 190 of the Code of Civil Procedure No. 6100 establishes that, unless otherwise specifically regulated by law, the burden of proof lies with the party who seeks to derive a legal right. Accordingly, in Turkish trademark law, the burden of proof rests, as a rule, with the claimant, except in cases where the law provides otherwise. Since bad faith is not among the matters for which a specific evidentiary rule is laid down in the IPC, the burden of proving bad faith lies with the party making the allegation, and this principle was affirmed by the 11th Civil Chamber of the Court of Cassation in its decision numbered 2012/7350 E. (Merits) 2012/6540 K. (Decision), where the plaintiff failed to prove that the defendant acted in bad faith.

However, depending on the nature of the evidence presented by the plaintiff, the burden of proof may shift, requiring the applicant to rebut the evidence put forward. This approach is reflected in the decision of 11th Civil Chamber of the Court of Cassation numbered 2012/5652 E. (Merits) 2013/18916 K. (Decision), in which the first instance court's finding of bad faith was upheld, on the grounds that the defendant failed to provide a reasonable explanation for the motive behind selecting the disputed trademark, after the plaintiff had put forth evidence demonstrating that the defendant had been aware of the plaintiff's trademarks. Similarly, in another decision of the same Chamber numbered 2013/5688 E. (Merits), 2013/20937 K. (Decision), the Court explained that because the defendant could not present evidence of use in Türkiye for the applicable goods prior to the plaintiff, the defendant thus had provided no evidence that they had acquired a right that should be given priority. It should be noted that the case was primarily concerned with bad faith rather than priority as an independent legal ground. The Court referred to the defendant's inability to prove any prior use of the disputed mark in Türkiye for the relevant goods because this undermined the defendant's claim to have had a legitimate reason for adopting the mark.

Given that bad faith is an abstract concept that can manifest in different forms in each case, Turkish trademark law does not impose a closed list of admissible evidence for proving bad faith. Any evidence capable of demonstrating bad faith may be relied upon to prove bad faith if it is concrete and suitable for evidentiary assessment. Such evidence may include evidence of a high degree of similarity between the marks, evidence of the parties' prior commercial relationship, correspondence between the parties, evidence that the parties operate in the same sector, evidence of the well-known status or reputation of the earlier mark, the applicant's pattern of filing similar third-party trademarks, and the manner in which the disputed mark has been used. While no single type of evidence is decisive, a combination of such objective circumstances may establish a prima facie case of bad faith, after which the applicant is expected to provide a credible explanation for its conduct.

B. Time Period for Assessing Bad Faith

In Turkish trademark law, the assessment of bad faith focuses on the intent of the party against whom the bad faith allegation is directed at the time of filing the application. Indeed, in its decision numbered 2012/13300 E. (Merits) and 2013/11168 K. (Decision), the 11th Civil Chamber of the Court of Cassation explicitly stated that the relevant time period to assess the applicant's intent is the time that the application for registration was filed. Since the determination of bad faith is assessed with reference to the circumstances prevailing at the time of filing, evidence relating to the period prior to the filing of the application is most frequently relied upon.[28]

Bad faith also cannot be "cured"; the transfer of a trademark registered in bad faith to a third party acting in good faith does not alter the relevant time frame for assessing bad faith, nor can it be argued that a trademark initially filed in bad faith later became in

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28 Decision dated April 15, 2015 and numbered 2013/1831 (Merits), 2015/1198 (Decision), the General Assembly of Civil Chambers of the Court of Cassation; decision dated May 15, 2024, and numbered 2023/201 (Merits), 2024/3967 (Decision), the 11th Civil Chamber of the Court of Cassation.

good faith. Accordingly, a party acquiring a trademark filed in bad faith must bear legal consequences if bad faith is ultimately established.

