



GRADUATE SCHOOL
ISTANBUL MEDENIYET UNIVERSITY
DEPARTMENT OF PRIVATE LAW

**Internet Domain Name Infringements Within the
Framework of Unfair Competition Law and WIPO
ICANN UDRP Procedure**

Master's Thesis

Gökçe Hilal Aldemir

June 2025



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Supervisor

Asst. Prof. Dr. Ece Deniz Günay

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Style and Reference Manual Statement

Having reviewed this thesis written under my supervision, I confirm that it has been written in accordance with The Chicago Manual of Style and used its footnote/in text reference format consistently throughout the entire text.

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Declaration of Originality

I hereby declare that all information in this dissertation has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conducts, I have fully cited and referenced all material and results that are not original to this work.

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GENİŞ ÖZET

İnternet Alan Adı İhlallerinin Haksız Rekabet Hukuku Kapsamında İncelenmesi ve WIPO ICANN UDRP Prosedürü

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İnternet ortamının hayatın neredeyse her alanına etki etmesiyle birlikte alan adları, birer teknik tanımlayıcı olmanın ötesine geçerek ekonomik, ticari ve hukuki birer değer haline gelmiştir. Özellikle marka değerinin internet ortamında ve dijital alanda korunması açısından alan adları, şirketlerin ve bireylerin tanıtım, pazarlama ve satış stratejilerinin önemli bir parçası olarak öne çıkmaktadır. Ancak alan adlarının tahsisinde uygulanan “ilk gelen alır” prensibi, kötü niyetli kişilerin üçüncü şahıslara ait marka veya ticaret unvanlarıyla benzer alan adlarını tescil ederek bu isimler üzerinden haksız kazanç elde etmelerine yol açmaktadır. Bu bağlamda ortaya çıkan hukuki sorunlar, çoğunlukla haksız rekabet niteliği taşımaktadır. Türk Ticaret Kanunu’nun 54. ve 55. maddelerinde düzenlenen haksız rekabet fiilleri arasında, başkasının tanınmış iş ürünlerinden yararlanmak, yanıltıcı davranışlarla müşterileri çekmek ve dürüst rekabet ilkelerine aykırı hareket etmek yer almaktadır. Başkasının markasını taşıyan ya da onu çağrıştıran bir alan adını tescil ettirmek ve bu alan adını kullanarak internet trafiğini yönlendirmek, haksız rekabet kapsamında değerlendirilmektedir. Özellikle cybersquatting, typosquatting, spamming, banner, pop-up reklamlar ile yönlendirme kodları gibi uygulamalar, marka sahiplerine ciddi zararlar verebilmekte, tüketicileri yanıltabilmekte ve piyasa dengesini bozarak haksız rekabete neden olabilmektedirler. Bu nedenle alan adlarının hukuki korunması, sadece fikri mülkiyet değil, aynı zamanda ticaret hukuku açısından da büyük önem taşımaktadır. Bu kapsamda çözüm yolları hem ulusal hem de uluslararası düzeyde farklılık göstermektedir.

Tezin ilk bölümünde alan adı, alan adı sistemi tanımı, alan adlarının tahsisi, ne şekilde tescil edildiği, alan adlarının hukuki niteliğine ilişkin tartışmalar ile alan adlarının Türk hukukunda, Avrupa Birliği hukukunda ve ABD hukukundaki düzenlemeleri incelenmektedir.

Alan adı, internet üzerinde bir web sitesinin adresini tanımlayan, kullanıcıların karmaşık IP (Internet Protocol) adresleri yerine kolayca erişim sağlayabildiği karakter dizileridir. Alan adları teknik olarak alan adları sistemi (DNS -Domain Name System) adı verilen sistem içinde çalışır ve belirli kurallara bağlı olarak yapılandırılır. DNS, internet üzerindeki cihazlara ve sunuculara tanımlayıcı bir isim atayarak iletişimi sağlar. Alan adı sistemi, üst düzey alan adları (TLD -Top Level Domain Name) ve bunlara bağlı ikinci düzey alan adlarından oluşur. Alan adlarının hukuki niteliği, doktrinde tartışmalı bir konudur. Bazı görüşler alan adlarını mülkiyet hakkı kapsamında değerlendirirken, bazıları bunların lisans benzeri sınırlı bir kullanım hakkı sunduğunu ileri sürmektedir. Türk hukukunda alan adları, doğrudan düzenlenmemiş olmakla birlikte, haksız rekabet ve marka hakkına tecavüz hükümleri çerçevesinde korunmaktadır. Avrupa Birliği'nde özellikle “.eu” alan adları için özel düzenlemeler ve alternatif uyuşmazlık çözüm yolları benimsenmiştir. ABD hukukunda ise ACPA (Anticybersquatting Consumer Protection Act) ile kötü niyetli alan adı tesciline karşı doğrudan dava açma imkânı sağlanmış, marka sahiplerine tazminat ve alan adının devri gibi güçlü haklar tanınmıştır.

Tezin ikinci bölümünde ise alan adları ile haksız rekabetin ve marka hakkının ilişkisinden bahsedilmiş, cybersquatting, typosquatting, spamming, banner, pop up gibi alan adının haksız rekabet ile ihlaline ilişkin örnekler incelenmiştir. Alan adı ihlallerinin başında gelen cybersquatting, yani bir başkasına ait tanınmış marka veya ismin kötü niyetle alan adı olarak tescil edilmesi, internet ortamında sıklıkla karşılaşılan bir problemdir. Bu tür kötü niyetli tescillerin temel amacı, marka sahibine alan adını yüksek bir bedelle satmak ya da internet trafiğini kendi lehine yönlendirerek haksız kazanç elde etmektir. Cybersquatting'in bir türevi

olan typosquatting ise, popüler domainlerin yazım hatalarına dayanarak benzer domainlerin tescil edilmesi yoluyla kullanıcıların yanlışlıkla bu sitelere yönlendirilmesi şeklinde gerçekleşir. Her iki uygulama da tüketiciyi yanıltmakta ve marka itibarına zarar vermektedir. Alan adı ihlallerinin yalnızca doğrudan tescille sınırlı olmadığını belirtmek gerekir. Web sayfalarında rakip markaların isimlerinin meta etiketlerde kullanılması, banner veya pop-up reklamlar yoluyla kullanıcıların yanıltılması ve spam e-postalarla sahte alan adlarının dolaşıma sokulması da alan adı bağlamında değerlendirilebilecek haksız rekabet fiilleri arasında yer almaktadır. Bu fiillerin tamamı, özellikle ticari hayatta dürüstlük kuralının ihlali anlamına gelmekte olup, Türk hukukunda Türk Ticaret Kanunu'nun 54. ve 55. maddeleri uyarınca haksız rekabet hükümleri çerçevesinde değerlendirilmektedir.

Tezin son bölümünde ise Alan adlarının haksız rekabet ile ihlali sonrasında uygulanabilecek ulusal ve uluslararası çözüm yolları incelenmiştir. Başvurulabilecek dava çeşitleri ve ulusal veya uluslararası düzeyde tahkim mekanizmaları incelenmiştir. Bu kapsamda Genel Alan Adı Uyuşmazlık Çözümü Politikası (UDRP -Uniform Domain Name Dispute Resolution Policy) ve ACPA karşılaştırması ve Türk hukukunda bu gelişmelerin yansımaları incelenmiştir. Uluslararası düzeyde alan adı uyuşmazlıklarına çözüm üretmek amacıyla İnternet Tahsisli Sayılar ve İsimler Kurumu (ICANN - Internet Corporation for Assigned Names and Numbers) tarafından geliştirilen UDRP mekanizması, hızlı ve etkili bir idari çözüm yolu olarak öne çıkmaktadır. Bu sistem çerçevesinde Dünya Fikri Mülkiyet Örgütü (WIPO -World Intellectual Property Organization) en çok başvuru alan tahkim kuruluşlarından biridir. WIPO nezdinde açılan UDRP davalarında, şikayetçinin markasıyla aynı veya benzer bir alan adının kötü niyetle tescil edildiği ve mevcut hak sahibinin bu alan adı üzerinde meşru bir hakkının bulunmadığı ispatlandığında, söz konusu alan adı iptal edilmekte ya da şikayetçiye devredilmektedir. Süreç tamamen çevrim içi yürütülmekte ve kararlar genellikle 60 gün içinde verilmektedir. WIPO kararları mahkeme kararı niteliğinde olmamakla birlikte, alan adı kayıt kuruluşları

nezdinde bağlayıcı olup etkili sonuç doğurmaktadır. Öte yandan, özellikle Amerika Birleşik Devletleri'nde UDRP dışında bir başka etkili yasal mekanizma olan ACPA 1999 yılında kabul edilmiştir. ACPA, kötü niyetle bir markaya benzer alan adı tescil edenlere karşı marka sahiplerine hem tazminat hem de alan adının iptali veya devri gibi hukuki imkânlar sunmaktadır. Başka bir deyiş ile ACPA kapsamında dava açılabilmesi için, tescilin kötü niyetle yapıldığının ve tescil edilen adın hak sahibinin markasıyla karıştırılacak derecede benzer olduğunun ispatı gerekmektedir.

ACPA kapsamında marka sahipleri federal mahkemelerde doğrudan dava açarak hem alan adının iptalini veya devrini hem de maddi tazminat talep edebilmektedir. ACPA'nın en dikkat çekici yönlerinden biri, kötü niyetin varlığı halinde her bir alan adı için tazminat hükmedilebilmesidir. Ancak bu sürecin mahkemeler nezdinde yürütülmesi zaman ve maliyet açısından UDRP'ye kıyasla daha külfetlidir. ACPA ile UDRP arasında bazı temel farklar bulunmaktadır. UDRP idari bir çözüm mekanizması olarak daha hızlı ve daha düşük maliyetlidir. Ancak sadece alan adının iptali veya devri gibi sonuçlar doğurur, tazminat kararı veremez. ACPA ise dava yoluyla tazminat taleplerine imkan tanır ve daha caydırıcı niteliktedir. Buna karşılık, ACPA yalnızca ABD'de geçerli olup, küresel bir koruma sağlamaz. UDRP ise ICANN'e bağlı tüm genel üst düzey alan adları (gTLD- Generic Top Level Domain Names) için uygulanabilir niteliktedir. Bu nedenle marka sahipleri, ihlalin kapsamına ve kendi taleplerine göre her iki yoldan birini tercih edebilmektedir. Avrupa Birliği ise UDRP'yi esas alan bir yaklaşımla hareket etmekte, ancak .eu uzantılı alan adları için özel bir sistem olan Alternatif Uyuşmazlık Çözümü, (ADR - Alternative Dispute Resolution) uygulamaktadır. EURid tarafından yürütülen bu sistem, yine WIPO benzeri bir prosedür izlemekte ve şikayetler belirli kurallara göre karara bağlanmaktadır. Bununla birlikte, Genel Veri Koruma Tüzüğü (GDPR- General Data Protection Regulation) nedeniyle WHOIS verilerine erişim sınırlandırılmış, bu da domain sahiplerinin kimliklerinin tespitini zorlaştırmıştır. AB hukukunda,

veri gizliliği ile marka hakkı arasında hassas bir denge gözetilmeye çalışılmaktadır.

Türkiye’de alan adlarına ilişkin hukuki rejim de zamanla evrilmiş ve TRABİS sistemi ile daha sistematik bir yapıya kavuşmuştur. Türkiye’de “.tr” uzantılı alan adlarının yönetimi uzun yıllar ODTÜ (Orta Doğu Teknik Üniversitesi) tarafından yürütülmüştür. Ancak 2022 yılı itibarıyla, Bilgi Teknolojileri ve İletişim Kurumu (BTK) bünyesinde kurulan TRABİS (“.tr Ağ Bilgi Sistemi”) faaliyete geçmiştir. TRABİS, alan adlarının başvurusu, tescili, güncellenmesi ve uyuşmazlıklarının çözümünde yeni standartlar getirmiştir. Türkiye’de de ilk gelen alır ilkesi geçerliliğini korumakla birlikte, TRABİS aracılığıyla alan adı uyuşmazlıklarının çözümünde alternatif uyuşmazlık çözüm yöntemleri oluşturulmuştur. Bu kapsamda, Marka ve Ticaret Unvanı sahipleri, haklarına tecavüz edildiğini düşündükleri durumlarda doğrudan TRABİS tarafından yetkilendirilen Uyuşmazlık Çözüm Merkezlerine başvurabilmekte ve hızlı bir biçimde sonuç alabilmektedir. Ayrıca, Türk Ticaret Kanunu, Türk Borçlar Kanunu ve Fikri ve Sınai Haklar mevzuatı çerçevesinde mahkemeler nezdinde de alan adı ihlallerine karşı dava açılabilmektedir. TRABİS ile birlikte Türkiye’de de UDRP’ye benzer şekilde idari uyuşmazlık çözüm süreçleri benimsenmiş, bu amaçla UÇHS (Uyuşmazlık Çözüm Hizmet Sağlayıcıları) yetkilendirilmiştir. “.tr” uzantılı internet alan adlarına ilişkin uyuşmazlıkların hızlı, etkin ve uzman kişiler eliyle çözümlenmesini amaçlayan alternatif bir uyuşmazlık çözüm mekanizması niteliğindedir. Bu mekanizma, marka hakkı ve ticaret unvanı gibi öncelikli hak sahiplerinin alan adı tahsisinde korunmasını sağlamakta, ayrıca kötü niyetli tahsis ve kullanımın önüne geçmektedir. TOBBUYUM (TOBB Uyuşmazlık Çözüm Merkezi), TRABİS kapsamında faaliyet gösteren Uyuşmazlık Çözüm Hizmet Sağlayıcıları arasında yer alan ve BTK tarafından yetkilendirilmiş bir hizmet sağlayıcısı olup TOBBUYUM nezdindeki hakem kararları bağlayıcı olup, geleneksel yargı yoluna göre daha kısa sürede sonuç alınabilmesi açısından uygulama etkin bir çözüm yolu olarak değerlendirilmektedir. Ancak kararların iptal davasına konu edilebilmesi, sistemin nihai kesinlik sağlamadığını

göstermektedir. Yine de uygulama, internet alan adı uyuşmazlıklarında hak sahiplerine önemli bir başvuru imkânı sunmaktadır.

Tüm bu gelişmelere paralel olarak, son yıllarda alan adı sistemlerinde büyük bir dönüşüm potansiyeli barındıran blockchain tabanlı domainler ortaya çıkmıştır. .eth, .crypto, .nft gibi uzantılar, merkeziyetsiz protokollerle çalışan ve klasik DNS sistemine tabi olmayan alan adlarıdır. Bu tür blockchain domainler, ENS (Ethereum Name Service) gibi sistemlerle yönetilmekte ve ICANN gibi merkezi otoritelerin kontrolü dışında işlemektedir. Bu durum marka sahipleri açısından büyük bir hukuki boşluk doğurmaktadır. Zira bu domainler üzerinde haksız tescil gerçekleştiğinde ne UDRP ne de ACPA kapsamında bir yaptırım uygulanabilmektedir. Bu nedenle, blockchain domainlerin fikri mülkiyet hukuku açısından ciddi bir tehdit oluşturduğu ve bu alanda yeni yasal düzenlemelere ihtiyaç duyulduğu açıktır.

Sonuç olarak, alan adı uyuşmazlıkları dijital ekonominin dinamik doğası içinde hızla artmakta ve gelişmektedir. UDRP, pratikliği ve küresel geçerliliği sayesinde önemli bir çözüm mekanizması sunarken; ACPA, caydırıcı yaptırımlarıyla özellikle ağır ihlaller için etkili bir yoldur. Avrupa Birliği, veri koruma ile fikri mülkiyet arasındaki dengeyi kurmaya çalışırken, Türkiye ise TRABİS ile UDRP benzeri bir sisteme geçmiş ve yerli bir çözüm mekanizması oluşturmuştur. Öte yandan blockchain domainler, geleneksel hukuk kurallarını aşan yeni sorun alanları yaratmakta ve bu alanda uluslararası düzeyde iş birliği gerekmektedir. Alan adı ihlallerinin önlenmesi ve çözümünde yalnızca hukuki mekanizmalar değil, aynı zamanda teknolojik takip, bilinçlendirme ve uluslararası düzenlemelerin uyumu da hayati önemdedir. Düzenlemeler ve alternatif uyuşmazlık çözüm süreçleri yürürlüğe konmuştur. Ancak, hala İnternet alan adlarının gelişimi devam etmektedir ve ayrıca blockchain ve yapay zeka gibi yeni teknolojilerin gelişimi de devam etmektedir. Bu gelişmeler nedeniyle yeni düzenlemeler uygulanabilir. Alan adları artık yalnızca birer internet adresi değil, aynı zamanda ticari itibar, güvenilirlik ve rekabet gücünün

dijital temsili olarak kabul edilmektedir. Bu bağlamda, alan adı ihlalleriyle mücadele hem hukuki düzenlemeler hem de idari mekanizmalar açısından daha güçlü ve kapsayıcı araçlar gerektirmektedir. Gerek ulusal gerekse uluslararası düzeyde etkin, esnek ve teknolojiye uyumlu bir hukuk sisteminin inşası, bu alandaki en büyük ihtiyaçlardan biridir.

Anahtar Kelimeler: İnternet Alan Adları, WIPO, UDRP Kuralları, ICANN, Haksız Rekabet

ABSTRACT

Internet Domain Name Infringements Within the Framework of Unfair Competition Law and WIPO ICANN UDRP Procedure

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Master's Thesis, Department of Private Law

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In the rapidly evolving digital landscape, domain names serve as crucial identifiers to online presence for businesses and individuals. However, with the improvements of the internet, the occurrence of domain name infringements has become important specifically for the trademark and competition law. Due to improvements of the domain names type of infringements such as cybersquatting, typosquatting, domain grabbing etc. occur and these infringements effect business owners, trademark owners and consumers. Therefore, protection of the domain names and regulation regarding domain names have become crucial. For the protection of domain names, the TRABIS dispute resolution mechanism offers a practical process for resolving domain name conflicts, ensuring fairness, transparency, and legal compliance within Turkey's internet domain name system through arbitration. This paper aims to delve into the intricate relationship between domain names and unfair competition, trademark violations, and their implications on the competition. As online assets gain increasing importance, the intersection of intellectual property rights and the domain name system presents challenges that demand comprehensive analysis. Additionally, this study will scrutinize the effectiveness of the Internet Corporation for Assigned Names and Numbers (ICANN) Uniform Domain-Name Dispute-Resolution Policy (UDRP) procedure in addressing and resolving domain name disputes. Moreover, this paper aims to offer improvements for the regulations regarding domain names by examining National cases, WIPO cases and applications of Anti- cybersquatting Consumer

Protection Act (ACPA). Furthermore, this study states what kind of infringements may occur due to lack of regulation regarding blockchain domain names which is the future area of new domain names.

Keywords: Domain Names, UDRP Rules, ICANN, WIPO, Unfair Competition.

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LIST OF ABBREVIATIONS

ACDR:	Arab Center for Domain Names Dispute Resolutions Center
ACPA:	Anti- cybersquatting Consumer Protection Act
ADNDRC:	Asian Domain Name Dispute Resolution Centre
ADNDRC:	Asian Domain Names Dispute Resolutions
ADR:	Alternative Dispute Resolution
AI:	Artificial Intelligence
BDNS:	Blockchain Domain Name System
BTK:	Bilgi Teknolojileri ve İletişim Kurumu (Information and Communication Technologies Authority)
CAC:	The Czech Arbitration Court
ccTLD:	Country Code Top Level Domain Names
CIIDRC:	Canadian International Domain Names Dispute Resolutions Center
	Communication Authority
DNS:	Domain Name System
DRSP:	Dispute Resolution Service Provider
ENS:	Ethereum Name Service
EUIPO:	The European Union Intellectual Property Office
EURid:	European Registry for Internet Domains
EUTM:	European Trademark
FTP:	File Transfer Protocol
GDPR:	General Data Protection Regulation
gTLD:	Generic Top Level Domain Names
HTTP:	Hyper Text Transfer Protocol
IANA:	Internet Assigned Numbers Authority
ICANN:	Internet Corporation for Assigned Names and Numbers.
IP:	Internet Protocol
IPL:	Intellectual Property Law
MEB:	Milli Eğitim Bakanlığı (Turkish Ministry of National Education)
METU:	Middle East Technical University
NAF:	National Arbitration Forum

NFT:	Non-Fungible Token
NSI:	Network Solution Inc.
OECD:	Organisation for Economic Co-Operation and Development
PDDRP:	Post-Delegation Dispute Resolution Procedures
RDNH:	Reverse Domain Name Hijacking Provision
RDP:	Registration Data Policy
RIPE NCC:	RIPE Network Coordination Centre
RIPE:	Réseaux IP Européens
SLDs:	Second Level Domains
SMTP:	Simple Mail Transfer Protocol
TCC:	Turkish Commercial Code
TCO:	Turkish Code of Obligations
TCP:	Transmission Control Protocol
TCCP:	Turkish Code of Civil Procedure
TOBBUYUM:	Türkiye Odalar ve Borsalar Birliği UYUM Arabuluculuk ve Uyuşmazlık Çözüm Merkezi (The Union of Chambers and Commodity Exchanges of Turkey Dispute Resolution Center)
TRABIS:	TR Ağ Bilgi Sistemi (TR Network Information System)
TRIPS:	Trade-Related Aspects of Intellectual Property Rights
UDRP:	Uniform Domain Name Dispute Resolution Policy
URL:	Uniform Resource Locator
URS:	Uniform Rapid Suspension
WIPO:	World Intellectual Property Organization
WTO:	World Trade Organization
www:	World Wide Web
YÖK:	Yükseköğretim Kurulu (Council of Higher Education)

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FIGURE 1: Hierarchical Level of Domain Names

FIGURE 2: Number of All Websites & Active Websites on the Internet

FIGURE 3: Total WIPO Domain Name Cases Filed by the Year

INTRODUCTION

Today's developing technology has also brought about easier access to information and services. For this reason, it has become necessary for commercial enterprises to introduce and advertise their activities, goods and services, and to present their presence in the internet environment in order to be active in the business area. In fact, commercial enterprises have not only shown their presence in the internet environment but have also started to transfer many of their activities to the internet environment, aiming to increase their recognition in this new environment and to reach wider audiences and customers. For this reason, they are making direct sales and establishing structures that integrate their companies' assets more into the environment. In this case, e-commerce has helped develop and, together with many factors like this, the need for regulating this area has emerged. Every business has also had to obtain a domain name on the internet. International commerce has grown significantly in recent years. Online commerce is also growing significantly due to developments of internet. According to eMarketer, in 2023, The global e-commerce market is worth \$5.8 trillion.¹ Moreover, e commerce expecting to grow more in future years. Today, commercial enterprises that are trying to adapt to the digital world are trying to strengthen their presence in the virtual environment. In the internet environment, users can access the products and services of the enterprises by connecting to the enterprises' websites. For this reason, enterprises choose domain names to make it easier for users to access their own sites. Therefore, internet domain names carry economic value and can be bought and sold. CEO and founder of domain registration company GoDaddy.com, Bob Parsons stated that "the real estate of the 21st century, serving as both contract rights and intangible property."² Since the developing of the internet, domain names became very important and also protection of the trademark became important.

¹ Emily Carlson, "Ecommerce Statistics You Need to Know," *Forbes Advisor*, 2024, <https://www.forbes.com/advisor/business/ecommerce-statistics/>, accessed January 2, 2025.

² "Internet Domain Names: The New 21st Century Real Estate" (2007), <https://perma.cc/UZ2S-5QQS>, accessed November 11, 2024.

Therefore, because of the development of the internet domain names, unfair competition has been increased. After the 90ss, new trademark infringements and competition infringements has been occurred.³

Internet domain names are developing day by day and more and more enterprises are joining the Internet. All brands aim to register the domain names and expand their sales and marketing in this way. This situation can cause many problems. For example, another person may register the internet domain name that a someone else's trademark name or brand's name is in. In fact, they may even sell these domain names to the relevant trademark owners at high prices and earn income. Due to these developments, infringements in e commerce market are growing. It is essential for trademark owners to create websites to promote and advertise their brands. Since the development of the internet area, infringement on the domain names is becoming popular. Specifically, infringements through the trademark rights and competition law. It is argued in the doctrine that even if the domain name is identical to other names and signs due to the nature of the internet environment, it is a completely separate and independent means of identification.⁴ Also, registration process of domain names are important issue because in registration procedure of domain names, there is a principle that first come, first served. This principle causes infringements and unfair competition.

The increasing use of domain names has increased the number of disputes between trademark owners and domain name holders, which has necessitated the development of resolution process. Due to the increase in domain name infringements, there are both local and international measures to prevent infringements. The European Union (EU) has been taken actions since 2004 for prevent domain name infringements. The Agreement on Trade-Related Aspects

³ Berkman Klein Center for Internet & Society at Harvard University, *Brief History of the Domain Name System*, accessed December 2, 2024, <https://perma.cc/8L9T-LWAN>.

⁴ Sefer Oğuz, *İnternet Alan Adı Haklarının Korunması* (Ankara: Seçkin Yayıncılık, 2018), 25.

of Intellectual Property Rights (TRIPS) is established by World Trade Organization (WTO) for set up rules regarding Intellectual Property rights. In Turkish law, directives adopted to regulate internet such as Law on the Regulation of Electronic Commerce.

Thanks to Internet Corporation for Assigned Names and Numbers (ICANN), with the assistance of World Intellectual Property Organization (WIPO), has established policies in order to prevent disputes such as "Uniform Domain Name Dispute Resolution Policy (UDRP) and the Uniform Rapid Suspension Policy (URS) for specific generic top-level domains (gTLDs)".⁵ Due to the absence of a centralized regulatory body for domain names gave rise to infringements on the internet and this gave reason to establish of UDRP and URS policies.⁶ "The DNS serves as a crucial mechanism in this process, as it seamlessly converts alphanumeric domain names into numerical IP addresses⁷." Domain name has important role for the internet, helps advertising and branding. "While search tools are used to navigate to different websites, the value of domain names became important. Domain names enhance brand recognition, enable direct navigation, and play a pivotal role in search engine optimization."⁸ Moreover, due to domain names have unique combinations of alphanumeric characters. They enable to use the internet more easily. They simplify the access the websites instead of using complex IP addresses.⁹

⁵ Assafa Endeshaw, "The Threat of Domain Names to the Trademark System," *Journal of World Intellectual Property* 3 (2000): 323, accessed December 4, 2024, <https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1747-1796.2000.tb00130.x>.

⁶ Laurence R. Helfer, "International Dispute Settlement at the Trademark-Domain Name Interface," *Pepperdine Law Review* 29 (2002): 87, accessed November 4, 2024, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=265922.

⁷ Julien Chaisse and Danny Friedmann, "Law of the Digital Domain: Trademarks, Domain Names, and the AI Frontier," *The Law Review of the Franklin Pierce Center for IP* 64, no. 2 (2024): 403, , accessed March, 21, 2024. <https://www.wipo.int/wipolex/en/text/287556>

⁸ Stephen O'Neill, "The Core Aspects of Search Engine Optimisation Necessary to Move up the Ranking," *International Journal of Ambient Computing and Intelligence* 3, no. 4 (2011): 62-70, accessed 3 March, 2024, https://www.researchgate.net/publication/220497253_The_Core_Aspects_of_Search_Engine_Optimisation_Necessary_to_Move_up_the_Ranking.

⁹ Geoffrey S. Weil, "The Trademark Battle for Internet Domain Names," *Loyola Intellectual Property & High Technology Law Quarterly* 1 (1996-1997): 24.

Furthermore, domain names have function of identify the origin of the name. However, this situation led to disputes, especially between domain names and both registered and unregistered trademarks.¹⁰ Most importantly first come first served principle regarding the domain name registrations cause many disputes and infringements such as cybersquatting, typecasting, reverse hijacking etc. Therefore, establishing certain rules and policies both national and international for the registration procedure for domain name is crucial in order to prevent disputes regarding domain names and prevent unfair competition.

Additionally, in order to prevent domain name disputes, AI technology may play important role. For example, AI may analyze the disputes with the parallel of the UDRP and may enable to efficiency and accuracy for the dispute resolution process.¹¹ In cases where trademark rights are infringed through the use of a domain name, trademark owners may request a decision under the Uniform Domain Name Dispute Resolution Policy (UDRP) or may initiate legal proceedings before the competent courts. The regulatory framework of the UDRP was primarily inspired by the Paris Convention for the Protection of Industrial Property and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).¹² Not only, the Uniform Domain Name Dispute Resolution Policy (UDRP) enables to resolve disputes between domain name registrar and trademark name owners but also the UDRP has contribution for the development of the domain name systems and trademark rights.¹³ With the new developments of the blockchain system, there may be new contributions to

¹⁰ Jessica Litman, "Commentary: Trademark Law and Domain Names," *International Intellectual Property Law & Policy* 6 (2001): 22–2 accessed 3 March, 2024, https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2259&context=faculty_scholarship

¹¹ Gus Agus et al., "The Use of Artificial Intelligence in Dispute Resolution Through Arbitration: The Potential and Challenges," *SASI* 29, no. 3 (2023): 570–78, accessed March 21, 2024, https://www.researchgate.net/publication/374112308_The_Use_of_Artificial_Intelligence_in_Dispute_Resolution_Through_Arbitration_The_Potential_and_Challenges.

¹² Julien Chaisse and Cristián Rodríguez Friedmann, *Law of the Digital Domain* (2024), 408, accessed January 2, 2025, https://law.unh.edu/sites/default/files/media/2024-03/chaisse0friedmann_publication_law-of-the-digital-domain.pdf.

¹³ Jonathan O. Nilsen, Mixing "Oil with Water: Resolving the Differences between Domain Names and Trademark Law", 1 *J. HIGH TECH. L.* 47, 55 (2002).

domain name regarding registration process of domain name and protection of the domain names due to blockchain systems helps to enhance security and transparency in domain name process. Also, artificial intelligence (AI) may have contributions to registration and protection of domain name. AI may help to prevent infringements such as cybersquatting, trademark rights infringement and prevent unfair competition through domain names and help resolve of disputes.¹⁴

For the protection of domain names and registration of domain names there has been establishment of policies both in national and international area. Regulations and alternative dispute resolution processes have been enacted. However, there is still development of Internet domain names and also there is development of the new technologies such as blockchain and artificial intelligence. Due to these developments there shall be exist may implementation of new regulations.¹⁵

In this study, which examines Internet domain name infringements within the scope of unfair competition law, the focus is primarily placed on the aspects of unfair competition specific to domain names. Within this framework, particular attention is given to the types of unfair competition arising from domain name infringements. The study addresses the consequences of economic activities and competitive behaviors that have evolved in parallel with the development of the Internet, from the perspective of unfair competition. It emphasizes the most common forms of unfair competition encountered in practice as a result of domain name infringements. It should be noted that the acts of unfair competition involving domain names discussed within the scope of this thesis are not exhaustive, as they are subject to continuous change in line with technological advancements. In particular, the emergence of blockchain

¹⁴ Chaisse and Friedmann, "Law of the Digital Domain, 412.

¹⁵ AIContify team, *A Journey Through Domains: Exploring the Fascinating History*, AICONTIFY (Nov. 6, 2023), accessed March 5, 2024. <https://perma.cc/M8MD-LCPQ>

technology may lead to new forms of unfair competition committed through blockchain-based domain names.

I. Aim and Scope

This thesis aims to examine the type of infringements of domain name disputes which cause unfair competition, and examine international dispute resolution mechanisms, particularly under the UDRP policy and Turkey's dispute resolution service providers procedure which is regulated under the Internet Domain Name Regulation. Also, the study will examine potential improvements for this dispute resolution mechanism. It will focus on international regulations, particularly the role of WIPO in enforcing domain name protections and ensuring fair competition. Additionally, the research will examine the applicability of UDRP principles in different jurisdictions and propose solutions to enhance the effectiveness of existing frameworks.

II. Problems and Key Research Questions

1. What are the types of domain name infringements?
2. The Role of the UDRP in Resolving Domain Name Disputes Arising from Unfair Competition?
3. How does ACPA regulates resolving process of domain name disputes, and what are the similarities and differentials with the UDRP system?
4. How effective is Turkish DRSP procedure in resolving domain name disputes, and what are its differences from the UDRP and ACPA frameworks?
5. How can the integration of UDRP and ACPA principles improve the effectiveness of Turkey's DRSP procedure in resolving domain name conflicts?
6. What improvements are needed in Turkish Regulations for domain name dispute resolution mechanisms and prevent unfair competition as well as protect intellectual property rights?

7. What are the Blockchain Domain Name System and what are the future challenges?

III. Overview and Contribution

This thesis aims to provide a comprehensive examination of domain name disputes regarding unfair competition, examine Uniform Domain-Name Dispute-Resolution Policy (UDRP), the Anticybersquatting Consumer Protection Act (ACPA), and Turkey's dispute resolution service providers procedure. In addition to analyzing these dispute resolution frameworks, this research will delve into Turkish legal regulations on domain names and the increased concerns regarding cybersquatting, a form of unfair competition in which individuals or entities register domain names in bad faith to profit from the goodwill of established trademarks. The thesis also explores the potential future of domain name systems with the emergence of Blockchain Domain Name Systems (BDNS). These decentralized systems promise to offer a more secure and transparent alternative to traditional domain name management, raising new questions regarding governance, legal protections, and fair competition. The contribution of this study lies in its integration of multiple legal perspectives: comparing international dispute resolution mechanisms such as UDRP and ACPA with Turkey's domestic framework dispute resolution service providers, examining the type of infringements such as cybersquatting and typosquatting, etc. Also, examine legal challenges introduced by blockchain-based domain names. This research aims to suggest improvements for domain name dispute resolution processes, suggesting potential reforms in Turkish law, and suggest improvements regarding blockchain technology

IV. The Importance of the Study

Domain names are important in modern economy, they are important for not only because of their identifier character for trademarks but also important for businesses in the internet area. The growing phenomenon of cybersquatting, where individuals or organizations register domain names that are identical or confusingly similar to trademarks in bad faith, has raised significant concerns about the protection of intellectual property and fair competition. These practices can result in lost revenue, brand reputation damage, and legal costs for businesses. Given the rapid expansion of the digital economy, the protection of domain names and the resolution of domain-related disputes are becoming increasingly important to businesses and consumers.

Also, this thesis, aim to provide policy recommendations that may enable to strengthen the legal regulations for domain names both in Turkey and internationally.

V. The Planned Structure of the Research

Section 1 aim to outline the background of research and scope with the details of domain name system such as legal nature of domain names, importance of domain names and regulations regarding domain names. Section 2 examines literature review and case law and analyze the basics of unfair competition through domain name infringements. Highlighting types of infringements with the case laws through WIPO panels, Turkish Court of Cassation Decisions and US Court of Appeals decisions.

Section 3 examines liability and type of protection of domain names. Evaluate national dispute resolution mechanism as well as with the WIPO UDRP process. Also, evaluate different legal approaches with the different jurisdictions such as WIPO- UDRP, ACPA, and Turkish Commercial Code, Turkish Electronic Communications Law No. 5809 and Internet Domain Name Regulation Law No:

27752. Finally in conclusion summarizing findings and highlight the gaps in the law and propose legal improvements.

VI. Research Methodology

This thesis adopts legal research and doctrinal analysis. Primary sources such as WIPO decisions, Guides, UDRP Policies, The ACPA rulings, Turkish Commercial Code, Turkish Electronic Communications Law No. 5809 and Internet Domain Name Regulation Law No: 27752 will be examined alongside secondary sources, such as academic research articles, case law, and legal commentaries. Moreover, a comparative legal analysis will be conducted to examine how different jurisdictions regulate domain name disputes and to identify recent regulatory developments in this area. Additionally, Official numerical data on domain name disputes will be examine and case studies of significant domain name disputes will be analyzed to illustrate key legal challenges and trends.

FIRST SECTION

1.DOMAIN NAME AND DOMAIN NAME SYSTEM (DNS)

1.1. Definition of Domain Name

In many parts of the world, the internet still functions over existing telephone lines. In addition, fiber cables and satellite infrastructure are laid under the ocean. Thanks to these lines, countries are connected to each other via the internet network and communication is possible in all around the world. The Internet has a structure consisting of servers and web clients. Servers, serve other machines and work in direct connection to the internet. There is different type of servers such as e-mail server, data server and web server. All servers have a fixed internet protocol, IP address. Also, IP addresses establish a connection between computers. Computers used at home are connected to the internet via an internet service provider, but not directly. A wireless internet connection is used. For this reason, computers at home are called system servers. With the internet service provided by the service provider, the computer is connected to the IP address of the server, and this allows the user to access the internet.¹⁶ The domain name system is a system that facilitates communication between computers connected to the internet. Each computer connected to the internet has an IP address that specifies its address and a domain name known to users. The domain name system bridges the gap between IP addresses and the internet domain name.

Every computer has an identifying internet protocol address (IP). A domain name system (DNS) has been established to match domain names with IP addresses. "This system acts as a guide to get users where they want to go on the Internet."¹⁷ Basically, domain names are an easy way of representing IP

¹⁶ Selminaz Adıgüzel, *E-Ticaret Sosyal Medyada Dijital Pazarlama: Mevzuat ve Uygulama Örnekleri* (Istanbul: Legal Yayıncılık, 2023), 3.

¹⁷ L. Bygrave, *Internet Governance: Infrastructure and Institutions*, 1st ed. (Oxford: Oxford University Press, 2009), 149.

numbers. Domain names are symbolic addresses used to easily remember IP numbers, which are the identification numbers of connected devices on the Internet.¹⁸ Basically, domain name is the name that identifies the internet protocol number used to define the address of computers or websites on the internet.¹⁹

Electronic Communication Law No. 5809, Article 3, paragraph v defines internet domain names. According to this article, “refers to the names that describe the internet protocol number used to determine the address of computers or Internet sites located on the Internet.” Also, Regulation of Internet Domain Names article 3/d defined Internet domain name, as a “names that describe the Internet protocol address used to determine the address of computers or Internet sites located on the Internet. Moreover, the domain name system is defined in the Article 3, paragraph 1, subparagraph y of the Electronic Communication Law No. 5809. According to this article, the domain name system is defined as “the system that finds the corresponding internet protocol number and gives it to the user in the addressing made with symbolic names that are easy to read and keep in mind and that can generally be associated with the owners of the address.” A similar definition is made in the internet domain names regulation. According to this regulation, “the internet domain name system is the system that finds the corresponding Internet protocol address and gives it to the user in the addressing made with symbolic names that are easy to read and keep in mind and that can be associated with the address owners who are generally searched.”²⁰

According to US Lanham Act, which is an Act for trademark registration process, section 45 stated that “The term “domain name” means any alphanumeric designation which is registered with or assigned by any domain

¹⁸ Zeynep Yasaman, *İnternette Marka Hakkının İhlali* (Ankara: Seçkin Yayıncılık, 2020), 122.

¹⁹ Mehmet Bedii, *İnternet Hukuku* (İstanbul: Onikilevha Yayıncılık, 2021), 18.

²⁰ Regulation on Internet Domain Names,” Official Gazette of the Republic of Turkey, No. 27752, November 7, 2010.

name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.”²¹

1.2. Explanation of the Domain Name System

Domain name systems (DNS) enable to users to have an easy access to web sites. “DNS is the system that allows users to “refer to web sites and other resources using easier- to-remember domain names (such as “www.icann.org”) rather than the all-numeric IP addresses (such as “192.0.34.65”) assigned to each computer on the Internet.”²²

There are different levels of domain names. At the highest level there is the root domain. “Technically, the root domain is the highest hierarchical level of the Internet, even above top-level domains such as “.com” and “.net”.”²³

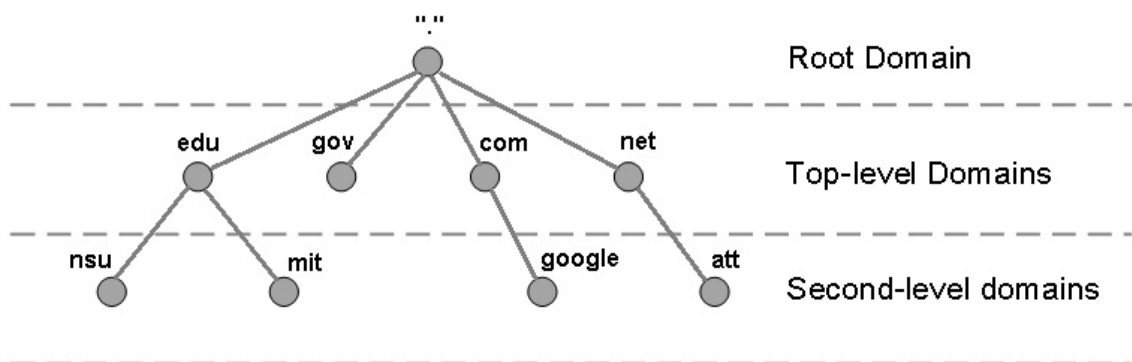


Image source: <https://raventools.com/marketing-glossary/root-domain/>

After the root domain name there is top-level domain” (“TLD”) such as like “.com”, “.net”, “.us” etc. TLDs have various types such as generic TLDs

²¹ 15 U.S. Code § 1127 – Construction and Definitions; Intent of Chapter, accessed March 2, 2025, <https://www.bitlaw.com/source/15usc/1127.html>.

²² ICANN, "Top-Level Domains," ICANN Archive, accessed March 27, 2025, <https://archive.icann.org/en/tlds/>

²³ Raven Tools, "Root Domain," Raven Tools Marketing Glossary, accessed March 27, 2025, <https://raventools.com/marketing-glossary/root-domain/>

("gTLDs") which is most used global domain names, they have no territorial limits, it can be use from everywhere such as (.com, .net, and .org). Also, there is country code top-level domains ("ccTLDs") which is designated for a particular country for use to service in their area. ccTLDs such as (.uk, .tr, etc.) ccTLDs usually do not available for registration by another country.²⁴ Second-level domains usually identify or differ business. For example, medeniyet in the domain name of "https://medeniyet.edu.tr" is the second level domains.²⁵ Moreover, there can be subdomains such as third- level, forth-level, etc. domain names that usually enable to navigate different sections of a website ²⁶ and subdomains located in the left of the second-level domain name For example, hukuk in the website of "https://hukuk.medeniyet.edu.tr/tr" is the third level domain name that located in the left of the second level domain name.

The network consists of websites, which are information content presented in a common HTML format by many computers connected to the Internet.²⁷ Every computer connected to the internet needs an address. Every site connected to the internet therefore has an address. These addresses consist of numbers and these numbers are simply called internet protocol addresses. The domain name system is a system that finds the internet protocol address that is easy to remember and can generally be addressed with symbolic names related to the owner of the address being searched and shows the relevant site to the user.²⁸ A domain is the name and address of a website on the Internet. Without this address, an internet user can only access a website by its IP address. Domain names are a simplified and worded form of the number system called IP address, which allows the

²⁴ Gilson LaLonde, Gilson on Trademarks § 7A.02 (2023), quoted in Vera Glonina, "Back to the Future with Blockchain Domain Names: Toward a Global Policy to Fight Cybersquatting in Web 3.0," The Trademark Reporter 114, no. 4 (July–August 2024): 592

²⁵ Gilson, Gilson on Trademarks § 7A.02, quoted in Glonina, "Back to the Future, 592.

²⁶ Colleen Branch, "What Is a Subdomain? Definition & Examples," Namecheap Blog, August 24, 2020, accessed March 22, 2025, <https://www.namecheap.com/blog/what-is-a-subdomain-dp/>.

²⁷ Füsün Nomer, "İnternet Alan Adının Hukuki Niteliği ve Marka ve Ticaret Unvanı gibi Ayırt Edici Ad ve İşaretler ile Arasındaki Benzerlik Bulunması Sebebiyle Doğabilecek Hukuki Sorunlar," Prof. Dr. Hayri Domaniç'e 80. Yaş Günü Armağanı, (İstanbul: Beta Yayıncılık, 2001), 396.

²⁸ Miyale Tanla Özen, *Haksız Rekabetin Elektronik Ortamda Görünüş Biçimleri* (İstanbul: On İki Levha Yayıncılık, 2023), 81.

servers of computers to recognize each other. Uniform Resource Locator (URL) is a string of characters in a standard format that corresponds to a resource on the Internet, such as an image, text, or music.²⁹ Basically, URL is all characters that appear in the address bar.

Domain names typically consist of two hierarchical components: the Top-Level Domain (TLD) and the Second-Level Domain (SLD). TLDs are further classified into generic top-level domains (gTLDs), such as '.com' or '.org', and country code top-level domains (ccTLDs), such as '.tr' for Turkey. These components are separated by dots. For example, in the domain name '<https://medeniyet.edu.tr/tr>', 'edu.tr' is the TLD, while 'medeniyet' is the SLD.

“Top-level domains are divided into three categories: generic genetic top-level domains (gTLDs), country-coded domains (ccTLDs) and. arpa.”³⁰ “Top level domains that end with two letters are called country coded top level domains. Top-level domains consisting of three or more characters are called generic top-level domains. “.arpa” is used for technical infrastructure.”³¹ Top level domain names are formed by combining two parts: “generic top level domain name” and “country code top level domain name”.³² Generic top level domain name indicates the field of activity. Country code top level domain name indicates the country to which the domain name belongs. Generic first-level domain names such as” com “, ”org“, ”gov“,” edu“ show the abbreviated name of the sector to which it belongs in English. Country code domain names show the abbreviated name of the country from which the domain name was taken. The second level domain names consist of the phrase chosen by the domain name owner.

²⁹ Bedii, *İnternet Hukuku*, 20.

³⁰ D. Lindsay, *International Domain Name Law: ICANN and the UDR* (Portland, USA: Hart Publishing, 2007), 9.

³¹ Zeliha Karaman, *İnternet Alan Adı Uyuşmazlıkları ve Çözüm Yolları: Karşılaştırmalı Bir Analiz* (Ankara: Seçkin Yayıncılık, 2017), 28.

³² Yasaman, *İnternette Marka Hakkının İhlali*, 125.

The second-level domain name is the part that sees the main distinctiveness. If the second-level domain name is separated from each other by dots, then 3. level and 4. level domain names would be formed. Second level domain names are the part of the top-level domain name that is located to the left of the domain name, which distinguishes the domain names from other domain names and can be freely chosen and registered.³³ For this reason, the subject of disputes arising from trademark infringement are second level domain names.

Furthermore, Root domain name is the name of a domain name in its entirety. In the event of a dispute regarding a domain name; terms of unfair competition discussions will be on the second-level domain name and the root domain name. In addition, the evaluation of similarity or misuse between a trademark, domain name or sign is made by looking at the second-level domain name. Second-level domain names can only be registered once by the registry authority and technically the same second-level domain name cannot be registered a second time.³⁴

“Internet protocols” are needed to transmit information on a computer. TCP/IP (Transmission Control Protocol/ Internet Protocol) is a data communication protocol that provides organization for transmitting and receiving data on our computers. It provides data communication between computers. FTP (File Transfer Protocol), SMTP (Simple Mail Transfer Protocol), TELNET are examples of these. “www” is called HTTP (Hyper Text Transfer Protocol), which enables the transmission of link objects to each other on the internet. “www” is a subdomain name.³⁵ Each computer connected to the Internet has its own unique address. The so-called Domain Name System (DNS) gives names to computers and computer systems connected to the Internet. DNS is also a TCP/IP service protocol. DNS allows all Internet-connected entities, called hosts, to be grouped locally in a tree structure. This way, all addresses do

³³ Kahraman, *İnternet Alan Adı Uyuşmazlıkları*, 32.

³⁴ Özen, *Haksız Rekabetin Elektronik Ortamda Görünüş Biçimleri*, 84.

³⁵ Adıgüzel, *E-Ticaret Sosyal Medyada Dijital Pazarlama: Mevzuat ve Uygulama Örnekleri*, 5.

not need to be defined everywhere. A website is a collection of documents that includes all the pages on the web, text, images and animations that provide information or services to its visitors. Visitors access a website using a unique address that is made up of a combination of elements from the HTTP or HTTPS protocols.³⁶ A domain name can consist of the owner's real name, the name of his brand, or a business entity. Domain names with .tr extension, which is Turkey's country domain name, are managed and allocated by “*Bilgi Teknolojileri ve İletişim Kurumu*/ Information Technologies and Communication Authority” (BTK).³⁷ Domain names can be allocated for a maximum of five years. A domain is the address of a website on the internet. Domains that start with www. and have extensions such as .com, .net or .org at the end, technically consist of a DNS address.

Domain names are generally allocated to registrants on a first-come, first-served basis. During the registration process, the applicant is required to confirm that the chosen domain name does not infringe upon the rights of third parties and to agree to the terms of the Uniform Domain Name Dispute Resolution Policy (UDRP) in the event of a dispute. This commitment is contractually embedded in the registration agreement, particularly for generic top-level domains (gTLDs) under ICANN's authority.

1.3. Domain Name Institutions

The Network Solutions, Inc. (NSI) is the “the registration authority for the top-level domain name “.com””. NSI established a “thirty days letter” policy that if the trademark rights owner inform NSI would deactivate the registration of that domain name in 30 days. Because of this principle, trademark name owners had benefit even though there is no trademark infringement. Therefore, “many domains name registrar whose domain names were deactivated, according to the

³⁶ Adıgüzel, *E-Ticaret Sosyal Medyada Dijital Pazarlama*, 6.

³⁷ BTK Akademi, “Hakkımızda,” accessed April 22, 2025, <https://www.btkakademi.gov.tr/portal/public/hakkimizda>.

NSI's "thirty days letter" policy, filed a suit against the NSI."³⁸ Many domain name registrars won the cases and because of this situation NSI changes their "thirty days letter" policy. "The responsibility of assigning domain names was previously managed by a Network Solutions, Inc. (NSI)."³⁹ There have been many disputes regarding domain name registration process. Many people were applying for registration of same domain name and this was causing conflicts. Because of this situation, NSI established the 'first come, first served' principle.

Internet Assigned Numbers Authority (IANA) had managed the domain name registration process. Then, ICANN managed the process for registration of domain names. "Since then, ICANN has been leading the management and oversight of the domain name registration process, and domain names governed by ICANN can be described as "ICANN-coordinated"."⁴⁰

1.4. Registration of Domain Names:

Domain names are allocated by Network Solution Inc (NSI) in the USA, which works under the sponsorship of the National Science Foundation, and internet protocol addresses have been provided by the Internet Assigned Numbers Authority (IANA) in the USA since 1997. In the European Union, domain name allocation is carried out by Réseaux IP Européens (RIPE). In Turkey, it has been provided by METU since 1991, and in 2019, the authority to allocate domain names was transferred to the Information Technologies and Communication Authority. Registration of generic top-level domains are managed by organizations authorized by ICANN. Country-coded domain names registrations are managed by national competent registration authorities.

Domain names are subject to two types of naming systems. Country codes are given by the authorized institution of each country because they indicate belonging to the country. Domain names that do not contain a country code and

³⁸ Ahmet Galip Kaplan, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri* (İstanbul: On İki Levha Yayınları, 2020), 20.

³⁹ Kaplan, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri*, 20.

⁴⁰ Alain Durand, *Challenges with Alternative Name Systems* (ICANN, April 27, 2022), Accessed 23 March, <https://www.icann.org/en/system/files/files/octo-034-27apr22-en.pdf>.

only contain a code indicating the nature of the domain name owner (generic Top Level Domain Name-gLTD) can be obtained by anyone anywhere in the world by applying to any organization that gives domain names.⁴¹ These domain names are used all over the world. A business can use both a geographical top level domain name and a world-wide top level domain name together. This method is usually followed by companies that operate in many countries and are recognized in the international arena.⁴² For registration of ccTLD, registration requirements and registration procedures may differ from country to country.

The TRABIS (TR Network Information System) is the technical infrastructure operated by the Information and Communication Technologies Authority (BTK) for managing domain names under the '.tr' country code top-level domain (ccTLD). According to Article 3 of the Internet Domain Names Communiqué⁴³, TRABIS is responsible for ensuring the operation of the '.tr' domain name system and its central database, maintaining the domain name directory, and providing guidance services. While the delegation of ccTLD management is coordinated by ICANN through the Internet Assigned Numbers Authority (IANA), the national administration is determined by each country. In Turkey, the Middle East Technical University (METU) served as the authorized domain name registrar for many years. However, with the enactment of the current Communiqué, this responsibility has been officially transferred to BTK.

Article 8 of the Internet Domain Names Regulation⁴⁴ regulates the allocation of domain names. According to this article, it is possible to allocate a domain name using two methods, with or without documentation. According to Paragraph 2 of Article 8 of the Regulation on Internet Domain Names, the 'first come, first served' rule applies to the allocation of domain names that do not require supporting documentation. At the same time, it has been arranged that

⁴¹ Özen, *Haksız Rekabetin Elektronik Ortamda Görünüş Biçimleri*, 84.

⁴² Tekin Memiş, "İnternette Cins ve Meslek İsimlerinin Alan Adı Olarak Kullanılması ve Ortaya Çıkan Hukuki Sorunlar," *Ankara Üniversitesi Erzincan Hukuk Fakültesi Dergisi* 4, no. 1-2 (2000): 466.

⁴³ Published in Official Gazette No. 31730, dated 20 September 2021.

⁴⁴ Regulation on Internet Domain Names," Official Gazette of the Republic of Turkey, No. 27752, November 7, 2010.

the determination of the first applicant will be based on the applicant's registration when his application reaches TRABIS. According to Article 8/3 of the Internet Domain Names Regulation, Certified domain name allocation is the allocation made as a result of submitting the relevant information and/or documents to the Registration Board by the applicant and delivering this information and/or documents to TRABIS. It has been regulated in the annex of the Internet Domain Names Regulation which are the domain names allocated with the certificate: “.av”, “.waist”, “.dr”, “.edu”, “.gov”, “.pol”, “.tsk”, “.kep”. The “first come first” policy applies to domain names that do not belong to any country. The person who wants to get the domain name does not need to submit a proof document indicating that he has a connection with this domain name.

The domain name has a registration-based use. In this case, a registration agreement is needed, and the domain name maintains its existence during the term of this agreement. In this respect, it is similar to a domain name registration agreement or license agreement. However, domain names differ from a registration agreement and a license agreement at a very important point. Namely, the person or organization that registers does not own the domain name before the registration agreement is established and does not even have any rights over the domain name. These people or institutions and organizations only have the function of acting as an authority that approves the person who requests the registration of that domain name so that it can be used by that person.⁴⁵

1.5. The Legal Nature of the Domain Names

In the past, domain names have been likened to telephone numbers or addresses. However, in the WIPO report of 1999, it was stated that domain names point to a person or a brand. The view that domain names are phone numbers or addresses is a thing of the past. Today, domain names are increasingly regarded as distinctive identifiers, similar to trade names, business names, or trademarks, especially when they are used in commercial contexts. In many legal systems, including Turkish law, the legal nature of domain names may vary depending

⁴⁵ Neval Okan, *Ağ Reklamları ve Haksız Rekabet* (Ankara: Seçkin Yayıncılık, 2011), 93.

on their usage and the relevant national framework.⁴⁶ According to decisions of the Turkish Court of Cassation, domain names may be considered assets with economic value and subject to legal protection, particularly where they are used to identify and distinguish commercial entities. When a domain name corresponds to a registered trademark, it benefits from protection under the Industrial Property Law (IPL). In cases where it functions as an unregistered trademark, protection may be afforded under the provisions on unfair competition in the Turkish Commercial Code (TCC).

1.6. Importance of Domain Names on The Internet

Since the development of the Internet, many websites and internet domain names have been created. With the January 2025, there are 1,161,445,625 websites and 194,973,562 of websites are in an active position. Most used top level domain name is “.com” with the approximately 154.6 million domain name registrations. There has been a dramatic increase in the registration of domain names over the years.⁴⁷

Year	All Websites	Active Websites
2025	1,161,445,625	194,973,562
2024	1,079,154,539	192,375,760
2023	1,132,268,801	202,900,724
2022	1,167,715,133	198,988,100
2021	1,197,982,359	199,533,484
2020	1,295,973,827	189,000,000
2019	1,518,207,412	182,185,876
2018	1,805,260,010	171,648,771
2017	1,800,047,111	172,353,235
2016	906,616,188	170,258,872
2015	876,812,666	177,127,427
2014	861,379,152	180,067,270
2013	629,939,191	186,821,503
2012	582,716,657	182,441,983
2011	273,301,445	101,838,083
2010	206,741,990	83,456,669

⁴⁶ Zeynep Yasaman, *Türk ve Avrupa Birliği Hukukunda İnternette Marka Hakkının İhlali* (İstanbul: Onikilevha Yayıncılık, 2020).

⁴⁷ Table of figure sources by: <https://siteefy.com/how-many-websites-are-there/#How-Many-Websites-Are-Created-Every-Day>,

Because of a registry of an incredible number of domain names lead to use of trademark rights. Using trademark names as a domain name buy the third parties caused trademark rights infringements through domain names and unfair competition through domain names.

If consumers want to access the relevant thing on the internet for reasons such as having information about the products they want to purchase or service they want to receive, they need to type the relevant domain name. However, if the domain name is not known, it is possible for the consumer to reach the desired website by typing the trademark name or the name of the relevant company into a search engine or by trial and error. In Article 15 of the Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS), has assumed the role of distinguishing the product and its source in the internet environment by the domain name.⁴⁸ Due to this situation, almost, all companies register their titles or trademark name as domain names. If a trademark is registered by someone else before being registered as a domain name by its owner, the consumer who wants to reach the website of relevant trademark actually encounters another web page under the domain name of the same trademark name, and this situation opens the door to various problems such as unfair competition, violation of consumer rights and infringement of trademark rights.

According to the Article 1524 of the Turkish Commercial Code No. 6102 which is amended in 2012, "Capital companies subject to audit in accordance with the fourth paragraph of Article 397 shall open a website within three months from the date of registration of their establishment in the trade registry and shall allocate a certain section of this website to the publication of announcements that are required by law to be made by the company." In this way, companies subject to independent external audit have been required to create a website. Therefore, many companies have chosen to register the necessary domain name for the

⁴⁸ Mustafa Gençer, "Markanın İnternet Ortamında Alan Adı (Domain Name), Yönlendirici Kod (Metatag) veya Anahtar Sözcük (Keyword) Olarak Kullanılması Sonucu Oluşabilecek Marka İhlallerinin İncelenmesi" (Thesis, T.C. Patent Enstitüsü Markalar Dairesi Başkanlığı, 2014), 43.

website they will open by writing their trade name or brand. Also, this situation has strengthened the connection between domain names and the brand or trade name.⁴⁹

Today, enterprises choose their trademark name as a domain name for able to benefit from the recognition of this trademark name and announce and advertise their own goods and services to a consumer. If the registered and unregistered trademarks used as a domain name by the third parties, they can unfairly economically benefit from it. Therefore, protection of domain name become extremely important, and to protect the rights of both trademark owners and consumers, preventive regulations should be accepted for the use of someone else's trademark name in domain names. On the other hand, ICANN's 'first-come-first-served' approach to domain name allocation has led to many disputes, and international organizations have implemented dispute resolution service providers to resolve disputes.

1.7. Domain Name Regulations

1.7.1. Domain Names and Turkish Law

In Turkey, the legal framework for domain names is primarily governed by secondary legislation, including the Regulation on Internet Domain Names and the related Communiqués issued by the Information and Communication Technologies Authority (BTK). While the Electronic Communications Law No. 5809 grants general regulatory authority to BTK, it does not directly regulate the substantive rules concerning domain names. "The Electronic Communications Law defines the domain name system as "the system that finds the corresponding internet protocol number and gives it to the user in addressing made with symbolic names that are easy to read and remember and can be associated with the address owners that are generally searched for⁵⁰." Law No.

⁴⁹ Merve Ayşegül Kulular, "Markanın Alan Adı Olarak Kullanılması: Türkiye, ABD ve Avustralya Örnekleri," *Bilişim Hukuku Dergisi* 29, no. 3 (2024): 570-78, accessed January 2, 2025, <https://dergipark.org.tr/tr/download/article-file/775044>.