On the other hand, there may be situations where, despite a finding that a trademark was registered in bad faith, a decision of invalidation cannot be granted due to factors such as the passage of time or the investments made by the trademark proprietor during that period. Even in such circumstances, however, the trademark is not regarded as having become in good faith, rather, the situation is treated as a loss of rights on the part of the earlier right holder due to acquiescence or inaction. For example, in its decision numbered 2013/11-1831 E. (Merits) and 2015/1198 K. (Decision), the General Assembly of Civil Chambers of the Court of Cassation held that, although an invalidation action based on bad faith is not subject to a statutory limitation period, the exercise of this right is nevertheless subject to the principle of good faith under Article 2 of the TCC. Accordingly, where the conduct of the rights holder amounts to implicit consent to the continued use of the mark, they may be prevented from seeking the invalidation of a trademark that the defendant has used and promoted for many years.

C. Person in Respect of Whom Bad Faith Is Assessed

The relevant intent when determining bad faith is the intent of the person or entity in whose name the application was filed. However, under certain circumstances, in assessing bad faith, other parties' intentions should also be taken into consideration. For instance, the applicant may have a connection with a legal entity belonging to the same corporate group,[29] or there may be an agreement for the applicant to file the application on behalf of another person.[30] Each case should be examined individually, taking into account the nature of the connection.

For example, in cases of bad faith based on no genuine intention to use the trademark in question, there may not be evidence that the applicant itself had no intent to use the trademark, but evidence that the larger corporate group had instructed the applicant to file

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[29] The reference to a "corporate group" concerns situations where the trademark applicant forms part of the same group of companies as another entity (e.g., a parent company, subsidiary, or affiliate) that possesses knowledge or acts with a bad faith intention. In such circumstances, Turkish courts may look beyond the named applicant and consider the knowledge and conduct of the related entity where the connection between them is sufficiently close and the evidence indicates that the application was filed as part of a common strategy. However, this does not mean that bad faith is automatically attributed to all companies within a corporate group; the relationship and the surrounding circumstances must be assessed on a case-by-case basis.

[30] Decision dated April 20, 2022, and numbered 2020/8121 (Merits), 2022/3205 (Decision), the 11th Civil Chamber of the Court of Cassation.

the application, despite having no intent to use the mark, could be relevant evidence of bad faith.

The assessment that the applicant may be found to have acted in bad faith due to their connection with another person has been recognized in various Turkish judicial decisions. For example, in the case upheld by the decision of the 11th Civil Chamber of the Court of Cassation dated March 12, 2017, and numbered 2015/13675 E. (Merits), 2017/1496 (Decision), the first instance court ruling involved a plaintiff who had been operating since 1960 and exporting to many countries, including Türkiye, using a distributor in Asia since 2007, and a defendant who was organically connected to the plaintiff's distributor.[31] The plaintiff argued that its application to extend protection of its international registration into Türkiye had been rejected on the basis of a trademark registered in the defendant's name. According to the plaintiff, it was impossible for the defendant not to be aware of the plaintiff's trademarks, due to the defendant's connection with the plaintiff's distributor, and that, thus, the defendant's application could only have been filed in bad faith. Given this connection, and the presumption of knowledge it created, the Court upheld the first instance court's holding, and ruled that the defendant had acted in bad faith.[32]

D. Scope of Refusal or Revocation Due to Bad Faith

According to established practice in Turkish trademark law, it is not considered reasonable or consistent with the ordinary course of business for a trademark application to be filed in good faith for some goods and services and in bad faith for others.[33] In the words of the Court of Cassation "bad faith cannot be divided," and a finding of bad faith with respect to any goods or services will essentially contaminate all goods and services in the application, rendering the entire application or resulting registration void or invalid.

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31 The "organic connection" referred to here may, for example, arise where the applicant company consists of the same individuals who serve as board members of the plaintiff's distributor, where the applicant is another company managed by the distributor, where it is a subsidiary of the distributor, or where both companies belong to the same parent company. The decision itself does not specify the precise nature of the connection between the parties.

32 Decision dated November 13, 2018, and numbered 2017/1409 E. (Merits), 2018/7015 K., the 11th Civil Chamber of the Court of Cassation.

33 Decision dated September 25, 2018, and numbered 2018/5681 E. (Merits), the 11th Civil Chamber of the Court of Cassation.