⁵⁰ Electronic Communications Law No. 5809

5809 gives the Ministry of Transport and Infrastructure of the Republic of Turkey the duty and authority to determine the strategies and policies regarding internet domain names, the institution or organization that will allocate internet domain names, and the procedures and principles regarding domain name management, while giving the Information Technologies and Communication Authority ("BTK") general authority in cyber security and internet domain names. TR Domain name was managed by Middle East Technical University ("METU") under the name Nic.tr with the authorization of ICANN and the rules regarding the allocation of TR domain names were regulated according to TR Domain Names Policies, Rules and Operation Rules. However, a new regime was introduced in 2022 in accordance with the Internet Domain Names Regulation and Internet Domain Names Dispute Resolution Mechanism Communiqué published by the Ministry of Transport and Infrastructure. According to Temporary Article 1 of the Internet Domain Names Regulation, it was decided that the METU would transfer the operation of the NIC.TR system to the Information and Communication Technologies Authority (BTK). Consequently, the management of the '.tr' country code top-level domain would be conducted entirely through the TRABİS operated by BTK."

The Internet Domain Name Regulation defines the persons who register domain names as "domain name owners" and according to this regulation, domain name owners have rights and obligations. According to Article 21 of the Internet Domain Name Regulation, the domain name owner has the right to use the domain name for the duration of the allocation period, renew the domain name allocation, waive the domain name, and change the registrar from which they receive service. Article 22 of the TR Regulation imposes obligations on the domain name owner. According to the provision in question, the domain name owner is obliged to comply with the relevant legislation, provide complete and accurate information to the registrar, immediately notify the registrar from whom they receive service of any changes in this information, not violate the rights of third parties, and take the necessary actions after being informed in cases of mandatory transfers between registrars. The protection of the rights of

third parties has been accepted as a fundamental principle in subparagraph (ğ) of the first paragraph of Article 4 of the Internet Domain Name Regulation. Domain name owners are also obliged not to violate the rights of third parties. Also, Article 7. Registrars are obliged to inform domain name registrants in general about the legal consequences of actions such as providing false information and violating the rights of third parties during the application process. Similarly, individuals are required to declare and undertake during the application process that they will not violate the rights of third parties, will not use the domain name in an unlawful manner, and that these actions will not create any rights in their favor in the event of cancellation or waiver.

1.7.1.1. “.tr” Domain Name

Some domain names under the '.tr' country code top-level domain (ccTLD) are registered on a first-come, first-served basis, while others require the submission of supporting documents for registration. According to Internet Domain Name Regulation Law No: 27752, “.av” Lawyers, law firms, and law partnerships; “.bel” Municipalities registered in the Ministry of Interior; “.dr” Medical doctors, doctor partnerships; “.edu” Higher education institutions recognized by the Council of Higher Education (YÖK); “.gov” Public institutions and organizations; “.pol” General Directorate of Security and units within it; “.k12” Ministry of National Education (MEB), pre-school education institutions, primary school, high school and equivalent educational institutions affiliated with MEB or approved by MEB, and organizations such as private nurseries, daycare centers, and private children’s clubs approved under the relevant legislation of the Ministry of Family, Labor and Social Services; “.tsk” Units within the Turkish Armed Forces; “.kep” Registered Electronic Mail Service Providers authorized by BTK are among the domain names allocated with a document. Domain names with the “.tr” extension other than these are allocated

on a first-come, first-served basis. Domain names can be registered for a minimum of one and a maximum of five years at a time⁵¹.

Considering the importance of the use of the Internet as a basic information access and communication medium in all areas of life in Turkey and the uninterrupted provision of digital services in the transformation into an information society, Law No. 5809 has introduced a special exemption for domain names. According to Article 34 of the Law titled 'Non-seizability and continuity of communication services', usufruct and usage rights and operator authorizations such as internet domain names cannot be seized in any way. According to Article 13 of the Internet Domain Name Regulation, domain names may be sold or transferred, subject to the procedures established by the relevant authorities. Furthermore, in cases such as death, absence, or presumed absence of natural persons, domain names may be transferred to their legal heirs. The

WHOIS service for the '.tr' domain is operated by the Information and Communication Technologies Authority (BTK) through the TR Network Information System (TRABİS), providing informational and directory services to the public.⁵² With the entry into force of the Personal Data Protection Law No. 6698, the rules regarding guide services have also been revised. According to the third paragraph of Article 29 of the Internet Domain Names Dispute Resolution Mechanism Communiqué, the personal data of real person domain name owners will only be published in the guide with their explicit consent. If the domain name owner does not give explicit consent, the above-mentioned information will not be included in the guide. On the other hand, all information of domain name owners who are not real persons will be published in the guide without their explicit consent. According to the third paragraph of Article 29 of the Internet Domain Name Regulation, the registry institution is obliged to determine an anonymized e-mail address to be published in the e-mail address

⁵¹ Internet Domain Name Regulation Law No: 27752

⁵² Mehmet Bedii Kaya, İnternet Alan Adı (Domain) Uyuşmazlıklarının Çözümünde Alternatif Yöntemler: UDRP, ÜRS ve TRABİS Karşılaştırması, *Journal of Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları* 27, no. 2 (December 2021): 1476.

field in the directory and to notify this to the domain name owner and TRABİS. E-mails sent to this address will be forwarded to the e-mail address of the domain name owner by the registry institution. Article 29 of the TR Regulation also introduces an additional measure regarding the protection of personal data. In order to prevent the misuse of personal data as a result of the publicity of this data in the directory, persons making inquiries in the directory will undertake not to use the information they obtain for purposes such as sending unsolicited e-mails or engaging in commercial activities.

1.7.1.2. Information Technologies and Communication Authority (BTK)

BTK plays a crucial role in the management of the '.tr' country code top-level domain. According to Article 14 of the Internet Domain Name Regulation, BTK is responsible for determining the fees related to domain name allocation and renewal, managing the operations of the domain name dispute resolution mechanism and making necessary amendments. Furthermore, BTK is tasked with establishing and operating the TRABİS or ensuring its establishment and operation by a third party, all within the framework of the procedures and principles it sets forth. Likewise, BTK is also responsible for determining the subdomains to be allocated or to be terminated. BTK is also responsible for providing the necessary coordination with organizations such as ICANN, RIPE NCC, and CENTR in order to ensure the interoperability and global accessibility of the “.tr” extension. Moreover, BTK also has an important task of resolving domain name disputes. BTK is responsible for determining the dispute resolution service providers (DRSPs)⁵³, which are defined as the parties that carry out the resolution process of disputes related to domain names through arbitrators or arbitration boards.

⁵³ Uyuşmazlık Çözüm Hizmet Sağlayıcıları

1.7.1.3. Domain Names and EU Law:

EUIPO (The European Union Intellectual Property Office) regulates registration process for EU trademarks, industrial design rights and geographical indications. The European Union has established EURid, which is authorized to register and manage domain names with the eu extension. This institution operates a private arbitration procedure. Also, EURid is a registry office for .eu top level domain names. In 2002, EU regulated “Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain” and in 2004, established new regulation called “Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (Text with EEA relevance)” After that EU established new regulation which included two other regulations and it is called “Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004” The Turkish Internet domain names regulation was prepared based on these regulations of the European Union.

Furthermore, there is Regulation (EU) No. 2019/517 in EU, for “.eu” domain names that regulates registration process for .eu domain names, for the individuals, or companies reside in the EU.⁵⁴ Additionally, in 2019, the EUIPO (the EU Intellectual Property Office) and EURid (the .eu registry), EUTM (European trademark) regulated process that domain name owners and trademark rights holders were can receive alerts if there is a registration of identical “.eu” domain name. In the doctrine there is a view that this EU regulation process may

⁵⁴ Regulation 2019/517 of the European Parliament and of the Council of March 19, 2019, and its accompanying Acts, accessed March, 3, 2025. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019R0517>.

“create the scheme for further harmonization of the cybersquatting legislation concerning all ccTLDs in Europe.”⁵⁵

1.7.1.4. Domain Names and The USA Law

The Anticybersquatting Consumer Protection Act (ACPA) was adopted by the U.S. Congress in 1999 for prevent cybersquatting.⁵⁶ “The ACPA introduced in rem jurisdiction for domain name disputes, since in personam jurisdiction often cannot be established.”⁵⁷ The ACPA regulated the remedies for the domain name disputes. According to the ACPA, if there are four conditions exists, trademark owner may receive remedies such as “cancellation of the domain name, as well as its transfer to the owner of the trademark.”⁵⁸ Also, the ACPA regulated statutory damages for trademark owners.

There is also other type of infringements regarding domain names such as Typosquatting, and Reverse domain name hijacking. In this type of infringements, parties may apply to courts for unfair competition, but this process may take a time and may be costly for parties. However, ICANN introduced a more efficient process with the UDRP. Under the UDRP rules, disputes may settle with the cancel, suspend or transfer their domain names.⁵⁹

⁵⁵ Jane Seager, "EURid and EUIPO Ramp Up the Fight Against Cybersquatting," JDSupra, May 31, 2019, accessed March 3, 2025, <https://www.jdsupra.com/legalnews/eurid-and-euipo-ramp-up-the-fight-98708/> & European Commission, Study on Evaluation of Practices for Combating Speculative and Abusive Domain Name Registrations, 5 (July 2020), <https://op.europa.eu/en/publication-detail/-/publication/e88d02f9-cbc6-11ea-adf7-01aa75ed71a1/language-en>.

⁵⁶ Susan Thomas Johnson, *Internet Domain Name and Trademark Disputes: Shifting Paradigms in Intellectual Property*, 43 ARIZ. L. REV. 476 (2001).

⁵⁷ Chaisse and Friedmann, "Law of the Digital Domain, 423.

⁵⁸ Tenesa S. Scaturro, *The Anticybersquatting Consumer Protection Act and The Uniform Domain Name Dispute Resolution Policy The First Decade: Looking Back and Adapting Forward*, 11 NEVADA L.J. 877, 894 (2011).

⁵⁹ Internet Corporation for Assigned Names and Numbers (ICANN), "About Locked Domain," last modified May 3, 2013, accessed March 22, 2025, <https://www.icann.org/resources/pages/locked-2013-05-03-en>.

SECOND SECTION

UNFAIR COMPETITION TYPES VIA DOMAIN NAME INFRINGEMENT

2.1. Competition and Unfair Competition

2.1.1. General

Although the principle of competition is not explicitly regulated in the Turkish Constitution, it is regulated in Article 48 of the Turkish Constitution that individuals have the freedom to make contracts and establish private enterprises. Due to the acceptance of the freedom to establish and sustain private enterprises, there is the right to compete. Therefore, the right to compete is a personal right arising from the freedom to work regulated in Article 48 of the Constitution. According to Article 48 of the Constitution, everyone has the freedom to work in the field they wish and can establish private enterprises in this context.⁶⁰ Also, the liberal economic understanding that is valid today is based on the principle of free competition.⁶¹ The fundamental element that constitutes the structure, functionality and internal dynamics of free market economies is competition.⁶² For a free market to exist, there shall be competition in the market. Thus, the general justification of the Law on the Protection of Competition No. 4054 states that *"the basic and central element of economic policies implemented to ensure and protect the functionality of market economies is competition. In other words, competition only has an existence with the market economy and the functionality of the market economy depends on the existence of a healthy competitive environment."*⁶³ Free market

⁶⁰ Engin Erdil, *Haksız Rekabet Hukuku*, 3th edition (Ankara: Seçkin Yayıncılık, 2022), 29.

⁶¹ Sabih Arkan, *Ticari İşletme Hukuku* (Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü, 2020), 345.

⁶² Sabih Arkan, *"Haksız Rekabet ve Rekabetin Korunması Hakkında Kanun Hükümleri Arasındaki İlişki,"* Prof. Dr. Turgut Kalpsüz'e Armağan (Ankara: Turhan Kitabevi, 2003), 3

⁶³ Türkiye Büyük Millet Meclisi (TBMM), *Rekabetin Korunması Hakkında Kanun Tasarısı ve Adalet ve Sanayi, Teknoloji ve Ticaret Komisyonları Raporları (1/542): Rekabetin Korunması Hakkında Kanunun Genel Gerekçesi* (Ankara: TBMM, 1993) 1. , Accessed 5 March, 2025. <https://www.tbmm.gov.tr/tutanaklar/tutanak/tbmm/d19/c073/tbmm19073046ss0599.pdf>

economy, grants rights and freedoms to all participants, such as private property, freedom of enterprise, freedom to choose a profession and workplace, freedom of contract, freedom to establish institutions and partnerships, and freedom to set prices and use marketing tools.⁶⁴ If there is a properly functioning competitive environment, there will be a positive result in favor of consumers. In order for this positive result to occur, competition shall be conducted within the framework of principle of good faith and shall not be abused. However, some enterprises may not act in accordance with the principle of good faith and may engage in behavior that will harm the competitive environment, in which case unfair competition may arise.

2.1.2. Concept of competition

Competition is considered as the totality of relations that emerge as a result of the conflict between enterprises.⁶⁵ Basic economic functions such as directing and coordinating economic units, determining the amount of supply and demand, forming the prices of goods, obtaining information about price, quantity, quality and other conditions are realized in markets and determined by markets. The states that have accepted today's liberal system have adopted the maintenance of economic and commercial life under conditions of free competition as a constitutional principle, have regulated this situation among the fundamental rights and freedoms of individuals and have undertaken certain duties to protect the conditions of competition.⁶⁶

Moreover, the concept of competition defined in Article 3 of the Law No. 4054 on the Protection of Competition as the race that enables free economic decisions to be made among enterprises in the goods and services markets. The OECD

⁶⁴ P. Uzun Şenol, *Haksız Rekabet ile Rekabetin Korunması Alanları Arasındaki Hukuki İlişki* (Doctorate Thesis, Marmara Üniversitesi, Sosyal Bilimler Enstitüsü, 2022), 13.

⁶⁵ Kadir Uyanık, *Rekabet Hukuku Kurallarının Elektronik Ticarete Uygulanması* (Master's Thesis, İzmir Ekonomi Üniversitesi, Lisansüstü Eğitim Enstitüsü, 2021), 35.

⁶⁶ Ömer Teoman, "Reklamlara İlişkin Haksız Rekabet Uyuşmazlıkları," İÜHF Mukayeseli Hukuk Araştırma ve Uygulama Merkezi, Uluslararası Reklam Hukuku Sempozyumu, 8-9 Mayıs 2008, 58.

(Organisation for Economic Co-Operation and Development) defines the concept of competition as the struggle of firms or sellers in a market to gain customers for a specific commercial purpose such as profit, sales or market share.⁶⁷ The OECD has stated the importance of the competitive environment as follows: *“Competitive and fair markets bring consumers higher quality goods and services, lower prices, and more choice. As they encourage firms to become more efficient and to enter new markets, they lead to greater efficiency and in turn to economic growth.”*⁶⁸ Article 167 of the Constitution mentions the duty of the state to prevent monopolization and cartelization in the markets, whether actual or resulting from agreements. In line with this provision of the Constitution, Law No. 4054 on the Protection of Competition was enacted in order to prevent agreement decisions and practices that prevent, disrupt or restrict competition in the goods or services markets and to prevent the abuse of this dominance by the enterprises that dominate the market.⁶⁹

Under Turkish law, competition is considered a fundamental element of a free market economy and is protected as a legitimate activity that promotes innovation, efficiency, and consumer welfare. Lawful competition involves enterprises striving to improve their goods, services, or market share through fair and transparent means. However, when competitive behavior crosses certain legal and ethical boundaries, it may constitute unfair competition, which is prohibited under the Turkish Commercial Code No. 6102 (TCC). According to Articles 54 to 63 of the TCC, unfair competition occurs when a party engages in deceptive practices, violates good faith, or disrupts the competitive balance by unlawful means such as misleading advertising, denigrating a competitor, or using confusingly similar trade signs, including domain names. While fair competition is encouraged and even essential to a healthy economic

⁶⁷ Organisation for Economic Co-operation and Development (OECD), *Glossary of Industrial Organisation Economics and Competition Law* (Paris: OECD Publications and Information Centre, 1993), 22.

⁶⁸ Organisation for Economic Co-operation and Development (OECD), accessed March 22, 2025, <https://www.oecd.org/en/topics/competition.html>.

⁶⁹ Arkan, *Ticari İşletme Hukuku*, 347.

environment, unfair competition is subject to legal sanctions because it harms not only competitors but also consumers and the market at large. The key distinction lies in whether the conduct respects the principles of honesty and fair dealing, which are central to the Turkish legal approach to commercial ethics.

2.1.3. Fundamentals Of Unfair Competition According to Turkish Law

2.1.3.1. Unfair Competition Does Not Require a Competitive Relationship Between Parties

Law No. 6102, Article 54/2 of the Turkish Commercial Code (TCC) states that “Deceptive or otherwise contrary to the rule of honesty and commercial practices affecting the relations between competitors or between suppliers and customers are unfair and unlawful.” As can be understood from this regulation, it is not necessary for the parties to be competitors in order for unfair competition to occur. Although behaviors such as disparagement and confusion are generally carried out by competitors, unfair competition in the form of providing false information about someone else’s financial situation can also be carried out by non-competitors.⁷⁰ In fact, relations between suppliers and customers are also included in the scope of unfair competition regulation.

By using a very broad expression such as “participants” in TCC 54/1, unfair competition does not only occur between rival merchants, and it has been stated that third parties and consumers can also benefit from this provision. When the regulating the rule of honesty in Turkish Civil Code and the legal regulations regarding unfair competition in TCC are considered together, the requirement of being a merchant is not required for actions taken against an enterprise to constitute unfair competition, and whether they are competitors in the same or similar field of business is not taken into account. The important issue here is not who carried out the action, but whether the enterprise was harmed in violation

⁷⁰ İsmail Kayar, *6102 Sayılı TTK'ya Göre Ticaret Hukuku*, 5. bası (Ankara: Seçkin Yayıncılık, 2018), 221.

of the rule of honesty and to what extent the competitive environment was disrupted.⁷¹

2.1.3.2. In Order to Unfair Competition Occur, The Perpetrator Does Not Need to Benefit

An act of unfair competition is generally an unjust act committed by the perpetrator for the purpose of gaining a benefit for himself/herself. For example, the person who commits the act of unfair competition may make disparaging statements about the practices of third parties because he wants to increase his customer base. However, in unfair competition law, what is important is that the perpetrator violates the competition rules, and it does not matter whether he or she benefits from this act.⁷² A deceptive act or an act contrary to the rule of honesty has been committed is sufficient for unfair competition to occur.

2.1.3.3. In Order to Unfair Competition Occur No Fault of the Perpetrator is Required

It is not necessary for the perpetrator to be at fault for unfair competition to exist. Likewise, fault is not an element of unfair competition actions. The result of the action taken or the situation intended by the perpetrator is of no importance. Therefore, it is not important whether the perpetrator has intent or negligence. Only fault is required to file a lawsuit for compensation for unfair competition.⁷³ In the tort regulation in the Turkish Code of Obligations, fault is required for the occurrence of a tort. In this respect, tort and unfair competition are distinguished from each other.

2.1.3.4. Sufficient Risk of Harm:

In the law of obligations, the existence of a risk of harm is not sufficient for classical tort liability to occur, but the existence of the harm is required. In the

⁷¹ Kaplan, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri*, 36.

⁷² İ. Yılmaz Arslan, *Ticaret Hukuku Dersleri*, 12 th edition (Bursa: Ekin Yayınları, 2018), 124.

⁷³ Aytakin Çelik, *Ticaret Hukuku*, güncellenmiş 8 th edition (Ankara: Seçkin Yayıncılık, 2018), 52.

law of unfair competition, the possibility of harm to the person subjected to unfair competition is sufficient for the existence of unfair competition.⁷⁴ It is a regulation introduced by Article 56/2 of the TCC No. 6102 that no requirement to cause damage to customers is required in terms of the existence of unfair competition. Unlike the repealed regulation of article 58 of the TCC numbered 6762, the new regulation granted customers the right to file the lawsuits specified in Article 56/1 of the TCC, even if there is a danger of damage, without the condition of being harmed.⁷⁵ This regulation distinguishes unfair competition from other special regulations. For example, in order for special regulations protecting trademarks, trade names, business names, etc. to be applied, there is no need for damage or risk of damage. However, if the party harmed by unfair competition wishes to apply to the provisions on unfair competition instead of these special regulations, there shall be a condition for damage or risk of damage.

There are differing views in the legal doctrine regarding whether actual damage constitutes an essential element of unfair competition, or whether the mere existence of damage or the risk thereof suffices for unfair competition to occur. According to one view in the doctrine⁷⁶, the fact that the party harmed of unfair competition suffers damage is only a condition sought in compensation cases and the existence of damage or risk of damage is not an element of unfair competition. According to another view in the doctrine⁷⁷, the existence of damage or risk of damage is not only an element of filing a lawsuit but also of the formation of unfair competition. In my point of view, it would be more appropriate to consider damage or risk of damage as a condition for the occurrence of unfair competition, in other words, to accept unfair competition as an element. Otherwise, an interpretation that will exceed the purpose of the unfair competition regulation will be made.

⁷⁴ Erdil, *Haksız Rekabet Hukuku*, 39.

⁷⁵ Ali Yaşar, *Fikir ve Sanat Eserleri Hukuku Bakımından Televizyon Reklamlarının Hukuki Niteliği ve Televizyon Reklamları Üzerinde Hak Sahipliği* (İstanbul: 12 Levha Yayınları, 2011), 44.

⁷⁶ Erdil, *Haksız Rekabet Hukuku*, 43-48.

⁷⁷ Sami Karahan, *Ticari İşletme Hukuku*, güncellenmiş 27 th edition (Konya: Mimoza Basım Yayım ve Dağıtım, 2015), 223.

As a result, even if there is no existing damage but there is a risk of damage, the judge may be requested to determine the act of unfair competition, prevent and correct unfair competition in accordance with Article 56/1 a, b and c of the TCC. If damage has occurred due to unfair competition, a compensation lawsuit may be filed by the party harmed by unfair competition.

2.1.4. Aims of the Regulation on Unfair Competition

Article 54/1 of the TCC states the purpose of unfair competition regulation. *“The purpose of the provisions of this Section on unfair competition is to ensure fair and undistorted competition for the benefit of all participants.”*⁷⁸ The commercial practice, supplier and commercial concepts are included in the TTK article 54 and the following provisions. It can be concluded from the terms here and the expression *“ensure fair and undistorted competition”* in TCC article 54/1 that the protection of economic competition is desired.⁷⁹ Article 54/2 states that *“Deceptive or otherwise dishonest behavior and commercial practices affecting relationships between competitors or between suppliers and customers are unfair and unlawful.”*⁸⁰ The unfair competition regulation in the TCC has two main purposes. The first of these is to prevent undertakings from abusing their competition rights, that is, unfair competition, and the second is to prevent the distortion of the free competition market and monopolization.⁸¹ What is meant by *“for the benefit of all participants”* in TCC article 54 is that these provisions are not only the protection of the interests of competitors and the relations between competitors and customers, but also the provisions that protect the interests of all other market participants, the society and the country's economy.⁸² Moreover, with the expression *“for the benefit of all participants”*, market actors such as operators, intermediaries and customers,

⁷⁸ Turkish Commercial Code, 6102/54(1), Official Gazette, February 14, 2011, no. 27846.

⁷⁹ Abuzer Kendigelen, *Yeni Türk Ticaret Kanunu: Değişiklikler, Yenilikler ve İlk Tespitler*, 3. tıpkı bası (İstanbul: Oniki Levha Yayınları, 2016), 81.

⁸⁰ Turkish Commercial Code, 6102/54(2), Official Gazette, February 14, 2011, no. 27846.

⁸¹ Ünal Tekinalp, *Yeni Haksız Rekabet Hukukunda Amaç, İlke ve Üç Boyutluluk*, Prof. Dr. Seza Reisoğlu Armağanı (Ankara: Banka ve Ticaret Hukuku Araştırma Enstitüsü, Türkiye İş Bankası A.Ş. Vakfı, 2026), 30.

⁸² Hüseyin Ülgen, Mehmet Helvacı, Arslan Kaya, and N. Füsün Nomer Ertan, *Ticari İşletme Hukuku*, 8th ed., (İstanbul: Oniki Levha Yayıncılık 2021), 586.

as well as decision-makers such as the media and the public are also included in the scope of the concept.⁸³

As a result, the protection of consumers has been stated as the purpose of unfair competition provisions. The provisions regarding unfair competition are not only intended to protect merchants, but also to protect consumers by accepting the violation of consumers' interests as unfair competition. In fact, in TCC 54/2, it has been stated that “*the protection of consumers is also the purpose by using the expression of deceptive and dishonest behaviors affecting the relationship between competitors, suppliers and customers.*”

2.1.5. Unfair competition regulations in Swiss law:

The Swiss federal court evaluated the expression “*abuse of economic competition*” in Article 1 of the Unfair Competition Act of 1943 as “abuse of the right to compete” and accepted that the provision was interpreted narrowly and that unfair competition may only be a matter of competitors with whom there was such a trust relationship according to the Swiss Federal Court. As a result, the Swiss Unfair Competition Act of 1943 only served to protect the interests of merchants.⁸⁴ The Swiss Unfair Competition Act of 1986 introduced provisions protecting not only merchants but also other interested parties and consumers in the markets. The unfair competition regulations in the TCC are based on the Swiss Federal Law Against Unfair Competition, dated 1986 and amended in 1988 and 2022. The Swiss Federal Law Against Unfair Competition has directly based Articles 54 and 55 of the TCC, and its impact on other articles of the TCC.⁸⁵

⁸³ Mehmet Bahtiyar, *Ticari İşletme Hukuku*, güncellenmiş 22. bası (İstanbul: Beta Yayıncılık, 2023), 169–170.

⁸⁴ Şirin Güven, *Haksız Rekabet Hukukunun Amacı ve Koruduğu Menfaatler* (Doctorate thesis, Ankara, 2011), 11.

⁸⁵ Güzide Soydemir, *İnternette Haksız Rekabetin Önlenmesi* (Ankara: Seçkin Yayıncılık, 2015), 28. Switzerland, Bundesgesetz gegen den unlauteren Wettbewerb (UWG) [Federal Act on Unfair Competition]. 19th December 1986. Last amendment 1st January 2022.

2.1.6. Unfair competition regulations in Turkish law

Unfair competition is a special type of tort, a concept that forms the basis of Turkish law of obligations⁸⁶. Unfair competition is the abuse of economic competition in various ways, contrary to the rules of deceptive action and good faith. The liability of a merchant for damage caused to another due to unfair competition activities is basically tort liability.⁸⁷ Tort liability, in the sense of the law of obligations, aims to compensate for damage caused to another by a faulty and unlawful act. According to the regulation introduced within the scope of Article 49 of the Code of Obligations No. 6098, even in cases where there is no legal rule prohibiting the damaging act, the person who intentionally harms another person by an immoral act is also considered liable to compensate for this damage. The unjust nature of the act, the existence of the fault and the damage, and the existence of a causal link between the act and the damage may constitute liability.

In Turkish law, there are two basic regulations which is regulated the unfair competition. These two regulations are the Code of Obligations No. 6098 and the Turkish Commercial Code No. 6102. In Turkish law, unfair competition is essentially regulated in the TCC Articles 54 and following. However, in Article 57 of the Turkish Code of Obligation, under the title of unfair competition regulated that *“a person whose customers have decreased or who is in danger of losing them due to the dissemination of false news or the making of such advertisements or other behaviors contrary to the rules of honesty may request that these behaviors be stopped and that the damages be compensated in the presence of fault.”*⁸⁸ In the continuation of the same article, the provisions of the Turkish Commercial Code regarding unfair competition in commercial transactions are reserved. The provision has been regulated, and a reference has been made to the unfair competition regulation in the TCC.

⁸⁶ M. Kemal Oğuzman and M. Turgut Öz, *Borçlar Hukuku Genel Hükümler*, 22nd ed., vol. 2 (Istanbul: Vedat Kitapçılık, 2021), 65.

⁸⁷ Oğuzman ve Öz, *Borçlar Hukuku Genel Hükümler*, 3.

⁸⁸ Turkey, Turkish Code of Obligations, Law No. 6098, article 57 (2011).

Article 57 of the Turkish Code of Obligation may not grant a special right of action to determine whether the action taken is unfair competition. The action regulated in Article 57 of the Turkish Code of Obligation is an action for suspension. This action will stop unfair competition. The decision of the action may not effect situation for the past or the future. For this reason, it will be a different type of lawsuit than the prohibition lawsuit regulated in Article 56 of the TCC. The decision in the lawsuit in Article 57 of the Turkish Code of Obligation will be exclusive only to the incident in question. If there is a repetition of the act that cause unfair competition, then there need to be a new decision for suspension of the act. However, in the prohibition lawsuit regulated in Article 56 of the TCC, the result of the lawsuit can be enforced in case of continuation or repetition of the act. Article 57 of the Turkish Code of Obligation stipulates that the perpetrator may claim material compensation for the damage caused by his/her fault but does not regulate moral compensation. For this reason, Article 57 of the Turkish Code of Obligation is effective for a narrow area compared to the TCC and the sanctions regulated are weaker compared to the TCC.⁸⁹

Article 54 and the following provisions of the TCC are the articles that will be applied to all unfair competition provisions. For this reason, some authors in the doctrine argue⁹⁰ that the provision in Article 57 of the Turkish Code of Obligations has no scope of application and should be repealed. Different authors in the doctrine argue⁹¹ that the regulation in Article 57 of the Turkish Code of Obligations should remain in force because the unfair competition regulations in the TCC will be applied to those related to a commercial enterprise, and in the event that any non-commercial but customer-related professional activity is subject to unfair competition, the provision in Article 57 of the Turkish Code of Obligations will be applied. In my point of view, since the unfair competition

⁸⁹ Erdil, *Haksız Rekabet Hukuku*, 36.

⁹⁰ Arkan, *Ticari İşletme Hukuku*, 311 & Reha Poroy and Hamdi Yasaman, *Ticari İşletme Hukuku*, 20th ed. (Ankara: Seçkin Yayıncılık, 2024).

⁹¹ Oğuzman ve Öz, *Borçlar Hukuku Genel Hükümler*, 11.

regulations in Article 54 and the following provisions of the TCC are provisions that will be applied to both merchants and non-merchants, it would be appropriate to repeal the provision in Article 57 of the Turkish Code of Obligations.

2.1.6.1. Law No. 6502 on Consumer Protection:

One of those protected by the unfair competition provisions of the TCC is “consumers”. There are regulations regarding unfair competition in the Law No. 6502 on Consumer Protection and in secondary legislations based on this law. In order to determine the content of the concept of “unfair commercial practice” regulated in Article 54 of the TCC, the provision titled “unfair commercial practice” regulated in Article 62 of Law No. 6502 will be useful. Articles 83 and 84 of the Intellectual and Artistic Works Law No. 5846 refer to the articles of the TCC regarding unfair competition.

2.1.6.2. No. 3577 on Prevention of Unfair Competition in Imports

In the Law No. 3577 on Prevention of Unfair Competition in Imports, special measures regarding tax law regarding dumping subsidies are regulated. Dumping is the exporter company selling its goods in foreign markets at a lower price than it sells in the domestic market. Subsidy is a benefit in the form of goods or money provided by the state to third parties outside the administration without a counteraction that is considered normal in the market and can be expressed in money.⁹² In other words, subsidy is state aid provided for the purpose of supporting the production of goods or services. In the suspension that disrupts unfair competition, the balance is provided by the compensatory tax and the amount of this compensatory tax is equal to the amount of the subsidy.

⁹² Hanife Dirikkan, *Karşılaştırmalı Hukuk Açısından Damping ve Antidamping Önlenmesi* (İzmir, 1996), 23.

According to Article 3 of Law No. 3577, the situations that require precautions are when the import subject to dumping or subsidy causes material damage or poses a threat of material damage to a production branch in Turkey or physically delays the establishment of a production branch. However, in order to take precautions against the import subject to subsidy, it shall be determined that the subsidy is directed at a company or a group of companies or a production or a production group.⁹³ An administrative investigation is conducted within the framework of the law and a tax is imposed as a result. However, depending on the situation of the concrete case, if it causes damage or a risk of damage to producers in Turkey, it may be possible to file unfair competition lawsuits within the framework of the provisions of the TCC regarding unfair competition.⁹⁴

2.1.6.3. Law on the Protection of Competition

While the provisions of Articles 54-63 of the TCC are applied to prevent unfair competition in Turkish law, Law No. 4054 on the Protection of Competition was enacted to prevent agreements, concerted practices, or abuse of dominant position in the goods or services market aimed at restricting competition. While competition law aims to remove all obstacles to effective competition and expand competition as much as possible, unfair competition provisions try to prevent competition.⁹⁵

The purpose of this Law No. 4054 on the Protection of Competition is “to prevent agreements, decisions and practices that prevent, distort or restrict competition in the goods and services markets and to prevent the abuse of this dominance by the undertakings that dominate the market, and to ensure the protection of competition by making the necessary regulations and inspections”.⁹⁶ In other words, Law No. 4054 on the Protection of Competition aims to establish and protect a free competition

⁹³ Dirikkan, *Karşılaştırmalı Hukuk Açısından Damping ve Antidamping Önlenmesi*, 24.

⁹⁴ Arkan, *Ticari İşletme Hukuku*, 321.

⁹⁵ Poroy and Yasaman *Ticari İşletme Hukuku*, 300.

⁹⁶ The purpose of this Law No. 4054 on the Protection of Competition, Article 1.

environment, and these regulations provide equal opportunities and freedom of enterprise, which are part of the fundamental rights and freedoms of individuals, while also helping consumers purchase cheaper and higher quality goods and enabling technological development.⁹⁷

2.6.1.4 Industrial Property Law

The Industrial Property Law provides protection for registered industrial rights. According to the Industrial Property Law, protection for registered trademarks, patents, utility models and designs, while protection for unregistered trademarks, designs, patents or utility models without certificates is provided by the general regulations of the TCC regarding unfair competition.⁹⁸ The regulations regarding unfair competition in the Industrial Property Law will be applied to registered industrial rights. In other words, in the event of a registered industrial right being disparaged, the provision of Article 55/1/a of the TCC will be directly applied. Or, if in the specific case there is both an infringement of industrial rights within the framework of the Industrial Property Law and an unfair competition situation not foreseen in the Industrial Property Law within the framework of Article 55 of the TCC, both the Industrial Property Law and the TCC will be applied.

There is a debate in the doctrine as to whether the special provision of the Industrial Property Law or the general provisions of the TCC shall be applied in the case of unfair competition. According to one view in the doctrine⁹⁹, when the rights of a registered trademark are violated in a trade name, business name or brand, this person may file a lawsuit based on the special provision of the Industrial Property Law. Or he may file a lawsuit based on the general provision

⁹⁷ Ahmet Battal, *Ticari İşletme Hukuku* (Ankara: Gazi Kitabevi, 2005), 165.

⁹⁸ Erdil, *Haksız Rekabet Hukuku*, 41.

⁹⁹ Yaşar Karayalçın, *Özel Hukukta Meseleler ve Görüşler: Hukuki Mütalaalar 1992-1996* (İstanbul, 1996); İrfan Dönmez, *Markalar ve Haksız Rekabet Davaları*, 2nd Edition (İstanbul, 1992), 139.

of the TCC, articles 54-55. According to another view in the doctrine,¹⁰⁰ the provisions of the Industrial Property Law and the unfair competition provisions of the TCC should be applied cumulatively. The unfair competition provisions in the TCC are not applied at a secondary level, but directly and primarily if the conditions are present, in addition to the provisions of the Industrial Property Law.

In general, although registered industrial rights are protected according to the Industrial Property Law., the plaintiff may also file a lawsuit based on unfair competition provisions. In this case, if the plaintiff claimed his/her arguments according to unfair competition provisions of the TCC, then the judge will be bound by the request in procedural law¹⁰¹. According to Article 70 of the TCC, "If the liability of a person can be based on more than one reason, the judge shall decide according to the reason of liability that provides the best remedy to the injured party, unless the injured party requests otherwise or the law provides otherwise." Therefore, in order for the rules on unfair competition to be applied, the protection provided by the special law shall also continue. If the protection has ended, the provisions on unfair competition cannot be resorted to.¹⁰²

2.1.7. International agreements Regarding Unfair Competition

2.1.7.1. Paris Convention

The "Paris Convention: Convention for the Establishment of an International Alliance for the Protection of Industrial Property, dated 20/3/1883, approved by the Council of Ministers' Decision dated 8/8/1975 and numbered 7/10464¹⁰³" which is stated in Article 2/1/ğ of the Industrial Property Law is one of the first

¹⁰⁰ Ünal Tekinalp, *Fikri Mülkiyet Hukuku*, 5th Edition, (İstanbul, 2012), 37; POROY/YASAMAN, *Ticari İşletme Hukuku*, 380.

¹⁰¹ Cahit Suluk, "Avrupa Birliği ve Türk Hukukunda Tasarımların Kümülatif Olarak Korunması," FMR 1 (2001): 46.

¹⁰² Tekinalp, *Fikri Mülkiyet Hukuku* 37.

¹⁰³ Turkish, Intellectual Property Code, Law No. 6769, art. 2(1)(ğ) (2016)

agreements to which Turkey became a party regarding unfair competition. This agreement has been revised several times later. Turkey made reservations to articles 1-12 when it became a party to this agreement, and the reservations were later removed with the decision numbered 94/5903.

According to Article 10 of the Convention, the protection of industrial rights has been regulated such as patents, utility models, industrial designs, trademarks, service marks, trade names, names of origin and prevention of unfair competition. According to this convention, the countries of the Union are obliged to provide their citizens with effective protection against unfair competition. Moreover, according to the convention, any competitive behavior that is contrary to honest practices in commercial and industrial matters constitutes an unfair competitive behavior.

2.1.7.2. Trade-Related Aspects of Intellectual Property Rights (TRIPS)

Although the TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) does not contain a direct provision on unfair competition, it refers to the Paris Convention, particularly Article 10, which prohibits acts of unfair competition. In this context, the TRIPS Agreement incorporates the principle that the misleading use of geographical indications, which may create unfair competition, is also prohibited.

2.1.7.3. World Intellectual Property Organization (WIPO)

The Model Provisions on Protection Against Unfair Competition, published by WIPO in 1996, which is not binding for member states, but it gives recommendation to member states that regulated the general principle of unfair competition and sample unfair competition cases. The Model Provisions on Protection Against Unfair Competition, developed by international organizations like WIPO, serve as a soft law instrument aimed at guiding countries in harmonizing their unfair competition laws. While not legally

binding, these provisions influence national legislation by providing standardized principles that promote fair business practices and protect competitors and consumers against deceptive, misleading, or unethical commercial behavior. Their effectiveness lies in encouraging legal coherence and fostering cross-border trade trust, although their impact depends largely on voluntary adoption and domestic enforcement.¹⁰⁴

2.1.7.4. EU Regulations

The first of the regulations regarding unfair competition in the “EU is Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising (codified version) (Text with EEA relevance).”¹⁰⁵ The definition of misleading and comparative advertising and examples related to these are included. Another regulation that directly regulates unfair competition is the “Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive.”¹⁰⁶ The issue of unfair competition with consumers and unfair commercial practices are regulated.

2.2. The Relationship Between Domain Names and Trademarks

When searching for a business's website, internet users often search for the domain name of the site they are looking for. An internet user can reach the product they are going to buy by searching the domain name of the seller of the product they want to buy on the internet on a search engine. For this reason, it

¹⁰⁴ World Intellectual Property Organization (WIPO). *Model Provisions on Protection Against Unfair Competition*. WIPO Publication No. 832. Geneva: WIPO, 1996. Accessed February 2, 2025. <https://tind.wipo.int/record/28768?v=pdf>

¹⁰⁵ Directive 2006/114/EC of the European Parliament and of the Council of 12 December 2006, accessed March 3, 2025, <https://eur-lex.europa.eu/eli/dir/2006/114/oj/eng>

¹⁰⁶ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005, accessed March 3, 2025, <https://eur-lex.europa.eu/eli/dir/2005/29/oj/eng>

will be very important for a business to choose a domain name that is memorable and easy to access so that customers can reach them. They choose a domain name that is different from the domain names of other businesses and that reflects the characteristics or trademarks of their own businesses.¹⁰⁷ Although domain names were initially thought of only to facilitate internet access and provide users with a comfortable experience, today domain names are seen as an identity that determines the workplace in the commercial field. For this reason, domain names are gaining commercial value for businesses day by day.¹⁰⁸ Even though domain names and brands need to be registered differently from each other, it will be important for businesses to determine their domain names in a way that includes their brands. Today, it is often observed that businesses use their own products, services or brands as domain names. In this way, users who want to reach the brand's website can easily reach the business when they search for the brand's name on the internet. In this case, it will cause the popularity of the business to increase through its brand.

Domain names are recognized as distinctive signs. In today's commercial life, traders often use their own brand names as internet domain names. "Since the trademark and the domain name are two different distinctive signs, the trademark right does not automatically confer a right on the domain name, which is the same sign as the trademark."¹⁰⁹ More detailly, when domain name users register a domain name on the Internet, they usually choose an appropriate name that is the same as their trade name or the brand name of the product or service or that recognizes their activities. The reason for this is that, thanks to the identifying function of the domain name, the internet user generally thinks that the website with the name chosen as the domain name belongs to the brand or undertaking. Therefore, domain name registrants choose a same name that is the same as their trade name or the brand name. Trademark owners have the right

¹⁰⁷ Nomer, Ertan, *Haksız Rekabet Hukuku*, 400.

¹⁰⁸ Tekin Memiş, *Alan İsmi Etrafında Ortaya Çıkan Hukuki Sorunlar*, Bilişim Toplumuna Giderken Psikoloji, Sosyoloji ve Hukukta Etkiler Sempozyumu (Ankara, 2001), 7.

¹⁰⁹ Sefer, *İnternet Alan Adı Haklarının Korunması*, 67-68.

to protect their trademark rights against unauthorized use by third parties under the IPL. To sum up, domain names and trademarks are different distinctive signs and the right over one does not automatically give rise to a right over the other. For this reason, the domain name owner may want to register to protect the sign used for the domain name. Although the domain name is a system that facilitates the use of the Internet, the domain name itself can constitute an infringement of the trademark right according to its content and intended use. For companies, the domain name serves the function of introducing and distinguishing companies rather than just the function of seeing an electronic address.¹¹⁰ It may be possible to register the trademark in bad faith and then take unfair advantage of the same or similar domain name owners. This situation will be examined in more detail below.

Internet domain names have become an important intangible asset and intellectual property right that has a separate economic value from the undertakings due to their ability to help customers find websites, to display the products of the undertakings independently of a physical location and to save time for both the undertakings and their customers. Domain names, in addition to indicating the address, distinguish the website from other websites by indicating which undertaking the website belongs to, and are used as a means of promotion, communication and advertisement.¹¹¹ Domain names are one of the distinctive signs such as trademarks, trade names or business names.¹¹² It is possible to use a trademark, trade name or business name as a domain name, and it is also possible to register a domain name as a trademark, trade name or business name. There are many undertakings that use their registered trademark in the internet domain name, or there are many undertakings that register the internet domain name as a trademark due to the distinctive nature of the internet domain name.

¹¹⁰ Kemal Şenocak, Tescilli Markanın Aynısının veya Benzerinin Alan Adı (Domain Name) Olarak Kullanılması Suretiyle Marka İhlali, *Banka ve Ticaret Hukuku Dergisi* 25, no. 3 (2009), 99.

¹¹¹ Yasaman, *İnternette Marka Hakkının İhlali*, 123.

¹¹² Yasaman, *İnternette Marka Hakkının İhlali*, 143.

Domain names became sine qua non for commercial institutions to continue their activities since business entities benefit from domain names in order to advertise and get attention to their brands and marks to highlight their recognition and reputation. For registration process of domain name there is a principle called 'first come, first served'. Due to this principle, infringements occurred to trademark owners and argued that this principle is harmed the trademark rights, and this practice is not sustainable.¹¹³ Nevertheless, when the registration of domain names for well-known trademarks is requested, priority is given to the application of the relevant brand or product owner.¹¹⁴ Domain names are not a trademark. But there is similarity between trademarks and domain names that both of them have distinctive features for the products or services. However, due to the development of the internet environment, domain names of companies have become their trademark in a way. For this reason, in many jurisdictions, domain names are protected by the provisions of trademark law.¹¹⁵ There are decisions that domain names should be protected in the context of trademark law in the disputes which is settled by the WIPO.¹¹⁶ In Turkish Law, domain names are currently protected under Article 11 f. of the Turkish Commercial Code regarding the transfer of a commercial enterprise. Domain names are considered as one of the intangible elements of the commercial enterprise since they are evaluated within the scope of 'asset elements permanently allocated to the enterprise' in Article 3 of Turkish Commercial Code.¹¹⁷ The Turkish Court of Cassation decisions also indicate that disputes regarding trademark infringement using domain names can be protected within

¹¹³ Sara Sunderland, "Domain Name Speculation: Are We Playing Whac-A-Mole?" Berkeley Technology Law Journal 25, no. 1 (2010): 465-492.

¹¹⁴Dr. Fatih Buğra Erdem, "Markanın Alan Adı Olarak Kullanılmasında Karşılaşılan Uyuşmazlıklarda Tahkim Mekanizmalarının Yeri," Selçuk Law Review (2023): 274.

¹¹⁵ Tekin Memiş, "İnternette Alan İsimleri Uyuşmazlıklarında Çözüm Arayışları ve WIPO Ara Raporu," Milletlerarası Hukuk ve Milletlerarası Özel Hukuk Bülteni 19, no. 1-2 (1999): 469

¹¹⁶ Google, Inc. v. wwwgoogle.com and Jimmy Siavesh Behain Case No. D2000-1240, Accessed March 5, 2025. <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1240.html> & Hermès International v. Zhangwei Case No. D2011-1942, Accessed March 5, 2025, <https://www.wipo.int/amc/en/domains/decisions/text/2011/d2011-1942.html>

¹¹⁷ Turkish Commercial Code Article 3.

the scope of trademark law.¹¹⁸ Moreover, there are debates in the doctrine, whether domain names are industrial property rights or not, it is theoretically accepted that domain names are also included in the scope of the “rights subject to intellectual and industrial property” listed within the scope of the mortgage of the commercial enterprise, in accordance with Article 5(1)c of the Law No. 6750 on Movable Pledges in Commercial Transactions.¹¹⁹

There is complex relationship between domain names and trademark names. “Domain names may function both as an address for a website and as an indication of source.”¹²⁰ Due to this function of a domain name, disputes may arise between domain name owner and trademark name owner if the domain name is confusingly similar or the same with the domain name. Also, if the third parties use both registered and unregistered trademark name as a domain name and try to unfairly benefit from it, there may be existing of unfair competition. Therefore, it is important that there need to regulation regarding protection of trademark rights and prevent unfair competition. There is a common acceptance that domain names are signifier to trademarks on the internet. It should be noted that trademarks are not only registered as a domain name but also domain names may protect as trademarks if there is a existence of essential elements of trademark registration.¹²¹

2.2.1. Use Of an Unregistered Trademark as A Domain Name

Today, it has become an important for businesses and companies to register domain names that carry their brands or business names in order to advertise themselves. An unregistered trademark will not be protected under the

¹¹⁸ Yargıtay 11. HD, E. 2020/ 6288, K. 2021/6285, T. 17.11.2021.

¹¹⁹ Celal Göle and Gökhan Aydoğan, "Ticari İşlemlerde Taşınır Rehni Kanunu'nun Ticaret Hukuku Açısından Değerlendirilmesi," *Banka ve Ticaret Hukuku Dergisi* 33, no. 1 (2023): 11; Alper Uyumaz and Mehmet Cemil Türk, "Ticari İşlemlerde Taşınır Rehni Kanunu Üzerine Düşünceler," *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 25, no. 2 (2023): 1433.

¹²⁰ Chaisse and Friedmann, "Law of the Digital Domain, 428.

¹²¹ Chaisse and Friedmann, "Law of the Digital Domain: Trademarks, Domain Names, and the AI Frontier, 429.

Industrial Property Law No. 6762¹²². An unregistered trademark can only be protected within the framework of the unfair competition provisions regulated under Article 54 and following articles of the TCC. According to Article 54/2 of the TCC¹²³, deceptive or dishonest behavior and commercial practices affecting the relations between competitors or suppliers and customers shall constitute unfair competition. According to this article, the unauthorized use of unregistered trademarks of others as domain names will constitute unfair competition. In order for the use of an unregistered trademark as a domain name to constitute unfair competition, the third party shall use the domain name in a way that misleads others or there shall be danger of misleads others.¹²⁴ When using an unregistered trademark as a domain name, the danger of misleading will continue if letters or signs are added or removed in a way that does not change the integrity of the meaning of the trademark. Therefore, typosquatting will constitute unfair competition. As a matter of fact, in the e-bebek case, the court ruled that the defendant's registration of the domain name www.e-bebekanneleri.com while the plaintiff owned the domain name www.e-bebek.com would constitute unfair competition.

2.2.2. Use Of a Sign as A Domain Name Which Creates Confusion with A Registered Trademark

Article 7/2/b of the Industrial Property Law regulates the use of an internet domain name consisting of a sign identical or similar to the registered trademark in a way that creates the possibility of confusion and association with the goods or services for which the trademark is registered, within the scope of the same or similar goods and services. According to a view in the doctrine, the top-level domain name element or subdomain of the domain name should not be taken

¹²² Industrial Property Law No. 6762, Official Gazette of the Republic of Turkey, No. 25871, December 24, 2004.

¹²³ Turkish Commercial Code No. 6102, Official Gazette of the Republic of Turkey, No. 27846, February 14, 2011.

¹²⁴ Tekin Memiş, İnternette Cins ve Meslek İsimlerinin Alan İsmi Etrafındaki Sorunlar, *Türkiye Bilişim Dergisi* (2006): 206. & Tekin Memiş, Elektronik Ortamında Haksız Rekabet Halleri, *Mevzuat Dergisi* (2004): 105.

into account when determining similarity. It is sufficient for the second level domain name element that gives the domain name a distinctive feature and the sign that creates the trademark to be similar to each other. However, in some cases, the domain name can create similarity by using the top-level domain name and the second level domain name together.¹²⁵ There may exist internet domain names that are a sign that creates the possibility of confusion is used in electronic commerce activities.

In one of its decisions, the Turkish Court of Appeals ruled that the use of an internet domain name created by adding other elements to a sign that is the same as a registered trademark creates a possibility of confusion.¹²⁶ In another decision, the Turkish Court of Appeals accepted the defendant's use of an element of his registered trademark as a keyword when advertising in order to be ranked first in search engines as a use that would create confusion.¹²⁷ The Turkish Court of Appeals has ruled that if a trademark right belonging to someone else is used as an internet domain name, even if the internet domain name is not actually used, if it creates a commercial effect, it will constitute an infringement of the trademark right.¹²⁸ In an another decision, the Turkish Court of Appeals held that the defendant's use of a component of his registered trademark as a keyword in online advertisements, with the intention of ranking higher in search engine results, constituted a use likely to cause confusion. In another ruling, the Court found that using a trademark belonging to another party as an internet domain name may amount to trademark infringement, even if the domain name is not actively used, provided that it creates a commercial effect."¹²⁹

¹²⁵ Oğuz, *İnternet Alan Adı Haklarının Korunması*, 312 & Yasaman, *İnternette Marka Hakkının İhlali*, 228.

¹²⁶ Yargıtay 11. HD. E. 2010/7395 K. 2012/8068 T. 17/05/2012.

¹²⁷ Yargıtay, 11. HD. E. 2016/10542 K. 2018/3077 T. 25.4.2018.

¹²⁸ Yargıtay, 11. HD. E. 2018/4155. K. 2019/5829 T. 25.9.2019.

¹²⁹ Yargıtay, 11. HD. E. 2015/9915. K. 2016/4605 T. 25.4.2016.

The most typical example of the use of a domain name similar to a trademark is domain names obtained through "cyber pirates" using typographical errors. In domain names obtained in this way; the person or enterprise that obtains the domain name creates similarity by using the letter next to one of the letters of the trademark with which it wants to create similarity, using words that make the same sound audibly but consist of different letters, changing the letters that make up the trademark to upper or lower case letters.¹³⁰

In terms of the use of the same sign as the trademark or a similar one that will cause confusion, a view in the doctrine argues that not every situation that may cause confusion between trademarks may cause confusion between the trademarks and the domain name.¹³¹ However, when WIPO decisions are examined, it is observed that decisions are made to transfer domain names created by adding or removing a letter to the brand to the brand owner due to the existing similarity. The WIPO decision given registry right to Toyota Motor Sales regarding the transfer of the domain names "tooyota.com" and "toyoota.com" can be given as an example.¹³²

2.2.3. Use Of a Well-Known Trademark as A Domain Name

Some individuals use well-known brand names as domain names. Because these people can more easily promote their goods and services to consumers by taking advantage of the recognition of the brand. In this case, the infringers are unfairly taking advantage of the trademark owner's commercial reputation, which has been effortfully built up over a long period of time.¹³³ At the same time, people who use websites where a well-known brand is used as a domain name cannot find out who actually presented the page and cannot access accurate information about the person who offers goods and services through the web

¹³⁰ Yasaman, *İnternette Marka Hakkının İhlali*, 235.

¹³¹ Kaplan, "Elektronik Ortamda İşlenen Haksız Rekabet Halleri", 62.

¹³² Toyota Jidosha Kabushiki Kaisha d/b/a Toyota Motor Corporation v. S&S Enterprises Ltd. Case No. D2000-0802, accessed February 2, 2025,

<https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0802.html>

¹³³ Memiş, *Alan İsmi Etrafındaki Sorunlar*, 206.

page. This also eliminates the advertising, warranty and quality function of the brand.¹³⁴ In the coca cola case¹³⁵, the complainant is Coca Cola Company, and they claimed that respondent was using <coca-colacompany.net> name as a domain name. Respondent used a similar name to Coca cola company trademark name in order to confuse customers and commercially benefit from it. Court decided that defendant registered unfairly under bad faith and there is infringement.

Cybersquatting refers to the practice of registering domain names that correspond to well-known trademarks or business names, without having any legitimate interest, and with the intent of obtaining unfair commercial gain. This often exploits the 'first come, first served' principle applied in domain name registration systems. Individuals engaging in such conduct are commonly referred to as cybersquatters. In legal proceedings against cybersquatters, courts have ruled in favor of trademark holders, especially in cases where the domain names were registered in bad faith and passively held without actual use. This was becoming an encouraging situation for cybersquatters. In an ICANN arbitration decision, it was determined that the non-use of the domain name "telstra.org" for a long period after it was registered was considered passive use, and it was decided that the registration of the domain name alone would constitute an infringement. After this decision, many national courts accepted this decision and implement this decision in similar cases.

According to Article 54 of the Turkish Commercial Code, actual damage is not required for an act to constitute unfair competition; the mere possibility of damage may suffice. Similarly, pursuant to Article 7/2(c) of the Industrial Property Law, if an internet domain name is used in a way that enables the

¹³⁴ Soydemir, *İnternette Haksız Rekabetin Önlenmesi*, 165.

¹³⁵ WIPO Arbitration and Mediation Center ADMINISTRATIVE PANEL DECISION The Coca-Cola Company v. EL\u0130F AKSOYEK DEG\u0130N Case No. D2019-1790, accessed February 3, 2025, <https://www.wipo.int/amc/en/domains/decisions/text/2019/d2019-1790.html>

registrant to gain an unfair advantage, harms the reputation, or dilutes the distinctiveness of a trademark that is widely recognized in Turkey, such use may also constitute trademark infringement.¹³⁶ In addition, the domain name does not need to be used in the same or similar goods or service classes as the well-known trademark. In order to be considered as infringement, it is sufficient for the sign constituting the domain name to be used in a way that will gain unfair advantage from the reputation of a trademark due to its level of recognition in Turkey, damage its reputation or damage its distinctive character.¹³⁷

2.2.4. Using A Sign That is The Same as A Registered Trademark as a Domain Name for Goods or Services Under the Registration

In order to claim that a trademark is violated through the use of a domain name first of all, the domain name shall violate Article 7/2 of the Industrial Property Law. According to Article 7/2 of the Industrial Property Law, if the domain name is the same as a registered trademark and is used for goods or services within the scope of the registration, this will constitute a trademark infringement.

Since domain names consist of top level, second level and third level domain name elements and have subdomains such as www. at the beginning or various country code suffixes at the end, it is controversial in the doctrine which element should be taken into consideration in determining identity of marks. According to one view, identity of marks will only occur if the brand is registered as a domain name¹³⁸. According to this view, if the trademark name contains all of the top level, second level and third level domain name elements and all of the suffixes such as subdomain and country code, the domain name will constitute an infringement of the trademark right. Moreover, according to this view in

¹³⁶ Industrial Property Law No. 6762, Official Gazette of the Republic of Turkey, No. 25871, December 24, 2004, Article 7/2.

¹³⁷ Yasaman, *İnternette Marka Hakkının İhlali*, 246.

¹³⁸ Guşan Söylensoy, *Tescilli Markanın İnternette Alan Adı Olarak Kullanılarak Tecavüze Uğraması*, master's thesis, (2011), 45.

doctrine, if the brand is used as a secondary level domain name, there will be similarity rather than identity of marks. According to another view, which is majority opinion in the doctrine, since the distinguishing element of domain names is the second level domain name element, if the second level domain name element and the registered trademark are the same, there will be identity of marks.¹³⁹ In addition, according to Article 7/2/a of the Industrial Property Law, if the brand is used in the same class of goods or services for which it is registered, there will be an infringement of the trademark right. Therefore, it would be correct to accept the majority opinion in the doctrine.

2.2.5. Misleading Impression of The Domain Name

Domain names may create a misleading impression regarding the activities, workplace, or goods and services of the registrant. In such cases, the use of the domain name may constitute unfair competition within the meaning of Article 54 of the Turkish Commercial Code. The registration of domain names containing titles that a person does not have the right and authority to use on their own behalf will also create unfair competition. Redirecting internet users to a website they don't want to use with small changes made to a well-known domain name belonging to another person, usually by adding or removing letters, is called typosquatting. Infringers obtain advertising revenue by redirecting internet users to a website they do not want with a letter change or by offering similar goods and services provided by the real domain name owner, users are misled and trying to get benefits.¹⁴⁰ It is the secondary level domain name that should be taken as a basis when evaluating the similarity between the brand and the domain name.¹⁴¹ Top Level domain name (for example tr. etc) may have no distinctiveness for the users. The element that an average user will notice is a second-level domain name. Moreover, adding letters to secondary-level

¹³⁹ Şenocak, *Tescilli Markanın Aynısının veya Benzerinin Alan Adı (Domain Name) Olarak Kullanılması Suretiyle Marka İhlali*, 116 & YASAMAN, *İnternette Marka Hakkının İhlali*, 194.

¹⁴⁰ Oğuz, *İnternet Alan Adı Haklarının Korunması*, 288.

¹⁴¹ Bozbel, *Fikri Mülkiyet Hukuku*, 471; Uzunallı, *Marka Hukuku*, 137, Şenocak, *Tescilli Markanın Aynısının veya Benzerinin Alan Adı Olarak Kullanılması Suretiyle Marka İhlali*, 116.

domain names, making letter errors, or writing in a different alphabet, or using the main element of the domain name as a third level domain name will constitute trademark infringement.¹⁴²

Article 55/1/a/1 of the TCC regulated that defaming other, their goods, business products, prices, activities or commercial transactions with false, misleading or unnecessarily offensive statements constitutes unfair competition. Therefore, unfair competition will occur if domain names containing disparaging expressions about competitors are used in a way that misleads users. For example, if a perfume company uses the domain name as a www.stinkychannel.com, this would clearly disparage the rival company in the eyes of internet users and would constitute unfair competition.

2.2.6. Evaluation of the Fact That a Domain Name Does Not Have to Have Distinctive Characteristics in Order to be Obtained From a Trademark Perspective

There is no requirement for the domain name to have distinctive characteristics like trademarks in order to obtain domain names. Any sign that has not been obtained before and meets the other requirements can be obtained as a domain name.¹⁴³ According to Article 4 and Article 5/a, 5/b of the Industrial Property Law No. 6762, non-distinctive names cannot be registered as trademarks. Obtaining an internet domain name does not mean that the sign constituting the domain name cannot be registered as a trademark. It is possible to subject the domain name to trademark registration in order to unfairly benefit from the domain name that has acquired distinctive characteristics due to the conveniences provided by electronic commerce.¹⁴⁴ According to Article 6/3 of the Industrial Property Law No. 6762, "If a right has been obtained for an unregistered trademark or another sign used in trade before the application date or the priority date, if any, the trademark application shall be rejected upon the

¹⁴² Bozbel, *Fikri Mülkiyet Hukuku* 471; Uzunallı, *Marka Hukuku*, 137, Şenocak, *Tescilli Markanın Aynısının veya Benzerinin Alan Adı Olarak Kullanılması Suretiyle Marka İhlali*, 475-476.