VI. COMPARATIVE LAW: THE PERSPECTIVE OF EUROPEAN UNION LAW AND COMMON PRACTICE NO. CP13

EU trademark legislation and case law, having been adopted and adapted in Türkiye as the basis of Turkish trademark law, constitutes an important reference in the interpretation of the concept of bad faith. Unlike Turkish trademark law, bad faith is specifically addressed under EU legislation, namely, under the EU Trademark Regulation, where bad faith is regulated as a ground for absolute refusal and invalidity. However, as it is under Turkish law, the scope of the concept and the application of bad faith under EU law have been shaped by the case law of the Court of Justice of the European Union ("CJEU").

The CP13 Common Practice titled "Trademark Applications Made in Bad Faith" ("CP13"), released by the European Union Intellectual Property Office ("EUIPO") was prepared within the scope of convergence studies on the assessment of bad faith in EU law and published on March 22, 2024.[34] CP13 aims to ensure consistency in the examination of bad faith trademark applications between the trademark offices of the EU Member States and the EUIPO. Within this scope, the text presents a harmonized approach in terms of the conceptual framework, common terminology, and the factors to be considered in assessment.

The CP13 systematically sets out the general principles and common assessment criteria for determining bad faith.[35] CP13 lays out one "mandatory factor" for bad faith, the applicant's dishonest intent, and then numerous "non-mandatory" factors that may be used when assessing a possible instance of bad faith. The document then distinguishes two scenarios of bad faith: misappropriation of the rights of a third party, and abuse of the trademark system.

Although Turkish trademark law and its legislation do not explicitly provide for such a binary distinction, in practice, both actions detrimental to third parties and applications aimed at abusing the functioning of the system are considered within the scope of bad faith.

A comparative analysis conducted with reference to the CP13 demonstrates that there are significant parallels between Turkish and EU trademark law in terms of the interpretation of the concept of bad faith and the methods of its assessment. However, in certain exceptional cases, such as with regard to the principle of the indivisibility of bad faith, differences in approach can also be observed. For example, as mentioned above, under Turkish

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[34] E.U. Intell. Prop. Off., CP13. Trademark Applications Filed in Bad Faith (2024) (available at https://www.tmdn.org/publicwebsite/#/practices/2537136).

[35] *Id.* at 10-31.

trademark law a trademark application cannot be divided into good faith and bad faith portions. Instead, a finding of bad faith is considered to taint the trademark application as a whole, leading to the refusal or invalidation of the registration in its entirety, irrespective of the goods and services covered by the application. By contrast, as confirmed by the CJEU in Case C-371/18, *SKY KICK*, a finding of bad faith may be confined to specific goods or services, allowing for partial refusal or partial invalidity on the ground of bad faith.

VII. EVALUATION AND CONCLUSION

The concept of bad faith is not a rule with rigidly defined boundaries in Turkish trademark legislation. Rather, it is a highly fact-dependent legal assessment that takes shape within the specific circumstances of each case and that is grounded within the framework of the principle of honesty under Turkish law.

The concept of bad faith, which was first shaped by doctrinal debates and judicial precedents during the period of the former Decree-Law No. 556, has been explicitly regulated in Turkish legislation, with the enactment of the IPC No. 6769, both as a relative ground for refusal and as a ground for invalidation. The absence of an explicit statutory definition of bad faith grants judicial authorities with broad discretionary power and imposes on them a significant responsibility in its assessment. In Turkish trademark law practice, the precedents developed through the decisions of the Court of Cassation and the Turkish Trademark Office, TURKPATENT, provide a framework for how to demonstrate the element of "intent," which, as a subjective internal state, must be primarily inferred through external factors such as the level of recognition of the prior mark, prior commercial relationships, the applicant's knowledge, and systematic trademark filing practices.

Comparisons with EU law and the picture emerging within the framework of the CP13 demonstrates that Turkish trademark law is largely aligned with the EU *acquis* terms of general principles. Nevertheless, it is observed that Turkish law adopts a more rigid and protective approach in certain respects, particularly regarding the principle of the "indivisibility of bad faith."

In conclusion, under Turkish trademark law, allegations of bad faith in trademark applications require a holistic analysis that goes beyond a purely formal examination. Although the approach to bad faith under Turkish trademark law is largely aligned with EU regulations, the absence of clear guidance by TURKPATENT—such as the guidance provided by CP13 at the EU level—leads to inconsistent decisions from time to time and prevents the creation of clear standards.