¹⁴³ Yasaman, *İnternette Marka Hakkının İhlali*, 143.

¹⁴⁴ Yasaman, *İnternette Marka Hakkının İhlali*, 149.

objection of the owner of this sign.” According to this article, if the domain name has become a distinctive sign due to use in trade, an objection may be made to the trademark registration application regarding the domain name or if the sign has been registered as a trademark, the invalidity of the trademark may be requested.¹⁴⁵

2.3. Domain Names and Competition Law

Domain name is a system that makes it easier for the user to reach the site they want to visit, more technically, and has become very important for commercial life over time. Today, with many commercial companies also taking place in the virtual world and sales made on virtual stores becoming widespread, internet domain names have been effective in building a new global market on the internet.¹⁴⁶ For this reason, having a domain name identical to a brand, trade name, or business name makes it easier to both promote and sell on the internet. The use of the domain name system by people who want to gain unfair advantage in commercial life will result in unfair competition.

In case an unregistered trademark is used as a domain name, protection can be provided with unfair competition provisions if the conditions are present. In addition, protection can be requested according to unfair competition provisions in case a domain name is obtained with the purpose of discrediting the products of an unregistered trademark.¹⁴⁷ If the reason for registering the domain name in his/her own name is to transfer or rent this domain name to one of his/her competitors, this situation is called domain grabbing. Here, it is seen that the domain name owner, who intends to sell the brand to the brand owner after registering it as a domain name, acts in bad faith. Domain grabbing is also considered within the scope of unfair competition, as it especially prevents

¹⁴⁵ Yasaman, *İnternette Marka Hakkının İhlali*, 151.

¹⁴⁶ Tekin Memiş, *Alan İsmi Etrafında Ortaya Çıkan Hukuki Sorunlar*, Türkiye Bilişim Dergisi, 2001.

¹⁴⁷ Tekin Memiş, *İnternette Alan İsimleri Uyuşmazlıklarında Çözüm Arayışları ve WIPO Kararı Raporu*, Prof. Dr. Aysel Çelikel’e Armağan (Ankara: 2001), 518.

competition.¹⁴⁸ Within the scope of TCC article 55/1/a-2, if domain names have false and misleading content, this will also cause unfair competition. For example, if a domain name such as “cheapestcar.com” is used, if the prices of the cars sold on the website are examined and it is determined that the domain name is misleading, it can be said that this domain name causes unfair competition. If expressions that are not compatible with reality or that will create a wrong perception and impression in the consumer are used as domain names for purposes such as increasing sales rates and expanding the customer circle, this may constitute unfair competition according to the TCC.¹⁴⁹

The person who registers the domain name has an exclusive right on the domain name he/she has registered.¹⁵⁰ Also, no one else may register that domain name. The person or organization that allocates the domain name will have an exclusive right on the domain name in terms of website and e-mail transfer. This principle is also known as the first-come, first-served principle.¹⁵¹ Unfair competition such as domain grabbing occurs due to this principle. A person who registers a domain name in his/her own name can prevent anyone else from using that domain name. However, if the person using this domain name has a legitimate reason to use the domain name, the use of the domain name cannot be prevented even if the domain name is registered in the name of someone else.¹⁵² In the case that the domain name is derived from a trademark name, business name or brand based on a primary and superior right, if a domain name has been previously registered by someone else and the person claiming to have rights over that name shall prove that he/she has a primary and superior right over the relevant domain name. If this person claims and proves his/her superior right, the first person to get the domain name will not be protected in accordance with the “first come, first served” principle. For this reason, the

¹⁴⁸ Soydemir, *İnternette Haksız Rekabetin Önlenmesi*, 194.

¹⁴⁹ Fatma İslamoğlu, *Elektronik Ortamda Haksız Rekabet* (Ankara: Adalet Yayınevi, 2023), 86.

¹⁵⁰ Sefer Oğuz, *İnternet Alan Adı Haklarının Korunması* (Ankara: Seçkin Yayıncılık, 2018), 61.

¹⁵¹ Gürsel Öngören, *İnternet Hukuku* (İstanbul: Öngören Hukuk Yayınları, 2006).

¹⁵² Güzide Soydemir, *İnternette Haksız Rekabetin Önlenmesi*, Seçkin Yayınevi, 2015, Ankara 164.

person who registers the domain name will not have absolute rights over the domain name he has registered.¹⁵³ Domain names have important functions such as providing user traffic to websites and attracting users' attention. Infringers would like to have unfairly benefit from it. For this reason, many illegal behaviors related to domain names may occur.

Each country's approach to domain names may have different practices in the allocation and registration of domain names. While there is no specific legal regulation specifically for domain names in Turkish law, there is a regulation in American law that regulates the illegality of domain name violations with the "Anti-cybersquatting Consumer Protection Act" (ACPA). There is a universal principle regarding domain names, first come first served principle. Only one person can register a domain name in his/her own name. For this reason, domain names are limited, and since domain names are limited, struggles and legal disputes regarding domain names come to the fore among some businesses.¹⁵⁴

Domain names can serve as a distinctive sign such as a trademark, or company name as long as they are used commercially. In the Turkish Court of Cassation decisions, domain names are accepted as industrial property rights such as patents, utility models, designs, trademark names, company names, and brands.¹⁵⁵ For this reason, domain names do not only serve as addresses, but they are also considered sui generis distinctive signs. For this reason, they can be protected under unfair competition.¹⁵⁶ Moreover, if a domain name is the same or similar to another domain name or a trademark name, a dispute may arise between the domain name owners or between the domain name owner and the brand owner within the framework of unfair competition. In order for the

¹⁵³ Kemal Şenocak, "Tescilli Markanın Aynısının veya Benzerinin Alan Adı (Domain Name) Olarak Kullanılması Suretiyle Marka İhlali," *Banka ve Ticaret Hukuku Dergisi* 25, no. 3 (2009), 106.

¹⁵⁴ Miyale Tanla Özen, *Haksız Rekabetin Elektronik Ortamda Görünüş Biçimleri* (İstanbul: On İki Levha Yayıncılık, 2023), 90.

¹⁵⁵ Yargıtay, 11. HD., E. 2009/15031, K.2011/17122, T.15.12.2011.

¹⁵⁶ Mehmet Emin Bilge, *Ticari Ad ve İşaretler Arasında Karıştırılma Tehlikesi* (Ankara, 2014), 184.

domain name owner to prove the unfair competition claim, it shall indicate the possibility of confusion between the names in question and prove that the domain name in question is effectively used. On the other hand, if a trademark is used as a domain name without the owner's permission, a trademark violation may be mentioned, and the Industrial Property Law No. 6769 will be applied. In addition, an unfair competition may occur in this case. In summary, trademark violations related to domain names, violations of names or commercial names may occur, as well as disputes within the framework of unfair competition regarding domain names.

There are cases where a sign or name belonging to someone else that is not registered but belongs to someone else is used as a domain name by a third party. When a sign or name belonging to someone else but not registered is used as a domain name, the second-level domain name should be examined first, as in other domain name disputes.¹⁵⁷ In order to determine unfair competition, there should be examination of whether domain name creates a risk of confusion or confusion for users or the situation that someone else's reputation is unfairly utilized. If the use of a person's name, title or sign by someone else as a domain name creates a risk of confusion or confusion for users or the reputation of the person whose name, title or sign is used, the existence of unfair competition can be mentioned. The first use of a name, title or sign by a person as a domain name will not create the conditions for legitimate use, and it is not necessary for a person to register a name, title or sign in order to legitimately use them.¹⁵⁸

What needs to be examined for legitimate use is that the name, title or sign that will be the subject of confusion stands out to a certain customer base due to its distinctive qualities. When examining confusion, users with an average level

¹⁵⁷ Kaplan, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri*, 63 & Yasaman, *İnternette Marka Hakkının İhlali* 136.

¹⁵⁸ Özen, *Haksız Rekabetin Elektronik Ortamda Görünüş Biçimleri*, 97.

of intelligence should be taken into account¹⁵⁹. If a third party creates situations that may cause the user to confuse a sign or name belonging to someone else but not registered with another person's goods, work products, activities or signs when used as a domain name, it will constitute unfair competition within the scope of TCC 55/1/a4.¹⁶⁰ Furthermore, if the third party uses the relevant domain name to benefit from someone else's name or sign or causes users to confuse the owner of the sign or name with the owner of the domain name, unfair competition will occur.

2.4. UNFAIR COMPETITION THROUGH DOMAIN NAME INFRINGEMENTS

2.4.1. Cybersquatting

Cybersquatting is defined as “registration of a domain name corresponding to another person's trademark for the purpose of resale or unfair use.”¹⁶¹ ICANN defined cybersquatting as Cybersquatting is generally bad faith registration of another's trademark in a domain name. Domain name infringer registers third party's trademarks or names similar to these trademarks in bad faith on a first-come, first-served principal basis. Domain name infringer who registers in bad faith aim to sell these domain names to their rightful owners or their competitors for a very high price in order to unfairly benefit from it. Moreover, domain name infringer may buy the domain name in advance with the possibility that there may be people who may buy the domain name in the future and sell it at a high price later.¹⁶²

¹⁵⁹Prof. Dr. Reha Poroy ve Prof. Dr. Hamdi Yasaman, *Ticari İşletme Hukuku* (Ankara: Seçkin Yayıncılık, 2024), 312.

¹⁶⁰ Ayşe İpek Sarıöz, *İnternet Alan Adlarının (Domain Name) Kullanılmasında Doğan Haksız Rekabet Halleri ve Uygulanacak Hukuk*, *Galatasaray Üniversitesi Hukuk Fakültesi Dergisi* (2011): 640.

¹⁶¹ SentinelOne. “Cybersquatting.” SentinelOne, accessed March 3, 2025, <https://www.sentinelone.com/cybersecurity-101/threat-intelligence/cybersquatting/>

¹⁶² Bernadette Dino, *Passive Warehousing under ICANN's Uniform Dispute Resolution Policy: A Utilitarian Perspective*, 10 COMMLAW CONSPECTUS 301 (2002).

In most cases, domain names are distributed on a first-come-first-serve basis to whoever registers a domain name first.¹⁶³ With this principle, registration process is fast and easy. "However, this relatively easy registration process has its drawbacks, including registration and use of domain names with the intent of profiting from the goodwill of someone else's trademark which will constitute cybersquatting."¹⁶⁴ Cybersquatters usually registers a domain name and most of the time this domain name "including a well-known trademark for the purpose of selling the name to the trademark owner."¹⁶⁵

One of the most well-known cases concerning cybersquatting is *British Telecommunications plc and Others v. One in a Million Ltd.*¹⁶⁶ In this case, the defendant company registered several domain names identical or similar to famous trademarks, with the intention of selling them to the legitimate trademark owners for profit. The court ruled against the defendant, holding that the registration of the domain names in bad faith constituted an instrument of fraud and amounted to trademark infringement.¹⁶⁷

People who register someone else's trademark as their own domain name are called cybersquatters. These cybersquatters sell the domain names they register to the trademark owner or a third party at a high price in order to make a profit. Cybersquatters may register domain names for many purposes. These purposes may include selling the domain name to the original trademark owner

¹⁶³ Gilson, Gilson on Trademarks § 7A.02, quoted in Glonina, "Back to the Future, 595.

¹⁶⁴ J. Thomas McCarthy, McCarthy on Trademarks and Unfair Competition, § 25A:48, 5th ed. (2024), quoted in Vera Glonina, "Back to the Future with Blockchain Domain Names: Toward a Global Policy to Fight Cybersquatting in Web 3.0," The Trademark Reporter 114, no. 4 (July–August 2024): 596.

¹⁶⁵ Liability Under the ACPA: A More Effective Approach to Deterring Cybersquatting at Its Source, 22 Roger Williams University Law Review 327, 330 (2017), quoted in Vera Glonina, "Back to the Future with Blockchain Domain Names: Toward a Global Policy to Fight Cybersquatting in Web 3.0," The Trademark Reporter 114, no. 4 (July–August 2024): 596.

¹⁶⁶ WIPO Arbitration and Mediation Center, *Sanofi v. Bo Li* (Case No. D2013-2071), Administrative Panel Decision, February 4, 2014, accessed February 3, 2025, <https://www.wipo.int/amc/en/domains/decisions/text/2013/d2013-2071.html>.

¹⁶⁷ Abdülkadir Gül, *İnternet Alan Adları Uyuşmazlıkları Alternatif Çözüm Mekanizmasında Dünya Uygulamalarının İncelenmesi ve Türkiye İçin Öneriler* (Ankara: Bilgi Teknolojileri ve İletişim Kurumu, 2015), 24-25.

or a third party at a high price or gaining unfair advantage by taking advantage of the recognition of the trademark by directing internet users to the website or, not actively using the domain name and waiting for the trademark owner to claim the domain right from him for a certain price over time. Moreover, cybersquatter may not actively use the domain name and prevent the trademark owner from register that domain name by simply holding the domain name without expecting any profit in return.¹⁶⁸

In the cybersquatting type of infringement, the person has no legitimate connection with the name registered as a domain name. The person wrongfully registers a well-known trademark name, city name, person name or trade name as a domain name. After that, infringer contacts the real right owner of the registered domain name and offers to sell it at a high price. Moreover, infringer threatens to sell it to competitors if real right owner does not agree to buy it for a high price. People who register other people's names and marks as domain names without a legitimate connection and make unfair profits by selling them without using them calls as a cybersquatters.¹⁶⁹ Even if no deceptive activity is carried out, the mere registration of the domain name shall constitute unfair competition within the scope of Article 54/2 of the TCC.

When the Internet Domain Names system was first introduced, it provided registration of domain names according to the first-come, first-served rule. With the establishment of ICANN, first come first served rule continued for a while. Due to the lack of regulation in this area, some persons have taken advantage of this gap in the law and registered the well-known and famous persons names or trademarks. Through this registration, they aimed to obtain unfair financial gain in an easy way. This unfair registration method created cybersquatting terminology. According to cybersquatting, infringer registers the famous brands

¹⁶⁸ Abdülkadir Gül, *İnternet Alan Adları Uyuşmazlıkları Alternatif Çözüm Mekanizmasında Dünya Uygulamalarının İncelenmesi ve Türkiye İçin Öneriler* (Ankara: Bilgi Teknolojileri ve İletişim Kurumu, 2015), 24-25.

¹⁶⁹ Poroy and Yasaman, *Ticari İşletme Hukuku*, 429.

and names belonging to well-known businesses as domain names in their own name, then resorts to the method of selling these domain names to the brand owner for a high price. The person who neglects to register it in his or her own name can take legal action or pay the price demanded by the infringer.

If the infringer who registered the .tr domain name has a place of residence or assets in Turkey, the rightful owner may seek compensation and request cancellation of the registration under Turkish law. However, when damages from unfair registration occur both in Turkey and abroad, cancelling the unfair registration solely through domestic courts may be insufficient to fully protect the rights of the owner. Moreover, if the trademark infringement involves generic top-level domain names such as .com, .org, or .net, domestic lawsuits may only result in blocking access to the infringing website within Turkey. To address these limitations, ICANN, in cooperation with WIPO and other organizations, established the Uniform Domain Name Dispute Resolution Policy (UDRP). Under the UDRP rules, right holders may initiate arbitration proceedings to cancel the infringer's domain name and have it transferred to their own name. Thus, domain name rights violations can be effectively remedied through WIPO-administered arbitration, authorized by ICANN, which has global application beyond national jurisdictions.

2.4.1.1. Telstra Doctrine

The courts have not initially recognized infringement in cases brought against persons who register names and signs identifying others as domain names and passively hold them for a long time without using them, because the domain name is not used. After the Telstra.org case, cybersquatting was also accepted as infringement. According to this decision, the unfair registration of famous names or well-known signs by third parties and the prevention of their use by the real

right holder is also constitute an infringement of the domain name.¹⁷⁰ Telstra decision has been turning point for cybersquatting infringements. Before Telstra decision, in accordance with the first-come, first-served principle, infringers registered well-known trademarks as domain names in order to sell them later at a high price. Infringers who registered the domain name in their own name even though they had no legitimate interest usually was winning the cases on the grounds that they did not actually use the domain names. Therefore, cybersquatting was an encouraging activity for infringers.

In the arbitral award under the ICANN regimes, the arbitral tribunal considered that the non-use of the Telstra.org domain name for a long period of time after its registration constituted passive use and held that its registration alone would constitute infringement. Therefore, with this decision, the registration and inactive use of a well-known trademark belonging to another person by third parties is prohibited, although it is considered passive use. In comparative law, this decision has been recognized by the courts and applied to existing cases. According to Article 54 of the TCC, financial damage is not required for unfair competition. The existence of other conditions and the risk of damage will constitute unfair competition. Therefore, in such a case, the existence of unfair competition may be decided.

In doctrine there is also argument regarding another type of infringement which is called an “anticipatory cybersquatting,” In this type of infringement, infringer “practice of registering domain names with minimal present value in the hopes that these names will become desirable, and therefore increasingly valuable, in the future.”¹⁷¹

¹⁷⁰ WIPO Arbitration and Mediation Center, “Telstra Corporation Limited v. Barry Cheng Kwok Chu,” Case No. D2000-0423, last modified July 18, 2000, accessed March 3, 2025, <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-0423.html>.

¹⁷¹ Tamara Michelle Kurtzman, “Cyber Center: The Continued Hijacking and Ransoming of the Domain Name System by Modern-Day Corporate Privateers,” *Business Law Today*, June 20, 2016, accessed March 3, 2025, https://www.americanbar.org/groups/business_law/resources/business-law-today/2016-june/cyber-center-the-continued-hijacking-and-ransoming/.

When the first time there are cases arising from cybersquatting in 1990s, US Courts did not resolve the cases from cybersquatting instead, courts resolve cases from consumer confusion. For example, Dennis Toeppen, registered many popular companies' trademark names as a domain names. Dennis Toeppen wanted to sell these domain names to real trademark owners in order to make economically profit from it. US Supreme Courts analyzed the cases of Dennis Toeppen in the basis of using pre-Internet trademark legislation like the Federal Trademark Act of 1946 and the Federal Trademark Dilution Act of 1995. Court did not claim there is a type of cybersquatting infringement, court claimed consumer confusion.¹⁷²

In another case of Dennis Toeppen, company which is called Panavision, tried to register the domain name "panavision.com," as their own. However, company learned that Dennis Toeppen had registered panavision.com and "panaflex.com." which is another trademark of the company, as his own before the company. Dennis Toeppen, he offered to \$13,000.35 to the company in order to settlement. Bu the company refused Dennis Toeppen's offer. Panavision bring the lawsuit regarding dilution of its trademark under the Federal Trademark Dilution Act of 1995, 15 U.S.C. § 1125(c) and under the California Anti-dilution statute, Cal. Bus. & Prof. Code §14330.37 Also company claimed that Toeppen was in the business of stealing trademarks, registering them as domain names on the Internet and then selling the domain names to the rightful trademark owners." The Federal District Court for the Central District of California and the United States Court of Appeals for the Ninth Circuit ruled in the company's favor, Courts decided that customers of Panavision cannot find its web page when they typed 'Panavision.com,' for this reason there will be decrease in the value of Panavision's trademark.¹⁷³

¹⁷² Jason M. Osborn, "Effective and Complementary Solutions to Domain Name Disputes: ICANN's Uniform Domain Name Dispute Resolution Policy and The Federal Anticybersquatting Consumer Protection Act of 1999," Notre Dame Law Review 76 (2001): 226-227.

¹⁷³ Panavision v. Tamarind, 141 F.3d 1319 (9th Cir. 1998)

Similar precedents exist in civil law jurisdictions. For example, in Russia, there is a notable precedent concerning a Starbucks trademark case. Before Starbucks commenced operations in Russia, an infringer registered the 'Starbucks' domain name to capitalize on the brand's popularity and later offered to sell it to Starbucks for \$600,000. Starbucks filed a lawsuit and eventually won the case after several years.¹⁷⁴ The length and unpredictability of such cases can be challenging for plaintiffs. Consequently, there has been a recognized need for specific regulations addressing cybersquatting.¹⁷⁵ While the United States and some other jurisdictions have enacted laws to regulate cybersquatting, many countries, including Turkey, still lack comprehensive legal frameworks and procedures to effectively address this issue. This regulatory gap continues to pose significant challenges for right holders seeking to protect their trademarks online.

2.4.2. Cyberpirates

Another type of infringement is called cyberpirating. In this type of infringement, "infringer use of the goodwill of the trademark to lure web users to a different site by redirecting or connecting ad revenue."¹⁷⁶ Cyberpirating is the use of a domain name that is too similar to distinguish to a well-known trademark in order to profit from it. Cyberpirate uses well-known trademarks and trade names belonging to third parties on its website in order to taking advantage of consumers' carelessness and ignorance and directing internet traffic to itself. In this way, it generates unfair profits through advertising.

There is a difference between cybersquatting and cyberpirates. "In cybersquatting, third parties register well-known trademarks belonging to third

¹⁷⁴ Andrew Kramer, "He Doesn't Make Coffee, but He Controls 'Starbucks' in Russia," The New York Times, October 12, 2005, accessed, <https://www.nytimes.com/2005/10/12/business/worldbusiness/he-doesnt-make-coffee-but-he-controls-starbucks-in.html>.

¹⁷⁵ Glonina, "Back to the Future," 595.

¹⁷⁶ Liability Under the ACPA, 330.

parties and wait in ambush to gain benefit by selling them. However, in cyberpirates, the domain name of a website is used to provide advertising services to third parties and deceive internet users.”¹⁷⁷

2.4.3. Typosquatting

Another type of domain name grabbing violation is typosquatting. in this type of infringement, “*registration of misspellings of a trademark as a domain name for the purpose of direct those who misspell a domain name to a different website.*”¹⁷⁸ With this method, regardless of whether it is well-known or not, the domain names of registered domain name owners or a very similar version of a brand name with a few letters different are registered by a third party.¹⁷⁹ Thus, the person who postpones the domain name by foreseeing spelling errors; will have an unfair profit from the site he registered since there will be confusion between himself and the real brand or domain name owner. In this way, he will provide an unfair economic and commercial gain. Typosquatting is the registration of a domain name similar to someone else's domain name with minor changes or missing letters. In this way, internet users visit a website they did not intend as a result of a typographical or spelling error, and the infringer benefits from this. “The methods that keyboard hackers usually use when determining the domain names they want to register are: taking into account the misspelling of the words to be searched, making additions to the domain name to be accessed, shortening the domain name to be accessed, changing the general top level domain names of the domain names.”¹⁸⁰ “In cyberpirates, the aim is to benefit from the similarity of spelling and pronunciation of a well-known domain name, while in typosquatting, it is aimed to benefit from possible mistakes made during the keyboard typing of the domain name.”¹⁸¹

¹⁷⁷ Sefer, *İnternet Alan Adı Haklarının Korunması*, 322.

¹⁷⁸ Liability Under the ACPA, 330.

¹⁷⁹ Özen, *Haksız Rekabetin Elektronik Ortamda Görünüşü*, 93.

¹⁸⁰ Karaman, *İnternet Alan Adı Uyuşmazlıkları ve Çözüm Yolları: Karşılaştırmalı Bir Analiz*, 67.

¹⁸¹ Sefer, *İnternet Alan Adı Haklarının Korunması*, 323.

There is a famous case regarding typosquatting, “Facebook v. Cyber2Media, Inc. et al., Case No. 4:11-cv-03619”. Defendant registered “Facebobk.com and Facebookwelcome.com” domain names in order to attract internet users who want to access Facebook. The complaint, Facebook, claimed that there is typosquatting, and due to this typosquatting there is unfair business profit. Also the complaint claimed that there is infringement regarding Anticybersquatting Consumer Protection Act. The court gave decision in favor of The complaint and “U.S. District Court, Northern District of California award Facebook \$2.8 million in damages from typosquatters under the Anticybersquatting Consumer Protection Act (ACPA).”¹⁸²

2.4.4. Domain Grabbing

Domain grabbing, often synonymous with cybersquatting, occurs when a registered trademark, an unregistered but well-known brand, or a confusingly similar mark is registered as a domain name.¹⁸³ Domain grabbing can take various forms and serve multiple purposes. For instance, the individual engaging in domain grabbing may seek to divert a competitor’s customers by exploiting their reputation, brand, and distinctive signs, or may use the domain name to advertise in a way that causes confusion among users, leading them to believe there is an association with the competitor. A person who performs domain grabbing may achieve his/her goal by selecting an indistinguishable similar version of the well-known brand as a domain name, or he/she may achieve his/her goal by selecting a domain name that includes the well-known brand and attracts the attention of users and directs them to his/her own site.¹⁸⁴ In this case, since it is regulated within the scope of TCC 54/2 that other behaviors and commercial practices that are deceptive or contrary to the rules of honesty and that affect the relations between competitors or between suppliers and customers

¹⁸² Facebook v. Typosquatters: Damages and Domains Awarded Under Anticybersquatting Consumer Protection Act, accessed March 20, 2025 <https://www.jdsupra.com/legalnews/facebook-v-typosquatters-damages-and-d-31804/>

¹⁸³ Armağan Ebru Bozkurt Yüksel, *Elektronik Ortamda Haksız Rekabet*, Türkiye Adalet Akademisi Dergisi no. 18 (2014): 100.

¹⁸⁴ Soydemir, *İnternette Haksız Rekabetin Önlenmesi*, 169.

are unfair and unlawful, the registration of the relevant domain name by the competitor for such reasons will be considered unfair competition. Domain name grabbing can occur when domain names that have not been taken by third parties but are likely to be taken or requested are purchased in order to be sold to people who want to use these names in the future for high amounts of money. This situation is called domain name parking. Domain name parking is when the name of a well-known brand or company is taken by others as a domain name and these domain names are later tried to be sold to interested parties for high amounts of money. Since domain names are allocated according to the first come first served principle, malicious people have taken advantage of this situation.¹⁸⁵

2.4.5. Sending e-mail with someone else's domain name for infringement

2.4.5.1. Spamming/ Spoofing

One of the most commonly used methods in internet advertising today is e-mail advertising. Spam emails are unsolicited and impersonal messages sent to attract the recipient's attention. These emails are often sent without the recipient's consent, which raises legal concerns regarding privacy and electronic communication regulations. People who cause these spam mailings to be sent to the masses are called spammers. Spammer collects e-mail addresses and creates a database. Then markets these e-mails to individuals and companies that want to advertise their products for a fee. Mass e-mailing on the Internet is characterized in two different ways. The first is spamming, which is done solely for advertising purposes, and the second is spoofing, which is mass mailing for fraudulent purposes. Spammer can obtain e-mail addresses in different ways such as forum sites, mailing lists, mailing lists, news groups, websites etc.

"Spoofing is sending mass e-mails to learn security and password information in order to take advantage of illegal transactions using someone

¹⁸⁵ Özen, *Haksız Rekabetin Elektronik Ortamda Görünüş Biçimleri*, 93.

else's domain name.”¹⁸⁶ This method is called phishing. It is a method used to defraud the domain owner's customers. In this method, the identical or indistinguishably similar domain name recognized by internet users is registered as a domain name under a false name. Or the infringer uses someone else's registered and in use domain name for its own purpose with a routing and misleading program. By registering an identical or indistinguishably similar domain name, mass e-mails are sent to users which says that customer information needs to be updated. Also, in order to avoid suspicion among users, an exact replica of the real website is created on the directed website. This is how the personal information that users write on the website is captured by fraudulent. Law On the Regulation of Electronic Commerce (No: 6563) Regulated unwanted e- mails. This regulation complies with 2000/31/EC EU directive which is also regulated unwanted, spam mails. In this regulation article 2/c regulated that e mails are commercial electronic message. Also, article 6 of this regulation regulated that “commercial electronic messages may only be sent to recipients with their prior consent.”

The EU adopted and developed many measures for prevent illegal activities on the internet since 2002. EU adopted Directive on Privacy and Electronic Communications to prohibit spam e mails. Then, adopted Communication on spam in 2004 for counter spam mails. This directive offered technical solutions regarding prevent spam mails and aimed to raise awareness on this subject. “Decision No 854/2005/EC of the European Parliament and of the Council of 11 May 2005” established safe use of internet and safe use of developing Technologies a multiannual Community Programme on promoting safer use of the Internet and new online technologies. “The Unfair Commercial Practices Directive, aimed to protect internet users from unfair commercial practices¹⁸⁷.

¹⁸⁶ Sefer, *İnternet Alan Adı Haklarının Korunması*, 324.

¹⁸⁷ Decision No 854/2005/EC of the European Parliament and of the Council of 11 May 2005 establishing a multiannual Community Programme on promoting safer use of the Internet and new online technologies.

2.4.5.2. Unfair Competition Through Spamming

Unfair competition through spam is a commonly encountered practice today. The commercial reputation of a business or brand can be targeted by sending spam emails containing false or misleading content to a large number of recipients. According to Articles 55/1(a), 55/1(b), and 55/2 of the Turkish Commercial Code, the Turkish Court of Cassation has held that emails sent by the defendant to its customers with the intent to defame the plaintiff constitute unfair competition.

2.4.6. Infringement by Use of Domain Name for Redirection (Hyperlink/Key Word/Meta Tag/Banner/Pop-Up)

2.4.6.1. Hyperlink

Hyperlinks are short codes used to connect web pages written in HTML language.¹⁸⁸ And it is a shortcode which links to other websites, shortly called link. If the content of the web page accessed via the link does not match with the link itself and misleads the user, unfair competition will occur. Or, if the web page which is accessed by the link infringes the competition law, it will also constitute unfair competition. In terms of unfair competition law, a link may constitute a violation of the law in two different ways. The first of these is that the way the link is provided constitutes unfair competition. The other is that the content of the target website to which the link is provided constitutes unlawful competition. A violation occurs if the content of the website accessed via the link does not match the link itself and users are misled due to this situation. In such cases, the link itself constitutes unfair competition. There are different types of links. Below, linking types will be examined in more detail.

¹⁸⁸Bozkurt, *Elektronik Ortamda Haksız Rekabet*, 103.

2.4.6.1.1. Surface And Deep Links

The part of a link code that can be accessed by clicking, may exist as a word or an image. These links can be in the form of a deep link or a surface link. In the surface link type, a link is given to the home page of the linked site.¹⁸⁹ In other words, when the link is clicked, a link is established to the home page of that site. In the deep link type, it provides access to a subpage of a third-party website that can be accessed from the homepage, bypassing the homepage.¹⁹⁰ In other words, a direct link is established not to the homepage of the accessed website, but to the subpages and files under this site. Accessing a website from another website via a deep link causes negativities for the website being accessed. Since the site is not accessed with its own domain name, recognition of the domain name is prevented. In addition, since subpages are accessed without accessing the homepage, advertisements and other revenue elements on the homepages will not be viewed by users. This will cause the website owner to suffer losses. This situation may be considered unfair competition in accordance with TCC article 55/1/a/4.

2.4.6.1.2. External And Internal Links

With external links, the internet user accesses a different web page by clicking on links that direct them to another website. This linked page may be the homepage or a subpage of that website. In contrast, with internal links, the user remains on the same web page and is not redirected elsewhere.¹⁹¹ An infringer may falsely represent the authorship of a work through misleading hyperlinking, thereby causing damage to the original website and its author.

¹⁸⁹ KAPLAN, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri*, 85.

¹⁹⁰ KAPLAN, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri*, 85.

¹⁹¹ Soydemir, *İnternette Haksız Rekabetin Önlenmesi*, 126.

2.4.6.1.3. Inline Links

In the inline link type, the domain name owner establishes a direct link to its own website with the audio, video, etc. content on the website of a third party in such a way that it is not noticeable that it is taken from another website.¹⁹² The site is displayed without changing the address of the previous page where the link is available. As a result, it cannot be recognized by a third party that the source of the content is another website. Thus, it may be considered as a violation pursuant to Article 55/1/a/2 of the TCC and Article 55/1/a/4 of the TCC. The inlink may be confused with the goods and services or activities of a third party. The person who links with the inlink method may mislead users about who offers the goods, services or activities. In this case, competition infringement occurs pursuant to Article 54/2 of the TCC. If the linker disparages the original site owner, its goods and activities or unlawfully makes a comparison, it will constitute unfair competition within the scope of Article 55/1/a/5 of the TCC.

2.4.6.1.4. Unfair Competition Through the Content of The Linked Website

Linking is a normal situation due to the nature of the Internet. It is not prohibited to link only on a website. For this reason, linking alone is not an act that constitutes unfair competition. The issue to be considered is whether the link given causes a situation that affects the competition. Providing a deceptive and misleading link to a website about the competitor's business products, prices and activities in violation of the rule of honesty or in a deceptive and misleading manner constitutes unfair competition pursuant to Article 55/1/a/2 of the TCC. Also, providing a link in order to humiliate the competitor, to disparage its commercial activities or to benefit from the fame of the competitor constitutes unfair competition pursuant to Article 55/1/a/1 of the TCC. Moreover, sharing links with advertisement content on third parties' websites for the purpose of

¹⁹² Güzin Üçışık, *İnternet Üzerinde Yapılan Karşılatımalı Reklamlar ve Tüketicinin Korunması*, 2. Tüketici Hukuku Sempozyumu, Ses Çözümleri ve Makaleleri (Ankara: Bilge Yayınevi, 2013), 126.

directing potential customers to a different website and thus gaining profit constitutes unfair competition pursuant to Article 54/2 of the TCC.

2.4.7. Framing

“Framing is the process of allowing a user to view the contents of one website while it is framed by information from another site.”¹⁹³ Framing allows the user to view different websites together on a single screen without disconnecting from the original page through a hyperlink. In other words, a framing site links to another site through HTML and displays that site in a window or frame. So, unlike hyperlinking, in the case of framing the user stays on the framing site and views the content of both sites. The web site user may not realize that the content in the frame comes from another site. Inline linking and framing can be confused. In an inline link, a certain part of a web page is visible, while in framing, the entire linked page is visible.¹⁹⁴

The framed page may be confused with the framer's page. In such a case, unfair competition may occur pursuant to Article 55/1/a/4 of the TCC. The frame provider is not obliged to display advertisements within the framed page. This will cause financial harm to advertisers on the framed website and will cause unfair competition.

2.4.8. Keyword - Meta Tag

According to Article 7/2 of the Industrial Property Law, the rights arising from trademark registration are vested exclusively in the trademark owner. Furthermore, Article 7/3/d provides that the use of the same or similar sign on the internet as a domain name, metatag, keyword, or in similar forms to create a commercial effect is prohibited. Metatags are identification clues within an HTML-formatted page, which often provide various instructions to the browser

¹⁹³ Richard Sim, Linking, Framing, and Inlining, accessed march 20, 2025 <https://www.nolo.com/legal-encyclopedia/linking-framing-inlining-30090.html>

¹⁹⁴ Kaplan, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri*, 93.

to enable search engines to correctly categorize a website.”¹⁹⁵ There are millions of web sites and content on the internet. Therefore, search engines use meta tags to list the right content that users are looking for. The use of the same or similar trademark as a meta tag on a website without a justifiable reason will constitute infringement of the trademark right. A website owner may aim to get more clicks by using well known trademark name as a meta tag on their own web sites due to the popularity of trademark and being highly searched on the internet.¹⁹⁶ Moreover, sometimes websites owners may use the competitor's trademark name as a meta tag on their own website in order to attract the competitor's consumers. Internet users use search engines to access a resource on the Internet. After typing certain words in search engines normally it is expected that websites are ranked from most relevant content to least relevant content. However, domain name owners pay search engines for their own websites to appear in the top row or to appear if a different word is searched. If domain name owners use the trademark names of other trademark right holders as a keyword, it will constitute infringement of the trademark right. Industrial property law regulated that the use of a keyword will constitute infringement of the trademark right. “When the decisions of the Court of Cassation in Turkish law are examined, the use of keywords without a legitimate connection and in a way to create a commercial effect is considered sufficient to constitute infringement.”¹⁹⁷

The keywords placed in the search engine to classify the HTML code and scope of a website are called metatags.¹⁹⁸ So, Metatag ensures that the content and keywords of the website appear in the result list of search engines. In other words, Meta tags are like a referral code. The website owners are free to choose the keywords that make up the content of the meta tags. In this way, people

¹⁹⁵ Ömer Korkut, *Bir Markanın Web Sitelerinde Meta Tag Olarak Kullanılması Sorunu*, Banka ve Ticaret Hukuku Dergisi 24, no. 2 (2017): 502.

¹⁹⁶ Dr. Harman Preet Singh, *Domain Name Disputes and Their Resolution under UDRP Route: A Review*, 6 ARCHIVES OF BUS. RSCH. 147 (2018).

¹⁹⁷ Duruceylan, *Marka Hakkına Tecavüz Halleri*, 124.

¹⁹⁸ Tekin Memiş & Mustafa Can, *Elektronik Ortamda Haksız Rekabet Halleri*, Mevzuat Dergisi Y. 4, Issue 81 (2004): 18.

searching for these keywords on the internet will be able to access these linked web pages directed by the keywords. Website owners generate revenue for every click. For this reason, they want to increase the number of clicks to their web sites. For this, they can resort to some methods. Website owners may choose more popular and unrelated words instead of choosing keywords related to their website. In order to increase the interaction of their own websites, they choose unrelated popular words and with that, they mislead the users. Moreover, Website owners who use the words that will express rival companies as meta tags for their websites increase the number of visitors and advertising value of their websites in this way. Words used as meta tags can sometimes indicate different brands and well-known companies. In this way, website owners unfairly benefit from the recognition of brands and companies and negatively affects the competitor's customer environment. "In addition, search engines are manipulated and misdirected."¹⁹⁹

Unfair competition through the use of metatags may be by taking advantage of someone else's recognition, or it may be in the form of defamation of someone else. Article 7/3/d of the Industrial Property Law regulates that the use of the same or similar sign on the internet in the form of a domain name, meta tag, keyword or similar forms to create a commercial effect, provided that there is no right or legitimate connection to the use of the sign, constitutes a trademark infringement. According to an opinion, there is a distinction between whether the goods and services for which the meta-tag is used and the goods and services for which the trademark is registered are similar or different.²⁰⁰ In case of similarity, in addition to being a violation according to Article 7/3/d of the IPL, it will also be a violation pursuant to Article 55/1/a/4 of the TCC.

¹⁹⁹ Savaş Bozbel & Tekin Memiş, Marka ve Haksız Rekabet Hukuku Bakımından Adwords Reklamları, *İnternet Dergisi* (2008): Issue 81, 9.

²⁰⁰ Bozbel, *Haksız rekabet*, 614.

2.4.9. Banner- Pop Up

Banners are advertisements visually displayed on website pages, often showcasing the promotional content of other businesses. They are usually placed on top of the website, or the corner of the website and they are in different sizes and structures. If the banner advertisement contains false statements for other undertakings' goods and services, then it will constitute unfair competition according to Article 55/1/a/1 of TCC. If banner ads unnecessarily disparage competitors' products in order to gain customers or contain misleading content about rival business, it will constitute unfair competition. Therefore, if a click on a banner ad provides access to content that disparages a third party's product, this will constitute unfair competition in accordance with Article 55/1/a/1 of the TCC. Moreover, if banner advertisements are compared with goods or activities belonging to others, it will be unfair competition according to TCC article 55/1/a/4 and TCC article 55/1/a/5. Pop-up ads are ads that usually open in a separate window when you enter a web page and take up more space than banner ads.²⁰¹ Usually these ads close automatically after a while. Pop-up ads are usually made to attract attention and get people's e-mail addresses.

Pop- Up advertisement is a type of online advertisement that automatically appears on the screen, when a website is opened. Users do not need to click on it. There will be unfair competition if the pop-up advertisements in the websites mislead and confuse users. There will be deceptive advertisements and there will be unfair competition according to Article 55/ 1/a of TCC. Also, if pop advertisement creates a comparative advertisement by comparing it with goods or prices of others, then there will be unfair competition according to Article 55/1/a/5 of TCC. Website owners can advertise other web pages on their websites just as they can advertise their own websites. These ads function like billboards within websites.²⁰² These types of ads, called banners, are generally

²⁰¹ Üçışık, *İnternet Üzerinde Yapılan Karşılatırmalı Reklamlar ve Tüketicinin Korunması*, 585.

²⁰² Üçışık, *İnternet Üzerinde Yapılan Karşılatırmalı Reklamlar ve Tüketicinin Korunması*, 585.

located at the top and side of the web page. These ads, designed as visuals with static images or animations, contain a link that directs to the advertised site. When users click on this image, they access the linked web page. In other words, "these images act as buttons to access the advertiser's page."²⁰³ Banners are one of the most preferred types of advertising on the internet today. The reason for their preference is that they are low cost and reachable to customers. Website owners often use banner advertising to generate income and increase the number of readers on their web pages. According to Article 7/3/d of the IPR, the person using the sign does not have the right or legitimate connection regarding the use of the sign or the use of the same or a similar sign on the internet and creates a commercial effect will constitute a trademark infringement. Pop-up advertisement may use as a misleading advertisement which will be constitute unfair competition. If the features stated in the product promotion in the pop-up advertisement are not the same when the product is purchased, it will be unfair competition according to TCC article 55/1/a. Pop up advertisements can be used as comparative advertisements. In such a case, it will constitute unfair competition according to TCC article 55/1/a/5.

²⁰³ Kaplan, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri*, 119.

THIRD SECTION

LIABILITY IN UNFAIR COMPETITION TYPES CONDUCTED VIA DOMAIN NAME INFRINGEMENTS, APPLICABLE LAW AND WIPO ICANN ARBITRATION PROCEDURE

3.1. Protection of Domain Names in Case of Unfair Competition and Trademark Infringement

3.1.1. Protection of Registered Trademark Under the Turkish Intellectual Property Law

In case of infringement of a registered trademark through a domain name, the provisions regarding the protection of trademark rights regulated in Article 146 and following articles of the Industrial Property Law may be applicable. Within the scope of the IPR, trademark right owner may request to detect a violation, prevent a violation, stop a violation, and remedy a violation. In addition, material and moral compensation may be requested. Under Turkish law, domain name disputes may be settled by the dispute resolution mechanism which is regulated in the Internet Domain Names Regulation, or the parties may file a lawsuit. Turkey has not accepted the UDRP rules in its dispute resolution mechanism for its country-encoded domain names. However, it has regulated the implementation of a dispute resolution mechanism similar to the UDRP rules in the Internet Domain Names Dispute Resolution Mechanism Communiqué. The Internet Domain Names Dispute Resolution Mechanism Communiqué regulates the implementation of a dispute resolution system similar to the UDRP rules. In the event of a dispute concerning a domain name without the '.tr' country code, the UDRP rules apply. Conversely, disputes involving domain names with the '.tr' country code are resolved in accordance with the Communiqué. The Information Technologies and Communications Authority settles cases related to '.tr' domain name disputes through the TRABIS system.

In cases where a domain name with a '.com' extension, but not a '.tr' extension, infringes trademark rights, Turkish courts may order the website with that domain name to be blocked within Turkey. However, courts do not have the authority to order the cancellation or transfer of such domain names to the trademark owner. Turkish court decisions²⁰⁴ often refer to the practices established under the UDRP dispute resolution mechanism. Litigation may be initiated in cases involving domain name disputes. Under Turkish law, claims may be based on both trademark infringement and unfair competition.

3.1.2. Cases And Claims That the Trademark Owner Can File for Unfair Competition Through Domain Names

3.1.2.1. Action for Declaratory

With the declaratory case, it is determined whether the defendant's behavior will constitute unfair competition. In addition, it may also be requested to determine that the act, practice or behavior that is the subject of the lawsuit does not constitute unfair competition.²⁰⁵ It is not necessary for the defendant to be at fault for a declaratory judgment action to result in acceptance. According to Article 114 of the CCP (Code of Civil Procedure), there shall be a legal interest in filing a declaratory action like any other action²⁰⁶. In this context, there is no legal interest in filing a determination action after the plaintiff has filed a termination and prevention action²⁰⁷. On the other hand, the decision issued by the court in a declaratory action constitutes a final judgment. However, it is not possible to enforce the decision. This characteristic of declaratory actions leads to the fact that such actions are less common in practice.

²⁰⁴ Yargıtay 11. Hukuk Dairesi, 18 Aralık 2023, E. 2014/7335, K. 2014/14804.

²⁰⁵ Arkan, *Ticari İşletme Hukuku*, 362.

²⁰⁶ Turkish Code of Civil Procedure. Law No. 6100, Official Gazette No. 27543, 12 January 2011.

²⁰⁷ Ülgen et al., *Ticari İşletme Hukuku*, 567.

3.1.2.2. Action For Termination and Prevention

The termination or prevention of the act constituting unfair competition may be requested according to Article 56/1/b of the TCC. Action may be filed only in cases where the act, behavior, or practice that is considered to constitute unfair competition continues or there is a danger of repetition. In addition, as in the case of a declaratory action, it is not necessary for the defendant to be at fault in order to file this action²⁰⁸. However, it is not possible to bring an action for termination in cases where unfair competition has not yet occurred. With this lawsuit, the plaintiff will be able to request the cancellation of the allocation of the domain name.

3.1.2.3. Action For Restoration

In order to eliminate the effects of unfair competition, to restore the situation before the act, practice or behavior that constitutes unfair competition, a restitution action may be filed according to Article 56/1/c of the TCC. As in the case of determination action, termination action and prevention action, no fault condition is required for this action to be brought. In the restoration lawsuit; the elimination of the material situation that is the result of unfair competition, the correction of these statements if unfair competition has been made with false or misleading statements, and finally, the destruction of the tools and goods that are effective in the commission of unfair competition, provided that it is inevitable for the prevention of infringement.²⁰⁹ With the restitution action, seizure of documents, commodities and the like bearing domain names that constitute unfair competition, deletion of the domain name from goods and packages may be requested within the scope of Article 56/1/c of the TCC.

²⁰⁸ Arkan, *Ticari İşletme Hukuku*, 363.

²⁰⁹ Ülgen et al., *Ticari İşletme Hukuku*, 568.

3.1.2.4. Compensation Case

Within the scope of 56/1/d and 56/1/e of the TCC, it is possible for the person who is damaged due to unfair competition to claim material and moral compensation. However, in order for the person concerned to claim compensation for pecuniary and non-pecuniary damages, the existence of fault is a prerequisite. On the other hand, according to the tort provisions regulated in Article 49 and the following articles of the TCO, there shall be a causal link between the damage and the act constituting unfair competition.²¹⁰ The burden of proof is on the plaintiff to prove the damage in the pecuniary compensation lawsuit. In the event that the domain name is used in a way that constitutes unfair competition, the damage may occur in the form of the inability of the right holder to use the domain name or the unfair use of the domain name or the weakening of the function of the domain name to promote the person or business.²¹¹

In the case of cybersquatting, there is no direct decrease in the assets of the domain name owner, but an indirect damage occurs due to the profit deprived by directing users to another domain name instead of the real domain name. In order to award moral damages for unfair competition, there shall be fault and damage or danger of damage.²¹² In this respect, non-pecuniary damages are paid for the pain and distress suffered by the person due to the act. However, according to some scholars, with unfair competition, the condition that the person feels pain and sorrow should not be sought. As a matter of fact, considering that moral damages are also awarded for legal entities, the relevant condition is not necessary for moral damages.

²¹⁰ Ülgen et al., *Ticari İşletme Hukuku*, 568.

²¹¹ Arkan, *Ticari İşletme Hukuku*, 365.

²¹² Özge Ulukaya, "Alan Adı ve Haksız Rekabet in Bilişim Hukuku Güncel Sorunlar, ed. Süleyman Yılmaz (Ankara: Yetkin Publishing, 2020), 36.

3.1.2.5. Parties Of Cases

Articles 56, 57, and 58 of the TCC regulate who may be parties to unfair competition lawsuits. According to the principle of limited standing, only the persons listed in these articles are entitled to bring such lawsuits. Article 56(1) of the TCC provides that persons who have suffered or are at risk of suffering damage may file a lawsuit. Furthermore, pursuant to Article 56(2), customers whose economic interests are damaged or threatened due to unfair competition may also initiate legal action. However, it is not possible for the customer to request the destruction of the tools and goods. In unfair competition lawsuits to be filed due to the use of domain names, the plaintiff is the person who has been damaged or is in danger of being damaged due to the use of the domain name in a way that constitutes unfair competition.²¹³

Within this scope, in the event that a domain name owner is damaged due to the use of a domain name that constitutes unfair competition, not only the person who has registered the domain name, but also the usufruct or pledge right holder who has an interest in the domain name should be entitled to sue²¹⁴. If there is an allegation that the domain name of a registered trademark is infringed, it is sufficient for the trademark owner to submit the registered trademark to the court in terms of the burden of proof. If it is claimed that the domain name of an unregistered trademark is infringed, the unregistered trademark owner will have to prove the business value, the defendant's misleading behavior and the possible damages that may occur in the business value²¹⁵.

3.1.2.6. Precautionary Measures

According to article 61 of TCC, if it constitutes an infringement of the rights holder's authorizations, the goods subject to unfair competition that requires a

²¹³ Arkan, *Ticari İşletme Hukuku*, 363.

²¹⁴ Ulukaya, *Alan Adı ve Haksız Rekabet in Bilişim Hukuku Güncel Sorunlar*, 37.

²¹⁵ Oğuz, *İnternet Alan Adının (Domain Name) Haklarının Korunması*, 334.

penalty may be seized by the administrations upon the request of the right holder as a precautionary measure. It may decide to prohibit the use of domain names in advertisements, commodities and documents, to block access to websites linked to domain names used after they are purchased abroad, to confiscate the commodities where domain names are used wherever they are located within the country and to preserve the confiscated commodities²¹⁶.

3.1.2.7. Provision And State Of Limitation

Article 60 of the TCC stipulates that actions based on unfair competition shall be time-barred after one year and in any case after 3 years from the date on which the party entitled to sue learns the birth of this right. There is no statute of limitations for termination and prevention actions. The statute of limitations does not start to run as long as the act of unfair competition continues. As the act constituting unfair competition is repeated, the statute of limitations is interrupted and restarted. However, filing a lawsuit long after the commencement of the unfair competition act may be considered against the rule of good faith within the scope of Article 2 of the TCC.²¹⁷

3.1.3. Applicable Law in Protecting Domain Name Rights

In cases of domain name infringements, acts such as registering a domain identical or similar to a well-known trademark without authorization may constitute unfair competition, as they distort market fairness and mislead consumers. Under Turkish law, such conduct is evaluated within the scope of unfair competition provisions set out in the Turkish Commercial Code. When the dispute contains a foreign element for instance, where the infringing domain is registered abroad or accessible globally the determination of the applicable law becomes crucial. It is accepted that in unfair competition disputes, including those arising from misleading advertising or domain name misuse, the law of the country where the effects of the unfair act are felt is generally applied. This

²¹⁶ Oğuz, *İnternet Alan Adının (Domain Name) Haklarının Korunması*, 330.

²¹⁷ Arkan, *Ticari İşletme Hukuku*, 368.

principle ensures that the protection of market order, consumer trust, and commercial reputation is aligned with the jurisdiction most closely connected to the harm caused.²¹⁸In this context, the legal analysis of unfair competition resulting from domain name violations requires both substantive and conflict-of-laws assessments to achieve effective legal protection.

In cross border domain name disputes, especially those involving arbitration mechanisms such as TRABIS or the ICANN, the ability of national courts to grant interim measures plays a crucial role in preventing irreparable harm, such as the transfer or disappearance of a disputed domain name. In this regard, the jurisdiction of Turkish courts to issue interim measures in disputes with a foreign element has significant implications. As analyzed in Turkish doctrine, Turkish courts may have the authority to grant such measures even if the main dispute falls under the jurisdiction of a foreign arbitral body or court.²¹⁹ This interpretation is particularly relevant in domain name cases where urgent protective actions like freezing a domain name or preventing its transfer may be necessary to preserve the status quo until the conclusion of arbitration. The flexible and protective approach of Turkish courts in granting interim relief thus, supports the enforcement of intellectual property rights and mitigates jurisdictional limitations in internet related disputes with international dimensions.

The rise of cross border domain name disputes has highlighted the need to assess the extraterritorial application of national laws, particularly when jurisdiction and enforcement intersect in the digital space. Usually, cross border domain name disputes resolved through arbitration mechanisms such as the ICANN or national systems like TRABIS, the effectiveness of interim legal

²¹⁸ Zeynep Derya Tarman, *Haksız Rekabetten ve Aldatıcı Reklamlardan Doğan Uyuşmazlıklarda Uygulanacak Hukuk* (Ankara: Beta Yayıncılık, 2011), 45–67.

²¹⁹ Bilgin Tiryakioğlu, “Jurisdiction of Turkish Courts to Grant Interim Measures Regarding Disputes with Foreign Element,” *Public and Private International Law Bulletin* 44, no. 1 (2024): 1–24, <https://doi.org/10.26650/ppil.2024.44.1.1397113> (accessed May 20, 2025).

protections is critical. However, the enforcement of precautionary measures such as court ordered transfer locks or suspensions can be significantly hindered when such measures are issued by foreign courts. This difficulty reflects a broader issue in private international law. The inability to enforce these interim measures may weaken the efficiency of domain name arbitration procedures, especially in cases where domain names risk being transferred or altered before a final decision is rendered. A recent legal analysis highlights that the lack of enforceability of such provisional measures stems from the absence of an international framework obligating states to recognize and execute precautionary decisions rendered abroad.²²⁰ This legal vacuum poses challenges not only for general civil enforcement but also for safeguarding digital assets like domain names. The extraterritorial scope of Turkish legislation, particularly in matters related to the protection of economic order and public interest, has been analyzed to allow certain legal provisions to apply beyond national borders.²²¹ When domain name infringements adversely affect Turkish right holders from abroad, such legislative reach may support the initiation of legal or arbitral remedies, enhancing the effectiveness of national trademark and unfair competition law in the borderless domain name system.

In Turkish law, the repealed Law No. 2675 did not contain a specific provision regarding the determination of the applicable law in cases of unfair competition. Therefore, the conflict of laws rules applicable to torts were also applied to unfair competition, based on the characterization of unfair competition as a form of tort. However, under the current International Private and Procedural Law No. 5718, a specific regulation concerning unfair competition has been introduced. According to Article 37 of this law, a dual assessment must be made in

²²⁰ Zeynep Derya Tarman, "The Problem of Non-Execution of the Precautionary Attachment Decision Taken during the Enforcement of Foreign Court Decisions," *Public and Private International Law Bulletin* 44, no. 1 (2024): 113-130, <https://doi.org/10.26650/ppil.2024.44.1.1397116> (accessed May 20, 2025).

²²¹ Bilgin Tiryakioğlu, "Extraterritorial Implications of Turkish Legislation," *Public and Private International Law Bulletin* 44, no. 1 (2024): 25-48, <https://doi.org/10.26650/ppil.2024.44.1.1397114> (accessed May 20, 2025).

determining the applicable law. If the effect and consequence of the act of unfair competition solely infringe upon the interests of the injured party's business, then the law of the place where the injured business is located shall apply. On the other hand, if the act of unfair competition affects not only the interests of the injured business but also has a broader impact on the market in which the business operates, then the law of the country whose market is directly affected shall be applicable.

In terms of the country whose market is affected, it is crucial to determine whether the impact is direct. Article 37/1 of the Turkish Private International and Procedural Law (Law No. 5718) stipulates that the effect must be direct. However, it remains a matter of debate in the doctrine whether this provision is applicable in cases where the effect on the market has not yet occurred but is likely to occur. Due to the absence of a clear provision in the law regarding such situations, differing views have emerged. According to one opinion, since the existence of unfair competition does not necessarily require actual damage, the provision on unfair competition may also be applied in such cases.²²² In my point of view, the relevant provision should be applicable even if the effect resulting from the act of unfair competition has not yet materialized.

According to Article 37/2 of the Turkish Private International and Procedural Law, if the act of unfair competition solely infringes upon the interests of the business, the law of the place where the business is located shall apply. Therefore, in order to determine the applicable law, the impact of the effect resulting from the tort must be assessed. If the term "place where the business is located" is interpreted narrowly, the application of the provision set forth in the first paragraph would not be possible.²²³ For this reason, a broader interpretation is

²²² Bengül Kayış, *Haksız Rekabetten Doğan Kanunlar İhtilafı Kuralları* (Master's Thesis, Dokuz Eylül University, Institute of Social Sciences, Department of Private Law, 2010).

²²³ Cemal Şanlı, Emre Esen, İnci Ataman-Figanmeşe, and Emre Esen, *Milletlerarası Özel Hukuk* 11th ed. (İstanbul: Beta Yayıncılık 2024), 447.

necessary. It must be determined whether the effect arising from the act of unfair competition is primarily on the market or on the business itself.

The rapid development of the internet has significantly facilitated communication and enabled natural and legal persons from different jurisdictions to interact more easily. Businesses can now participate in the global market and operate in distant markets through the internet by using domain names. Therefore, if a business harmed because of unfair competition due to a domain name infringement, the impact may be global in scope. In such cases, multiple national markets may be directly affected by the act of unfair competition resulting from the domain name infringement. Determining which country's law is to be applied thus becomes crucial. In cases where the act of unfair competition affects multiple national markets, the Turkish legislation does not contain a specific provision on how to determine the applicable law. As a result, there are differing opinions in the doctrine regarding this issue. According to one view, in torts occurring simultaneously in multiple countries, the connecting factor should be the place where the act was committed, rather than the place where the damage occurred²²⁴. Another view argues that, in practice, the place of damage should be accepted as the connecting factor, but with certain limitations. A further opinion suggests that the lack of a specific provision in Turkish law creates practical difficulties, and therefore, a separate regulation similar to that found in Swiss or EU law should be adopted.²²⁵ In my point of view, due to the broad reach of domain names, the act of unfair competition may directly affect the markets of multiple countries. In such a case, more than one applicable law may need to be determined. However, the application of multiple legal systems may lead to certain problems, particularly in terms of legal certainty and foreseeability. Therefore, it would be appropriate to introduce a specific regulation addressing this issue.

²²⁴ Ergin Nomer, *Devletler Hususi Hukuku*, 23rd ed. (İstanbul: Beta Basım Yayın, September 2021), 366.

²²⁵ Barış Huysal, "Yabancı Unsurlu Rekabet İhlallerinde Uygulanacak Hukuk," *Rekabet Dergisi* 13, no. 2 (2012): 85.

Moreover, In Turkish law, Article 23 of the Law No. 5718 on International Private Law and Procedural Law stipulates that intellectual property rights will be subject to the law of the country under which protection is requested, and that the parties may choose the law of the court after the violation. For this reason, in disputes regarding domain names, the law of the country where protection is requested shall be applied. If the infringement of the domain name occurred in Turkey, the dispute shall be resolved in accordance with Turkish law. In disputes where Turkish law is applied, protection and termination of the domain name as an intellectual property right shall be subject to Turkish law. Reason for the registration of the domain name right is for the domain name to provide the indication function.²²⁶ If there is a domain name registered abroad, in order to gain legal protection in Turkey, it shall be used in commercial activities within the borders of the country where protection is requested.

The principle of territoriality in domain names is important in terms of whether it will be determined according to the law of the country where the domain name is registered or the law of the country where the domain name is used to promote a person or business. In this context, if the domain name with the extension .tr is also actually used in Turkey, the principle of territoriality will be applied. If the domain name with the extension “.tr” is registered by a foreigner and is not actually used to promote a person or business in Turkey, the principle of territoriality will not be applied. If the domain name with the extension “.com” is registered abroad and is used to promote a person or business in Turkey, protection can be requested according to Turkish law.²²⁷ Therefore, if there is a use that is identical to the domain name for which protection is requested or indistinguishably similar to the one used on the internet or outside the internet directed to customers in Turkey or if this use creates a commercial effect, then there can be a violation. This protection to be

²²⁶ Oğuz, *İnternet Alan Adı Haklarının Korunması*, 386.

²²⁷ Oğuz, *İnternet Alan Adı Haklarının Korunması*, 386.

provided for the domain name will be valid within the borders of the country and Turkish law will be applied for disputes.

If a domain name owner has rights over a domain name according to Turkish law, domain name owner may claim this right in another country. This will be an important issue whether the person can claim this right according to the law of the other country. According to Article 23 of the Law No. 5718 on International Private Law and Procedural Law, since protection is requested in another country, the applicable law will also change. In this context, if the domain name owner has rights over a domain name in Turkey and does not have a right in the country where protection is requested then according to the law of that country, the domain name right may not be protected in that country.²²⁸

The evolving legal treatment of intangible assets in Turkey, including intellectual property rights and domain names, is critical for understanding the jurisdictional and procedural challenges in domain name dispute resolution. As emphasized in recent research on Turkey's intangible asset framework, domain names though not explicitly classified under traditional IP categories have increasingly been recognized as valuable assets that may require specialized legal protection.²²⁹ This recognition is particularly important in the context of dispute resolution mechanisms such as the ICANN and the national TRABIS arbitration system, where legal ambiguities surrounding domain names can impact the effectiveness of remedies. The Turkish legal framework, as noted, is still in the process of aligning its treatment of intangible digital assets with global standards. However, the growing awareness of the need to regulate domain names through both public regulation and private arbitration signals an important shift toward

²²⁸ Oğuz, *İnternet Alan Adı Haklarının Korunması*, 387.

²²⁹ Uğur Gürşad Yalçiner, Cansu Durukan, and Aslı Ertan, Legal Framework for Intangible Assets in Turkey, STPS-WP-13/05, Science and Technology Policies Research Center (TEKPOL), Middle East Technical University, 2013, <https://open.metu.edu.tr/handle/11511/92354> (accessed May 20, 2025).

the formal recognition of domain names as enforceable rights, particularly in cross border infringement scenarios.

If a website located on a server abroad is considered to be an infringement of the domain name right in a dispute due to a domain name violation in Turkey then court may give decision to suspend and prevent the use of domain name, and although the decision cannot be executed in Turkey, court may give judgement regarding to block access of domain name from Turkey and ensure that the broadcast to Turkey is stopped. Moreover, The Turkish Court of Cassation applies Turkish law to disputes arising from the use of the website to which the .com domain name is linked. In the domain name dispute, the Court of Cassation evaluated the registration of the domain name of the plaintiff's brand as a violation of the domain name right and decided to determine, suspend and prevent its use.

3.1.3.1. WIPO and American Law Institute's Proposal on Applicable Law in Domain Name Disputes

A number of proposals have been made in the international arena to determine the law to be applied to disputes arising from the unfair use of someone else's trademark as domain names on the internet, and discussions have been held in the doctrine to determine the applicable law. There is a collaboration among American Law Institute and Max- Planck Institute and WIPO. They studied on "Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)."²³⁰ According to this regulation, in disputes which are occur from infringement of intellectual property rights, the law of the country in which protection is sought, i.e. the *lex loci protectionis*, is applied²³¹. In the doctrine, it

²³⁰ Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II), accessed March 3, 2025, <https://eur-lex.europa.eu/eli/reg/2007/864/oj/eng>

²³¹ Anette Kur, "Applicable Law: An Alternative Proposal for International Regulation - The Max Planck Project on International Jurisdiction and Choice of Law," Brooklyn Journal of International

is argued that since domain names are accepted as identification marks, that is, as an intellectual property right, the law of the “country for which protection is sought” is accepted, shall be applied in disputes regarding intellectual property rights.²³² The law of “country for which protection is sought” is based on the principle of territoriality, the *lex loci protectionis* rule.²³³ There are different interpretations in the doctrine in determining the law of the country where protection is requested. The law of the court hearing the lawsuit filed for the protection of intellectual property rights as the country for which protection is sought can be interpreted as *lex fori* or *lex loci delicti commissi*, which is the place where the act where the intellectual property right is used and the violation is claimed to have occurred.²³⁴ However, the dominant view in international doctrine is that the country where the act where the intellectual property right is used or violated occurs, that is, country for which protection is sought.

3.1.4. Dispute Resolutions In Country Coded Domain Names

UDRP is applied to all generic top-level domains, but URS is applied only to new top-level domains. Every country has the discretion to apply the dispute resolution rules to own country-coded top-level domain.²³⁵ Usually, many countries jurisdiction preferred to apply the UDRP instead of applying their own rules because UDRP has become a generally accepted dispute resolution mechanism. Therefore, disputes will be resolved according to the same formal procedures and principles in country codes that have made this choice, and the decisions will be applied bindingly. By the way, some countries have developed their own dispute resolution mechanisms. When such policies are examined, it is

Law 30, no. 3 (2005): 959. Accessed March 3, 2025

<https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1293&context=bjil>

²³² François Dessemontet, "A European Point of View," in *The ALI Principles - Intellectual Property: Principles Governing Jurisdiction, Choice of Law, and Judgments in Transnational Disputes*, Brook, vol. 3 (2005): 856, Accessed March, 3, 2025

<https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1288&context=bjil>

²³³ Sefer Oğuz, *İnternet Alan Adı Haklarının Korunması* (Ankara: Seçkin Yayıncılık, 2018), 385

²³⁴ Esra Dardağan, *Fikir ve Sanat Eserleri Üzerindeki Haklardan Doğan Kanun İhtilafı* (Ankara, 1999), 132, cited in Sefer Oğuz, *İnternet Alan Adı Haklarının Korunması* (Ankara: Seçkin Yayıncılık, 2018), 385.

²³⁵ Tamer Soysal, *İnternet Alan Adları Hukuku (Domain Name Law)*, Adalet, 2014, 625

seen that they are generally inspired by the UDRP policy, but disputes are resolved by local courts or arbitrators. In Turkey, there is a similar dispute resolution mechanism regarding domain name disputes. This dispute resolution mechanism regulated in the Turkish Internet Domain Name Regulations.

3.1.4.1. “.tr” Domain Name Dispute Resolution

3.1.4.1.1. Procedural Rules

The Internet Domain Names Regulation establishes an alternative dispute resolution system for resolving disputes concerning domain names bearing the ‘.tr’ country code. The Internet Domain Names Dispute Resolution Mechanism Communiqué also sets out detailed procedures for dispute resolution. In cases not covered by this Communiqué, the Information and Communication Technologies Authority has the authority to issue regulations through board decisions.

According to Article 23 of the Internet Domain Name Regulation, disputes regarding domain names will be resolved through the dispute resolution mechanism operated by the dispute resolution service providers (DRSPs²³⁶) as an alternative. In this context, a similar procedure has been followed with ICANN. Disputes will be resolved in independent centers accredited by the BTK, as in the UDRP procedure. DRSP will include arbitrators who are experts in the fields of intellectual property law, trademark law, commercial law or information technology law, and the arbitrators will start their work after they submit their written declarations to the DRSP demonstrating their independence and impartiality regarding the domain name in question and the parties.

The Internet Domain Name Regulation includes a specific transparency provision regarding arbitral decisions. According to the second paragraph of Article 27, the Dispute Resolution Service Provider (DRSP) is required to notify the Information and Communication Technologies Authority (BTK), the parties

²³⁶ In Turkish, *Uyuşmazlık Çözüm Hizmet Sağlayıcı (UÇHS)*

involved in the dispute, and the relevant registration institutions of the decision within one day and to publish the decision on its website. Transparent publication of decisions, similar to the practice under the UDRP, plays a crucial role in the development of precedents in this field. Moreover, it is possible to file a complaint with the DRSP concerning multiple domain names simultaneously, a procedure that aligns with the UDRP framework.

Applications to DRSP are subject to a fee. This fee will be determined by DRSP according to the upper limit to be determined by BTK which has the authority to determine the lower limit for transaction fees related to the operation of the dispute resolution mechanism when necessary. According to Article 20 of the Internet Domain Names Dispute Resolution Mechanism Communiqué, the arbitrator fee will be increased each year according to the revaluation rate to be determined by the Ministry of Treasury and Finance of the Republic of Turkey for the previous year. The DRSP fee is half of the fee determined for each arbitrator.

According to the third paragraph of Article 26 of the Internet Domain Name Regulation, it is essential that arbitrators conduct their work based on the file consisting of information, documents and evidence sent to them, and unless deemed necessary, the parties will not be heard in person. In this way, regulator aimed to resolve disputes quickly. According to Article 13 of the Internet Domain Names Dispute Resolution Mechanism Communiqué the arbitrator or the arbitration board reserves the right to request additional information and documents from the parties through the DRSP if necessary. Even in this case, the decision regarding the dispute is made based on the file. The complainant or the complained party is prohibited from submitting information and documents directly to the arbitrator or the arbitration board; the flow of information and documents between the parties will only be made through the DRSP. The Dispute Notification allows communication between the DRSP and the parties to be provided through electronic methods such as e-mail.

According to Article 18 of the Internet Domain Names Dispute Resolution Mechanism Communiqué, unless otherwise agreed by the parties, the language to be used in the dispute resolution process is Turkish. In accordance with Article 7, paragraph 6, subparagraph (c) of the Internet Domain Names Dispute Resolution Mechanism Communiqué, the application to be made to the DRSP shall include all information and documents supporting the complainant's claim and the reasons for meeting the application conditions, not exceeding five thousand words. The complainant shall also declare whether or not he/she has previously applied to another DRSP or court regarding the same complaint subject and whether or not any decisions have been made. The complainant shall also provide information in his/her response whether or not or not he/she has previously applied to another DRSP or court regarding the subject and whether or not any decisions have been made. Both regulations are parallel to the UDRP. Upon the application to be made to the DRSP, the arbitrator or arbitration board will decide on the cancellation of the domain names, their transfer to the complaining party or the rejection of the complaining party's request, taking into account the relevant legislation, precedents and court decisions. The decisions of the arbitration board are made by simple majority and abstention is not possible. Since the transfer of the domain name can be decided, a regulation similar to the UDRP has been made. An executive decision is made regarding the domain name.

According to Article 14 of the Internet Domain Names Dispute Resolution Mechanism Communiqué, the arbitrator or arbitration board shall decide within fifteen days following the completion of the complaint petition and response process. If a decision cannot be made within this period, the arbitrator or arbitration board may use an additional period of up to five days. By making it mandatory for the dispute to be decided within fifteen days, it is aimed to resolve internet domain name disputes quickly and thus ensure the sustainability of services in the internet environment. This period is shorter than the UDRP period and TRABİS differs from the UDRP method in this respect.

According to Article 15 of the Internet Domain Names Dispute Resolution Mechanism Communiqué, if the DRSP is not notified that an interim measure decision has been taken on the subject within ten working days after the arbitration decision is notified to the parties or at an earlier stage of the dispute resolution mechanism process, the relevant registry institution and DRSP shall immediately fulfill the decision taken by forwarding it to TRABIS. Similarly, if the DRSP is notified that an interim measure decision has been taken on the subject within ten working days after the arbitration decision is sent to the parties or at an earlier stage of the dispute resolution mechanism process, the dispute resolution mechanism process will continue, but the arbitrator or arbitration board decision will not be implemented. In this case, the completion of the litigation process will be awaited and the court decision will be fulfilled immediately by forwarding it to TRABIS by the relevant registry institution and DRSP.

In case of an application to the DRSP regarding a domain name, the domain name in question is frozen for the duration of the dispute. In this context, no change in the information in the domain name registration, no sale, transfer, renunciation or registrar transfer of the domain name is allowed; only renewal of the domain name is allowed. This special protection brought by Article 16 of the Internet Domain Names Dispute Resolution Mechanism Communiqué is similar to the UDRP. When the UDRP process is initiated, a transfer ban is imposed on the domain name. In this way, the aim is to prevent the dispute from being extended to third parties and the complainant from losing his rights.

3.1.4.1.2. Rules Relating to The Substances

Similarities to the UDRP regarding the procedure are also observed regarding the substance of the disputes. In order to apply to the dispute resolution mechanism in accordance with Article 25 of the Internet Domain Name Regulation; “The domain name in question shall be similar or identical to the trademark, trade name, business name or other identifying mark owned or

used in trade, the party allocating the domain name shall not have a legal right or connection with this domain name, This domain name shall be allocated or used in bad faith by the domain name owner.” The complainant who claims that these three conditions exist together will apply by choosing one of the DRSP for the resolution of the dispute. It should be noted that the complainant cannot apply to another DRSP on the same issue until the first DRSP procedure has a final decision.

Although the similarity and confusion criteria, right or legitimate interest criteria are exactly the same as the UDRP, the bad faith criterion contains a significant difference from the UDRP. According to the Internet Domain Name Regulation, the allocation or use of the domain name by the owner in bad faith are alternative cases of unlawfulness. However, for the UDRP, both the allocation and use shall be in bad faith. Although some exceptions have been brought by case laws on this issue, it is an appropriate approach to use the phrase “or” instead of “and” by learning from the UDRP practice.²³⁷ Article 19 of the Internet Domain Names Dispute Resolution Mechanism Communiqué regulates the presumptions regarding proof of bad faith, just like in the UDRP procedure. The following situations will be considered as the allocation or use of the domain name in bad faith: “The complainant who owns the domain name in question, trade or service mark, trade name, business name or person name or other identifying mark, or the complainant’s commercial competition, The domain name has been allocated to the party to which it is located for the purpose of selling or transferring it for an amount exceeding the documented allocation costs and investment cost of the domain name, The domain name in question has been allocated in order to prevent the owner of the trademark, trade name, business name or other identifying sign used in trade from using this trademark, title, name or sign in the domain name, The domain name in question has been allocated primarily for the purpose of harming the businesses or activities of commercial competitors, The domain name in question has been used for the

²³⁷ Kaya, *İnternet Alan Adı (Domain) Uyuşmazlıklarının Çözümünde Alternatif Yöntemler*, 1482.

purpose of directing internet users to the website of the domain name or any other website by creating confusion by creating similarity with the trademark, trade name, business name or other identifying sign used in trade owned by the complainant for the purpose of gaining commercial gain.”

It should be noted that these situations are not limited, and the arbitrator or arbitration board may also decide that the domain name has been allocated or used in bad faith at its discretion. When the presumptions of bad faith allocation or use foreseen for “.tr” extension domain names are examined, it is seen that they are of the same nature as the presumptions foreseen in the UDRP procedure. In this direction, it can be said that there is no difference in substance between UDRP and TRABİS, except for the difference regarding the acceptance of both bad faith allocation and use as an independent violation.

3.1.5. Introduction To ICANN (Internet Corporation for Assigned Names and Numbers)

ICANN was established in 1998. ICANN, as the internet organization for allocated names and numbers, settle internet domain name disputes. In the arbitration proceeding, the parties voluntarily choose arbitration in case of dispute, while in the ICANN arbitration proceeding, the ICANN arbitration proceeding is chosen in case of dispute during the registration of the domain name. The parties are not given a free choice to select ICANN arbitration. Instead, the party requesting the registration of a domain name is considered to have implicitly accepted and agreed to be bound by ICANN’s Uniform Domain Name Dispute Resolution Policy (UDRP) as part of the registration process. After the adoption of UDRP, which is rules for resolution of disputes regarding internet domain names, ICANN, was adopted. ICANN is the only authorized organization for the centralized allocation of domain names all over the world and resolves disputes through a judicial procedure similar to arbitration. Domain name disputes are resolved through organizations accredited by ICANN. The

most popular among these organizations is WIPO. ICANN is particularly active in disputes arising from unfair competition on “.com”, “.net” domain names, which are expressed as top-level domain names, or disputes arising from the cybersquatting.

3.1.5.1. WIPO - ICANN Arbitration

WIPO has a key role for the Uniform Domain Name Dispute Resolution Policy (UDRP). After many disputes has been arised regarding domain names, WIPO pointed to there is a need for a resolution mechanism for domain names disputes in their report.²³⁸ After publishing of that report, With the help of the WIPO ICANN adopted the UDRP. Since then, The UDRP has an important role for registration of domain names. Also, WIPO has an important role for dispute resolution mechanism under the UDRP regarding domain name disputes.²³⁹

ICANN regulated that if there is a bad faith registration, there can be apply of UDRP in the domain name disputes. Also, if there is a registration of trademarks and service marks as domain names exist, parties may apply for the UDRP process. This situation has both positive impacts and negative impacts regarding protection of domain name. Thanks to the UDRP, trademark owners have protection from domain name infringements such as cybersquatting. However, “The UDRP only may applied to cases of bad-faith and abusive registration, and it only focuses of the abusive registration of trademarks and service marks as domain names²⁴⁰.” Therefore, there is no protection if these conditions do not exist. In doctrine there is a criticizing that the UDRP is “process favors trademark holders over domain name holders.”²⁴¹

²³⁸ Uniform Domain Name Dispute Resolution Policy, accessed march 3, 2025, <https://www.icann.org/resources/pages/policy-2012-02-25-en>

²³⁹ Uniform Domain Name Dispute Resolution Policy, accessed march 3, 2025. <https://www.icann.org/resources/pages/policy-2012-02-25-en>

²⁴⁰ Chaisse and Friedmann, "Law of the Digital Domain, 431.

²⁴¹ Sheri Lyn Falco, "Trademarks, Domain Names, and ICANN: An Evolving Dance," *St. Thomas Law Review* 26 (2014): 191.

A hybrid system has also been established for the resolution of disputes related to domain names, and they are subject to registration in a similar manner to commercial registries. This registration is done according to the UDRP rules issued by ICANN (Internet Corporation for Assigned Names and Numbers). This procedure deals with issues of abuse of domain name registrations. While it is debatable whether the UDRP system is an arbitration system, it is accepted that disputes concerning domain names can be submitted to arbitration. WIPO adopted policies and rules for the settlement of disputes arising out of domain names with the meetings held in Santiago, Mexico on August 25-26, 1999, for the settlement of disputes arising out of unfair use of domain names, especially between registrants of internet domain names and third parties and called it UDRP. It set out the procedural rules for the dispute resolution process and administrative functioning. In addition, WIPO has also developed Supplemental Rules that complement the UDRP rules. The WIPO Arbitration and Conciliation Center is also recognized by ICANN as a dispute resolution provider.

ICANN is a non-profit private sector organization. It is an organization that handles the technical management and coordination of the Internet domain names system. Without this coordination, there would be no wire internet system. In addition to these administrative activities, ICANN has also developed uniform dispute resolution rules, especially for the resolution of disputes that may arise regarding internet domain names²⁴². The parties exercise their free will when using arbitration for existing or potential disputes. On the other hand, in the ICANN arbitration procedure, parties are deemed to have consented to the process at the time of domain name registration. Rather than being based on the explicit free will of the parties, the applicant requesting the domain name registration is automatically considered to have accepted ICANN's dispute resolution mechanism. ICANN has adopted two legal instruments governing

²⁴²Sibel Özel, *Milletlerarası Ticari Tahkimde Kanunlar İhtilafı Meseleleri* (Ankara: Legal Yayıncılık, 2024), 10.

this process: the Uniform Domain Name Dispute Resolution Policy (UDRP) and the Rules for Uniform Domain Name Dispute Resolution Policy (RUDRP).

UDRP has been adapted in 1999, and it consists of 21 articles. ICANN Arbitration is concluded in a much shorter time than regular arbitration proceedings and less costly. After the application of ICANN arbitration procedure made over the internet, the dispute is resolved in an average of 45 days²⁴³. Before the adoption of the UDRP rules, parties who had disputes regarding domain names had to seek a solution by applying to national courts. This led to disputes regarding the recognition and enforcement of the judgement given by the national court in other countries, as well as it was a loss of time and money. However, the parties do not need to apply to the national court for enforcement of the decisions rendered in ICANN arbitration procedure. An arbitral award issued under the WIPO-ICANN procedure constitutes a binding decision that is directly enforceable by ICANN, without requiring recognition or enforcement by national courts²⁴⁴. Decisions rendered as a result of ICANN arbitration are enforced ex officio. Therefore, there is no separate procedure to apply for recognition or enforcement. The most preferred institution for ICANN arbitration procedure is the WIPO Arbitration and Mediation Center.²⁴⁵

WIPO is an institution that operates within the United Nations and specializes in intellectual and industrial property rights. It provides an effective arbitration mechanism (within a reasonable time frame, by independent arbitrators) for the resolution of commercial disputes with international elements

²⁴³ Nurullah Bal, *İnternet Alan Adları ve İnternet Alan Adı Uyuşmazlıklarının Tahkim Yoluyla Çözümlemesi*, "Gazi Üniversitesi Hukuk Fakültesi Dergisi 17, no. 1-2 (2013): 315-352.

²⁴⁴ Yusuf Çalışkan, *Uluslararası Fikri Mülkiyet Hukukunda Uyuşmazlık Çözüm Mekanizmaları: WIPO Tahkimi ve Dünya Ticaret Örgütü* (İstanbul: Değişim Yayınları, 2008), 96.

²⁴⁵ WIPO, "WIPO Arbitration and Mediation Center, Including Domain Names," WO/GA/54/13, accessed March 27, 2025, https://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_54/wo_ga_54_13.pdf.

that may arise due to the universalization of trade and the cross-border effects of intellectual property rights²⁴⁶.

According to article 66/ a of the WIPO Arbitration Rules which is updated on July 2021, “By agreeing to arbitration under WIPO Arbitration Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, in so far as such waiver may validly be made under the applicable law.”²⁴⁷ So, parties of the disputes automatically accepted to waive all legal remedies against the decisions of the independent arbitrators if they apply for WIPO arbitration regarding domain names.

There are also expedited arbitration rules for WIPO arbitration proceedings. Expedited arbitration, which allows for a solution to be obtained in a shorter period of time compared to ordinary arbitration proceedings, begins with the plaintiff submitting the petition containing the request for arbitration to WIPO and the plaintiff. Within this framework, the defendant shall respond to the petition within 20 days. WIPO, as a rule, conducts expedited arbitration proceedings with a single arbitrator. While the parties to the dispute can propose an arbitrator within 15 days for the selection of the arbitrator, if no agreement can be reached, a list of arbitrators is provided to the parties on the condition that they respond within 7 days. If no arbitrator is preferred within this period, WIPO appoints an arbitrator at the end of the period. A maximum period is for the completion of all procedural procedures shall be in 3 months and decisions shall be given within one month. ²⁴⁸

²⁴⁶ WIPO, ‘WIPO Caseload Summary accessed March 27, 2025 ,
<https://www.wipo.int/amc/en/center/caseload.html>

²⁴⁷ Article 66/ a of the the WIPO Arbitration Rules, accessed March 27, 2025,
<https://www.wipo.int/amc/en/arbitration/rules/index.html>

²⁴⁸ World Intellectual Property Organization, WIPO Expedited Arbitration Rules, accessed January 23, 2025, <https://www.wipo.int/amc/en/arbitration/expedited-rules/>.

The relevant dispute concerns the domain name “koc.com” registered by Network Solutions, Inc. Koç Holding A.Ş. filed a complaint through the WIPO Arbitration and Mediation Center, claiming that the domain name was unfairly assigned to MarketWeb A.Ş. (‘MarketWeb’). Network Solutions. Koç Holding A.Ş. claimed that they are the owner of the name ‘Koç’ as a trademark and their company is well known globally at the time of the application. Also, plaintiff Koç Holding A.Ş. claimed that MarketWebs had no relation to the name Koç and that MarketWebs had purchased the domain name koc.com in order to sell it at a high price without any legal benefit. MarketWeb stated in its response that there was no record of the name ‘Koç’ in either the American or Turkish trademark registries and continued by adding that many companies in Turkey used the Koç brand. MarketWebs stated that the only trademark owned by Koç Holding was its logo and added that it had never used this logo. The arbitration board (arbitrator) then asked the Turkish Patent Institute whether the ‘Koç’ trademark was a registered as a trademark. Turkish Patent Institute gave response that application for this trademark exists however it had not registered yet. In the final decision, arbitrator found the defendant’s defense justified by claiming that there was no registered trademark in the context of the first condition of Article 4(a) of the UDRP and ruled that the domain name ‘koc.com’ was rightfully registered by MarketWeb on legal grounds.²⁴⁹

3.1.5.2. Uniform Domain Name Dispute Resolution (UDRP)

Alternative dispute resolution (ADR) mechanisms are available to trademark rights holders to challenge cases of cybersquatting involving both gTLDs and ccTLDs around the world. Although various ADR procedures exist globally, the most widely used mechanism is the Uniform Domain Name Dispute Resolution Policy (UDRP), which was adopted by ICANN on October 24, 1999²⁵⁰, following recommendations developed with input from WIPO. ICANN’s policies regulate

²⁴⁹Koç Holding A.S. v. MarketWeb A.S. Case No. D2000-1764, accessed January 23, 2025, <https://www.wipo.int/amc/en/domains/decisions/html/2000/d2000-1764.html>

²⁵⁰ Uniform Domain Name Dispute Resolution Policy," ICANN, October 24, 1999, accessed January 25, 2025, <http://archive.icann.org/en/udrp/udrp-policy-24oct99.htm>.

the domain name registration process and provide a fast and cost-effective mechanism for resolving domain name disputes. According to Registrar Accreditation Agreement, "Domain name registries cannot be accredited by ICANN without agreeing to ICANN's rules, which include provisions that require registries to include specific dispute resolution and UDRP terms in their user agreements²⁵¹." According to the terms, "registrants of domain names shall agree to be subject to UDRP proceedings as a condition to registering their domain name²⁵²." The first UDRP application was made on December 9, 1999, for the domain name *worldwrestlingfederation.com*, and the WIPO ruled in favor of the applicant on January 14, 2000²⁵³.

There are 6 dispute resolution service providers: Arab Center for Domain Names Dispute Resolutions Center (ACDR), Asian Domain Names Dispute Resolutions (ADNDRC), Canadian International Domain Names Dispute Resolutions Center (CIIDRC), National Arbitration Forum (NAF), WIPO Arbitration and Mediation Center, The Czech Arbitration Court (CAC). Anyone who complaints may choose one of these service providers. ICANN arbitration is mostly conducted by WIPO among the mentioned organizations. One of the most important reasons for this is that WIPO is an international organization specialized in property law and the people with technical experience who can take part in arbitration are registered with WIPO²⁵⁴.

"UDRP is neither a judicial proceeding nor an arbitration. It is rather an administrative proceeding."²⁵⁵ "Arbitral tribunal decisions only result in the cancellation or transfer of the disputed domain name, and their execution is

²⁵¹Registrar Accreditation Agreement," ICANN, May 21, 2009, accessed January 25, 2025, <https://www.icann.org/resources/pages/ra-agreement-2009-05-21-en>.

²⁵² ICANN, Registrar Accreditation Agreement.

²⁵³ World Wrestling Federation Entertainment, Inc. v. Michael Bosman Case No. D99-0001, accessed January 5, 2025. <https://www.wipo.int/amc/en/domains/decisions/html/1999/d1999-0001.html>

²⁵⁴ Çalışkan, *Uluslararası Fikri Mülkiyet Hukukunda Uyuşmazlık Çözüm Mekanizmaları: WIPO Tahkimi ve Dünya Ticaret Örgütü*, 95.

²⁵⁵ Yasaman, *Türk ve Avrupa Birliği Hukukunda İnternette Marka Hakkının İhlali*, 254.

carried out by domain name registrars.”²⁵⁶ In addition to this arbitration procedure, the parties may apply for a judicial remedy. UDRP Article 4 regulated the applicable disputes. UDRP is a quick resolution process for infringements. There are criticisms in doctrine about this procedure regarding bad faith.

The Internet Corporation for Assigned Names and Numbers (ICANN) was established in line with the ‘Uniform Domain Name Dispute Resolution Policy (UDPR)’, which was accepted by WIPO in 1999, as the fastest and easiest method for seeking rights.²⁵⁷ In the context of Articles 2 and 4 of the UDPR, the prevention of the use of a domain name is regulated on the existence of three conditions which are the domain name and the trade/service mark being identical or similar to cause confusion, the absence of any rights or legitimate interests in the relevant name in the registration of the domain name and finally, the domain name being registered and used in bad faith. Unless the existence of all these issues is proven by the claiming trademark owner, no right can be claimed for the domain name. According to WIPO decisions, if the trademark owner is registered his/her trademark then, the burden of proof will be on the party that registered the domain name.²⁵⁸ Arbitration proceedings conducted within the WIPO within the UDPR framework are currently seen as the most effective authority in resolving disputes regarding domain names.²⁵⁹

Since 1999, ICANN a central body responsible for coordinating the global domain name system has provided an administrative dispute resolution mechanism for certain domain name conflicts through the Uniform Domain Name Dispute Resolution Policy. These issues include, but are not limited to, the similarity of the domain name to a registered trademark, the domain name owner

²⁵⁶ Ansong, *Trademark Claims in Internet Domain Names: Applicable Disputes and Enforcement of Panel Decisions Under the ICANN Uniform Domain Name Dispute Resolution Policy*, 138.

²⁵⁷ Matthias Kettemann, *The Normative Order of the Internet*, 279.

²⁵⁸ WIPO, *Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition* ("WIPO Jurisprudential Overview 3.0"), accessed March 27, 2025, <https://www.wipo.int/amc/en/domains/search/overview3.0/>.

²⁵⁹ Lars Vrieldechner, *The Transnational Dimension of Constitutional Rights: Framing and Taming 'Private' Governance Beyond the State*, ed. Poul Kjaer (Cambridge: Cambridge University Press, 2020), 352.

having no legitimate interest in the domain name, and the domain name being registered and used in bad faith. The ICANN arbitration procedure, which is regulated in the UDPR has some similarities with the compulsory arbitration. ICANN arbitration procedure is like a compulsory arbitration that the party who acquires the domain name is automatically accepted the ICANN arbitration procedure; even if registrant of the domain name is not aware of this, all parties necessarily accept ICANN's authority in the contracts to be made between ICANN-Registrars-Domain Name Registrant.²⁶⁰ On the other hand, ICANN arbitration procedure has similarity to the classical arbitration procedure is that the plaintiff reserves the right to apply to the courts before applying to ICANN or after the ICANN arbitration decision is published.²⁶¹ If the party against whom the decision was made does not notify ICANN of the documents indicating that it has applied to the court within 10 days from the date of the decision, the institution that registered the domain name shall implement the relevant decision without the need for any recognition or enforcement decision. However, difference between the ICANN arbitration procedure and classical arbitration is that the decisions are announced to the public.²⁶²

The most preferred institution for the application of ICANN arbitration procedure is the World Intellectual Property Organization (WIPO), which is accredited by ICANN. Other organizations accredited by ICANN are, "Resolution Centre", the 'Canadian International Internet Dispute Resolution Centre', the 'The Czech Arbitration Court Arbitration Center for Internet

²⁶⁰ Özgün Law, "Internet Alan Adı Uyuşmazlıklarında ICANN Tahkim Usulü ve Şartları," Özgün Law, accessed March 27, 2025, <https://www.ozgunlaw.com/makaleler/internet-alan-adi-uyusmazliklarinda-icann-tahkim-usulu-ve-sartlari-324>.

²⁶¹ Alex ANSONG, "Trademark Claims in Internet Domain Names: Applicable Disputes and Enforcement of Panel Decisions Under the ICANN Uniform Domain Name Dispute Resolution Policy," *Estey Journal of International Law and Trade Policy* 16, no. 2 (2015): 134.

²⁶² Fatih Buğra Erdem, "Markanın Alan Adı Olarak Kullanılmasında Karşılaşılan Uyuşmazlıklarda Tahkim Mekanizmalarının Yeri," *Selçuk Law Review*, 2023, 279.

Disputes’ and the ‘National Arbitration Forum’.”²⁶³ Each accredited institution differs from each other with different fees and additional arbitration rules.

Article 2 of the UDRP regulated that registrant of the domain name automatically accepts that he or she does not violate the rights of third parties on the domain name. In this regard, in the event of a dispute, registrant defense regarding not knowing the violation shall be null and void. If there is an trademark right infringement or infringement on the domain name through unfair competition, the party whose rights have been infringed shall apply to any institution accredited by ICANN to prove that the domain name is identical or similar enough to a trademark to cause confusion, (the domain name owner does not have a legitimate interest, and the domain name was acquired in bad faith.²⁶⁴ According to the article 4a of UDRP, proving the existence of all three elements is a prerequisite for a lawsuit.²⁶⁵ Article 4(b) of the UDRP specifies the conditions under which are accepted bad faith registration. According to UDRP “In the sense of Article 4(a)(iii), the existence of a bad faith registration and use shall be accepted in the following cases, particularly as determined by the Court: (a) The Internet domain name was registered or obtained primarily for the purpose of selling, renting or otherwise transferring the domain name to the plaintiff, the trademark or service mark owner, or the plaintiff’s competitor for a substantial amount exceeding the documented registration costs of the domain name; or (b) The domain name application was made with the aim of preventing the trademark or service mark owner from using his mark in the domain name and in doing so, commercial purposes were acted upon; or (c) The domain name application was made primarily for the purpose of harming the business of commercial competitors; or (d) The use of the domain name, in order to obtain commercial gain, by creating confusion between the defendant’s mark and the

²⁶³ ICANN, “UDRP Providers,” accessed March 27, 2025,
<https://www.icann.org/resources/pages/providers-6d-2012-02-25-en>

²⁶⁴ ICANN, “UDRP Providers,” accessed March 27, 2025,
<https://www.icann.org/resources/pages/providers-6d-2012-02-25-en>

²⁶⁵ UDRP, Article 4(a), accessed March 27, 2025,
<https://www.icann.org/resources/pages/policy-2024-02-21-en>

source, sponsorship, relationship or recommendation of the product or service on the website, thereby directing Internet users to his own website or another website.²⁶⁶ "The UDRP's jurisdiction covers gTLDs (e.g., .biz, .com, .info, .mobi, .name, .net, .org) and ccTLDs that have adopted the UDRP Policy voluntarily."²⁶⁷ Due to this jurisdictions, the UDRP rules may be applicable in international domain names, and mostly can be used for cybersquatters who are from abroad and not the subject to the laws of a plaintiff's jurisdiction. UDRP proceedings are approved by ICANN. WIPO is the largest provider of UDRP services, and it handles UDRP proceedings for gTLDs and ccTLDs.²⁶⁸

According to the UDRP Policy, Registrar defined as "the entity with which the Respondent has registered a domain name that is the subject of a complaint."²⁶⁹ The UDRP is not the only regulation applied between domain name owners and domain name registrars. Domain name registrars may establish additional rules in accordance with the laws of the country in which they are located, or domain name registrars may establish their own registration policies and may impose additional obligations on domain name owners that are not included in the UDRP. In any case, when a domain name is registered, according to the article 2 of the UDRP, the user who registers makes a commitment regarding "(a) That the information shared in the registration agreement is complete and accurate, (b) That the registration of this domain name does not prejudice or otherwise violate the rights of any third party, (c) That the

²⁶⁶ UDRP, Article 4(b) accessed March 27, 2025,

<https://www.icann.org/resources/pages/policy-2024-02-21-en>

²⁶⁷ WIPO Guide to the Uniform Domain Name Dispute Resolution Policy (UDRP), accessed March 27, 2025, <https://www.wipo.int/amc/en/domains/guide/>

²⁶⁸ "WIPO Center Caseload," WIPO, accessed March 27, 2025,

[https://www.wipo.int/amc/en/center/caseload.html?utm_source=WIPO+Newsletters&utm_campaign=e67a58af31-DIS_ADR_EN_190123&utm_medium=email&utm_term=0_bcb3de19b4-e67a58af31-256979998&ct=t\(DIS_ADR_EN_190123\)](https://www.wipo.int/amc/en/center/caseload.html?utm_source=WIPO+Newsletters&utm_campaign=e67a58af31-DIS_ADR_EN_190123&utm_medium=email&utm_term=0_bcb3de19b4-e67a58af31-256979998&ct=t(DIS_ADR_EN_190123)).

²⁶⁹ ICANN, Rules for Uniform Domain Name Dispute Resolution Policy, September 29, 1999, accessed, March 27, 2025, <https://archive.icann.org/en/udrp/udrp-rules-29sept99.htm>.

domain name was not registered for unlawful purposes, (d) That the domain name is not knowingly used in violation of any applicable law or regulation.”²⁷⁰

The UDRP article 4 has regulated conditions for apply for a “Mandatory Administrative Proceeding”. In order to request the suspension of use or transfer of a domain name under the UDRP, the following three conditions shall be exist; “(i)The domain name shall be identical or confusingly similar to a trademark or service mark.(ii) The registrant of the domain name shall have no rights or legitimate interests in the domain name (legitimate rights or interest).(iii)The domain name shall have been registered and used in bad faith.”²⁷¹ According to the UDRP Policy, only similarity between the domain name and trademark is not sufficient on its own to cause the domain name to be removed from the registry or transferred to the complainant. At the same time, even if there is no legitimate purpose and if bad faith registration and use cannot be proven, the claim will be vague. To sum up, if the three conditions listed in the article 4 of the UDRP do not exist simultaneously, the claim regarding the domain name will have no meaning. According to the UDRP policy, the burden of proof in claims is on the complainant.²⁷² The complainant has the burden of proving that a registered domain name is identical or confusingly similar to its trademark. Also, the complainant has to prove who registered the domain name has no right or interest in the domain name and that both the registration and use are in bad faith in order to the domain name to be removed from the registry or transferred to the complainant.

²⁷⁰Article 2 of the UDRP Policy, accessed March 27, 2025, <https://www.icann.org/resources/pages/policy-2024-02-21-en>

²⁷¹ Article 4 of the UDRP Policy accessed March 27, 2025, <https://www.icann.org/resources/pages/policy-2024-02-21-en>

²⁷² Kenneth Merrill, “Domains of Control: Governance of and by the Domain Name System,” in *The Turn to Infrastructure in Internet Governance*, ed. Francesca Musiani, Derrick L. Cogburn, Laura DeNardis, and Nanette S. Levinson (London: Palgrave Macmillan, 2016), 96, quoted in Mehmet Bedii Kaya, “İnternet Alan Adı (Domain) Uyuşmazlıklarının Çözümünde Alternatif Yöntemler: UDRP, URS ve TRABİS Karşılaştırması,” *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi* 27, no. 2 (December 2021): 1465.

3.1.5.2.1. Similarity Criteria

In order to apply for the UDRP procedure for the domain name dispute, the domain name shall be identical or confusingly similar to a trademark of the complainant. According to the WIPO Panel views, it is not important whether the trademark is registered or unregistered or it is not matter trademark registered in which country.²⁷³ There is argument in doctrine regarding whether in domain name disputes, top-level-domain (TLD), such as “.com”, “.net”, “.org” at the end of the domain name shall be considered in determining the similarity with the trademark. According to the WIPO Panel views, since TLD is a standard in the registration procedure, the TLD extension should not be considered in determining the similarity with the trademark, unless the TLD constitutes part of the trademark.²⁷⁴

3.1.5.2.2. Interpretation and Application of the Right or Legitimate Interest Element in UDRP Decisions

After determining that a domain name is identical or confusingly similar to a trademark, the second issue to be proven is that the registrant does not have a right or interest in the domain name. The UDRP includes some guiding examples of rights or legitimate interests. According to article 4 of the UDRP policy, the existence of a right or legitimate interest may be accepted if; “(i). The person registrant had a bona fide use or demonstrable preparation for use of the domain name or a name corresponding to the domain name for the provision of goods or services prior to the notification of the dispute; (ii) The person (as an individual, commercial organization or other entity) is known by the domain name despite the absence of any trademark or service mark; (iii) The disputed trademark or service mark is used for commercial gain without misleading consumers or disparaging the trademark or service mark, and there is a

²⁷³ WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), Section 1.1., accessed March 30, 2025

<https://www.wipo.int/export/sites/www/amc/en/docs/overview3.pdf>

²⁷⁴ WIPO, WIPO Overview 3.0, Section 1.1.

legitimate non-commercial or fair use of the domain name.”²⁷⁵ The trademark owner who applied for the UDRP procedure is responsible for proving that the person registering the domain name has no right or legitimate interest to use the domain name. Basically, burden of proof is on the trademark owner.

3.1.5.2.3. Bad Faith Criteria

The last criteria for the domain name disputes is proof of bad faith. It will be not possible to have an objective criterion for proof of bad faith. Nevertheless, the UDRP Policy has established presumptions for proof of bad faith. According to the UDRP Policy, (i). The domain name was allocated to the complainant, who owns a trade or service mark, trade name, business name or other identifying mark, or to a party with whom the complainant competes commercially, for the purpose of selling or transferring the domain name for an amount exceeding the documented allocation costs and investment cost of the domain name, (ii). The domain name was allocated for the purpose of preventing the owner of a trademark, trade name, business name or other identifying mark used in trade from using such a mark, title, name or mark in the domain name, (iii) The domain name was allocated primarily for the purpose of harming the businesses or activities of commercial competitors, (iv) The disputed domain name was used for the purpose of generating commercial gain, creating confusion by creating similarity with a trade mark, trade name, business name or other identifying mark owned by the complainant, and thus directing internet users to the domain name owner's website or any other website.²⁷⁶

According to the UDRP policy, the trademark owner shall prove bad faith in registration and bad faith in use of domain name. Therefore, the burden of proof covers both registration and use of domain name. In cases where the domain name is registered but never used, no website is created, or even the

²⁷⁵ Article 4 of the UDRP Policy, accessed March 27, 2025, <https://www.icann.org/resources/pages/policy-2024-02-21-en>

²⁷⁶ UDRP Policy, accessed March 27, 2025, <https://www.icann.org/resources/pages/policy-2024-02-21-en>

name servers are not directed to a website, proving bad faith is a significant problem. In such cases, since there is no concrete data to prove the bad faith of the domain name registrant, serious debates are experienced in the UDRP application.²⁷⁷ In this case WIPO defines this situation as the “passive holding doctrine”. This doctrine defined in the case of Ferrari S.p.A v. Contact Privacy Inc. which is settled by the WIPO panel.²⁷⁸ In the case, the respondent Contact Privacy Inc. had registered the “ferrari.app” domain name and did not use this domain name actively, website page was blanked and offered temporary use of this domain name to the Ferrari S.p.A which is complainant party. The complainant claimed that Ferrari is the well-known trademark in the worldwide and this domain name is confusingly similar to their trademark name. Also, the complainant claimed that respondent has no license or authorization to use this name so, there is no right or legitimate interest for the respondent to use this domain name. Moreover, the complainant claimed that after registration of this domain name and not using it and offer to temporary use to them shall considered as registered and used in bad faith. The Panel gave decision in the favor of the complainant and defined applicability of the “passive holding doctrine”. Moreover, Panel noted that this doctrine shall evaluate case by case. So, these conditions shall take in account of in order to decide whether passive holding doctrine is exist or not; The distinctiveness of the complainant’s trademark, the disputed domain name, and the degree of recognition of the mark, The respondent’s failure to respond to any UDRP application or provide actual or probable evidence of good faith use; The respondent’s concealment of identity or use of false contact information, No demonstration of good faith by the register. According to the Panel, respondent could not give any reasonable explanation for the registry of the “ferrari.app” and Ferrari trademark is well known worldwide. Also, the respondent benefit unfairly from well-known

²⁷⁷ Kaya, “İnternet Alan Adı Uyuşmazlıklarının Çözümünde Alternatif Yöntemler,” 1469.

²⁷⁸Ferrari S.p.A v. Contact Privacy Inc. Customer 1247676738 / Warren Welsh, Revolution.app Case No. D2020-3537, accessed March 27, 2025,

<https://www.wipo.int/amc/en/domains/decisions/text/2020/d2020-3537.html>

trademark and offered temporarily use to the complainant. So, there is a bad faith and there is an infringement regarding article 4 of the UDRP.

3.1.2.5.4. The Burden of Proof in UDRP Proceedings:

There is an argument regarding the burden of proof is on the trademark owner because it is too hard for the trademark owner to prove registrant of the domain have no right or legal interest on the domain name. To elaborate further, domain name registration processes are carried out through an automated process that does not require identity verification or physical contact as a rule. Basically, there is application of first come, first served principle. Generally, it is not mandatory to share personal information or personal data in domain name registrations. As a result, it is frequently encountered that incorrect and false information is entered in the domain name owner section. Determination of the owner of a domain name can be through the WHOIS system. For instance, when the domain name “medeniyetuniversitesi.com” is searched from the website “<https://who.is>”, server information will indicate the registrant of the domain name and when the registration period will expire. However, with special domain name hiding services offered by third parties, it is possible to completely hide the information belonging to the domain name owner. Thanks to proxy services, personal data is hidden and specially created masked information is updated in the WHOIS record.²⁷⁹ When the UDRP process is initiated, some proxy service providers share the real domain name owner, while some proxy service providers share this information only during the UDRP process due to personal data protection regulations. The identification of the person appearing in the WHOIS information as the counterparty in the UDRP process does not prevent the process from being carried out. Likewise, after the real domain name owner is identified, it is possible to request correction and direct the request to the real domain name owner.²⁸⁰

²⁷⁹ ICANN, "ICANN Lookup," accessed March 27, 2025, <https://lookup.icann.org/en>.

²⁸⁰ WIPO, WIPO Overview 3.0, Section 1.1.

While there are those who argue that the WHOIS database should be completely closed, especially in the context of protecting personal data.²⁸¹ Also, there are argue that this registry should be made more effective and domain name registration should be carried out with an identity verification method in order to combat cybercrime. This argument became important after the establishment of the General Data Protection Regulation (GDPR).²⁸² Therefore, it will be hard for the trademark owner to prove that the person does not have a right or a legitimate interest due to not knowing who registered the domain name.

There is no judicial inspection or discovery in the UDRP process. Burden of the proof is on the complainant. The arbitrator or arbitrators make decisions based on the documents presented to them by the parties. However, WIPO Panel accepts that prove of domain name registrar has no rights and legitime interest on the domain name will be very difficult for the complainant. Therefore, if the complainant “provides enough initial evidence to suggest the respondent lacks rights or legitimate interests, the burden shifts to the respondent to present evidence showing they do have such rights or interests.”²⁸³ This will help to the complainant in the disputes.

3.1.5.3. Uniform Rapid Suspension (URS)

When there is an application for the UDRP procedure, there is no automatic restrictions on the use of the domain name. The domain name is only canceled or transferred by the final arbitrator's decision. Even if, the UDRP procedure provides significant resolutions for the domain name disputes, it has some ineffectiveness in the procedure. This procedure takes approximately two months and cost of approximately \$5,000 is required for each domain name. With the introduction of new top-level domain extensions the need for a more dynamic

²⁸¹Kaya, “İnternet Alan Adı Uyuşmazlıklarının Çözümünde Alternatif Yöntemler, 1468.

²⁸² ICANN, Data Protection and Privacy, accessed March 28, 2025.

<https://www.icann.org/dataprotectionprivacy>.

²⁸³WIPO, WIPO Overview 3.0, Section 1.1.

method for protecting trademark rights on the Internet has become important. With the introduction of new domain name extensions in 2010, a new procedure called Uniform Rapid Suspension (“URS”) was introduced by ICANN in 2013 for the resolution of domain name disputes²⁸⁴. UDRP was not abolished with the introduction of the URS process. Both procedures are in effect and are implemented simultaneously. The complainant who claims that their rights have been violated by the registration and use of domain names may apply for the UDRP or URS methods separately or together.²⁸⁵ Even if complainants apply for the UDRP or URS procedure, they can also apply to the national court.

In order to the URS application to be successful, the domain name shall be an identical or confusingly similar to trademark and the registrant shall have no right to the domain name or there is no legitimate interest and registration and using domain name in bad faith shall be exist. Both the UDRP and the URS impose similar rules. The main point where the URS procedure differs from the UDRP procedure is related to the burden of proof²⁸⁶.

Under the UDRP, the complainant bears the burden of proving all three required elements by a preponderance of the evidence, whereas the URS applies a higher evidentiary threshold requiring clear and convincing evidence but only in cases of trademark abuse, thereby constituting a more expedited and narrowly applied procedure. According to the article 8.2 of the URS “The burden of proof shall be clear and convincing evidence.”²⁸⁷ At the end of the URS process, the domain name is neither transferred nor cancelled from the registry. The URS method ensures that a domain name is temporarily suspended during the registration period. Depending on the situation, this suspension can be extended for another year. For this reason, it is possible to take special measures to prevent

²⁸⁴Uniform Rapid Suspension (URS), accessed March 27, 2025. <https://www.icann.org/urs-en#:~:text=The%20Uniform%20Rapid%20Suspension%20System,clear%2Dcut%20cases%20of%20infringement>.

²⁸⁵ WIPO, WIPO Overview 3.0, Section 1.1.

²⁸⁶ <https://www.icann.org/en/system/files/files/urs-procedure-redline-21feb24-en.pdf>

²⁸⁷ ICANN, Uniform Rapid Suspension (URS), Article 8.2.

illegalities arising from the domain name with a relatively lighter burden of proof. While the UDRP process can take eight weeks, the URS process can be concluded in three weeks. In some cases, the arbitrators can announce their decisions in a shorter period. It is possible to apply both UDRP and URS procedures at the same time for a domain name. It is possible for the URS decision to be given before the UDRP decision is given. WIPO maintains that both processes are independent processes and that URS decisions are not binding on the UDRP.²⁸⁸ Since, URS is a precautionary measure for the disputes regarding domain names, WIPO's approach is appropriate.

URS is applied to new generic top-level domains such as "info", "org", "pro", "tel", "asia" and some country-coded top-level domains such as pw. As of 2021, three organizations have been authorized by ICANN as URS service providers. These organizations are Asian Domain Name Dispute Resolution Center (ADNDRC)²⁸⁹, MFSD²⁹⁰ and National Arbitration Forum (NAF).²⁹¹ Unlike the UDRP method, the URS method is not a final legal remedy; it is a temporary measure. At the end of the URS decision, the domain name is not transferred, it is only suspended for the duration of the registration process. Unlike UDRP decisions, URS decisions can be appealed²⁹². A review of the decision is requested using the same procedure. In summary, URS is a method developed to provide temporary protection for new domain name extensions. Although it provides limited protection, this procedure is important for protecting trademarks.

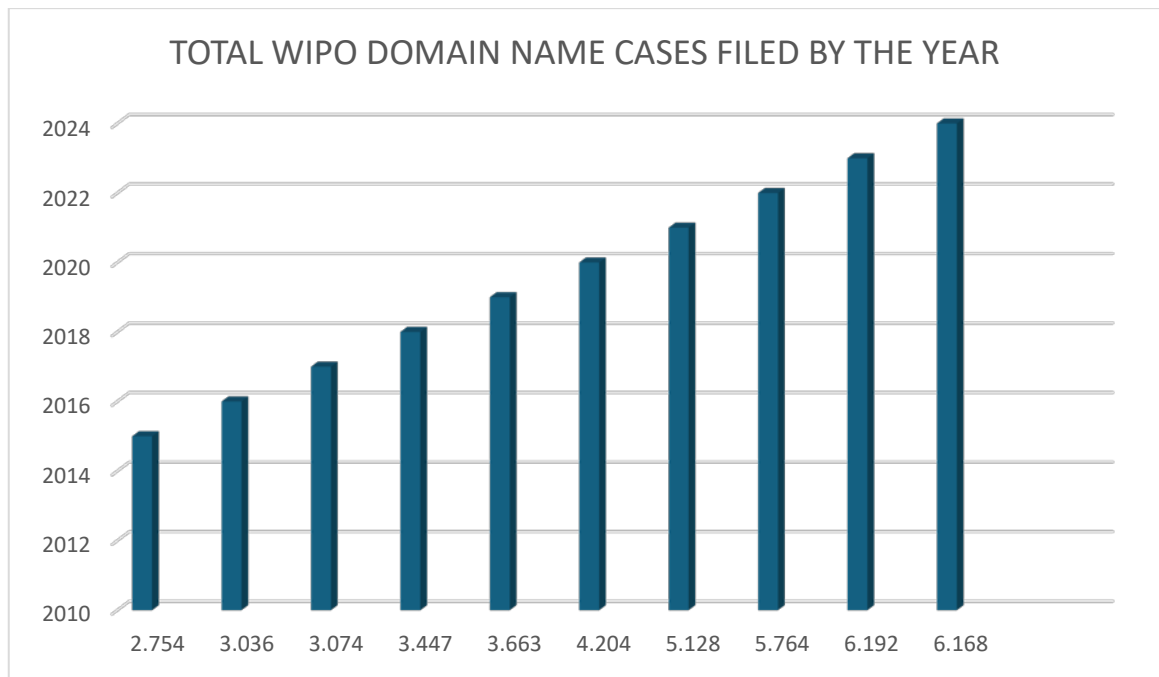
²⁸⁸ WIPO, WIPO Overview 3.0, Section 1.1.

²⁸⁹ Asian Domain Name Dispute Resolution Centre (ADNDRC), Home, accessed March 23, 2025, <https://www.adndrc.org>.

²⁹⁰ MFSD, Uniform Rapid Suspension (URS) Provider - Italy, accessed March 23, 2025, <https://urs.mfsd.it>.

²⁹¹ ADR Forum, Home, accessed March 23, 2025, <https://www.adrforum.com>.

²⁹² Kaya, İnternet Alan Adı (Domain) Uyuşmazlıklarının Çözümünde Alternatif Yöntemler: UDRP, URS ve TRABİS Karşılaştırması, 1473.



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[https://www.wipo.int/amc/en/center/caseload.html?utm_source=WIPO+Newsletters&utm_campaign=e67a58af31-DIS_ADR_EN_190123&utm_medium=email&utm_term=0_bcb3de19b4-e67a58af31-256979998&ct=t\(DIS_ADR_EN_190123](https://www.wipo.int/amc/en/center/caseload.html?utm_source=WIPO+Newsletters&utm_campaign=e67a58af31-DIS_ADR_EN_190123&utm_medium=email&utm_term=0_bcb3de19b4-e67a58af31-256979998&ct=t(DIS_ADR_EN_190123)

The WIPO settles many cybersquatting disputes over the years. According to official website of the WIPO, Since 2015, the number of cybersquatting cases resolved by WIPO has increased. “The UDRP applies primarily to international domains such as .com, .net, .org, .top, .win and .xyz. In addition, over 85 country code top-level domains (ccTLDs) have appointed the WIPO AMC as service provider for managing domain name disputes in their respective ccTLD.”²⁹³ Therefore, as internet usage and establishing trademark names increase, cybersquatting increases and the number of cases settled by WIPO increases.

3.1.5.4. Recent Developments in the Uniform Domain Name Dispute Resolution Policy

The Uniform Domain Name Dispute Resolution Policy (UDRP), as administered by ICANN, serves as the cornerstone mechanism for resolving

²⁹³ WIPO, WIPO Center Caseload.

domain name disputes involving abusive registrations, such as cybersquatting. While the UDRP text itself has remained largely consistent since its inception, recent regulatory developments most notably, the implementation of the Registration Data Policy (RDP) have significantly influenced the procedural landscape of UDRP proceedings.²⁹⁴ The RDP, which came into full effect in August 2024–2025, directly responds to the evolving global data protection regime, especially the GDPR, and consequently introduces notable implications for access to WHOIS registration data a fundamental evidentiary resource in UDRP cases.

Prior to the RDP, complainants in UDRP proceedings relied extensively on open access WHOIS databases to identify the registrant of an allegedly infringing domain name and substantiate elements such as bad faith or lack of legitimate interest. However, the RDP operationalizes ICANN's commitment to data minimization and purpose limitation principles by restricting routine public access to registrant data. Under the RDP framework, access to registrant information is mediated through contracted party disclosure mechanisms or third party data request processes, adding procedural complexity to the initial phase of a UDRP filing. As a result, complainants must now often initiate UDRP complaints based on redacted registrant data, potentially delaying dispute resolution or affecting the completeness of initial pleadings.

In adapting to the RDP's restrictions, the UDRP Rules were incrementally updated to allow dispute resolution providers, such as WIPO or the Forum (NAF), to request registrant data disclosure from registrars during the lock period following the complaint's filing. The updated Rules explicitly require registrars to provide the full registration data to the dispute resolution provider, who then shares it with the complainant. This ensures that the complainant can

²⁹⁴ ICANN, *Uniform Domain Name Dispute Resolution Policy (UDRP)*, January 1, 2020, accessed April 2, 2025, <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>.

amend the complaint if necessary, preserving due process and procedural fairness. Nevertheless, this reactive disclosure model introduces delays and strategic uncertainty, especially in cases involving domain privacy services or proxy registrations, which are increasingly prevalent.

3.1.6. Alternative Dispute Resolution Procedures in Domain Name Infringements in Turkish Law

There is a regulation called the 'Internet Domain Names Regulation published in the Official Gazette dated 7/11/2010, No: 27752. This Regulation's main purpose is to determine the procedures and principles regarding the management of Internet domain names with the extension ".tr" and this regulation regulated the Alternative Dispute Resolution Mechanism between Articles 23 and 27. According to this regulation, Dispute Resolution Service Providers carries out the resolution process of disputes related to domain names through arbitrators. First parties of dispute apply to the for the dispute resolution mechanisms, if the application found appropriate by the Turkish Information Technologies and Communication Authority, then parties dispute may settle by the Dispute Resolution Service Providers mechanism. According to Article 25 of the Internet Domain Names Regulation, if the parties apply for dispute resolution mechanism, the domain name in question shall be similar or identical to a trademark, trade name, business name or other identifying mark owned or used in commerce and domain name owner shall has no legal right or connection to this domain name and finally the domain name was allocated or used in bad faith by the domain name owner²⁹⁵. According to Article 25/2 of the Regulation, the complainant who claims that all three conditions exist may apply for the Dispute Resolution Service Providers. According to article 26 of Internet Domain Names Regulation there shall be certain criteria regarding the selection and qualifications of arbitrators. First of all, arbitrators who want to be included in the list to be published by the Dispute Resolution Service Provider shall be experts in the fields of intellectual property rights law, trademark law,

²⁹⁵ Article 25 of the Internet Domain Names Regulation.

commercial law or information technology law. Also, in order for arbitrators to start their duties, they shall submit written declarations to the DRSP indicating their independence and impartiality regarding the area of the dispute and the parties. The arbitrator or arbitration board shall take into consideration the relevant legislation, precedents and judicial decisions when deciding on the relevant dispute. According to article 27 of Internet Domain Names Regulation, as a result of the investigation, two types of decisions can be made, depending on the request of the complaining party: cancellation of the domain names or their transfer to the complaining party or rejection of the complaining party's request. Decisions are made by simple majority and no referee can abstain.

The trademark owner may alternatively prefer to resolve the dispute related to domain names through the dispute resolution mechanism operated by the Dispute Resolution Service Provider. The disputed domain name shall be similar or identical to the trademark, Trade name, business name or other identifying marks owned or used in commerce, the party allocating the domain name does not have a legal right or connection to this domain name, this domain name shall be allocated or used by the domain name owner in bad faith."²⁹⁶ Before the adoption of the UDRP rules and ICANN jurisdictional procedure in Turkish law, domain name disputes were handled by local courts and the courts applied the rules of domestic law. The competent authority for the arbitration of domain names in Turkish law was METU. Pursuant to the 2010 Regulation on Internet Domain Names and the 2013 Communiqué on Internet Domain Name Dispute Resolution Mechanism, an alternative WIPO like resolution system was introduced in Turkish law for domain name disputes in line with ICANN and UDRP.

²⁹⁶ Ezgi Öztürk, "İnternet Yoluyla Markanın Haksız Kullanımı," Terazi Hukuk Dergisi 5, no. 45 (2010): 72-73; Nurullah Bal, "İnternet Alan Adları ve İnternet Alan Adı Uyuşmazlıklarının Tahkim Yoluyla Çözümlemesi," Gazi Üniversitesi Hukuk Fakültesi Dergisi 17 (2013): 341-345.

Furthermore, METU, which had been in charge of allocating “.tr” domain names since 1991, transferred its duty to the TRABIS system as of September 29, 2022. Due to this change, the Communiqué on Internet Domain Names Dispute Resolution Mechanism entered into force in 2021. The Communiqué aims to harmonize the Internet Domain Name Dispute Resolution Mechanism Communiqué with TRABIS. ICANN's UDRP is used as an alternative dispute resolution mechanism for domain name right infringements.

In case of a violation of the domain name right in Turkey, access to that internet domain name can be blocked in order to prevent the violation in Turkish courts. However, it is not possible to request the transfer of that domain name. At the same time, the violation of the domain name right may occur abroad and there may be an appropriate use in the law of the country where that violation occurred. For this reason, it may be more advantageous to apply to alternative remedies in addition to local courts in disputes related to domain names.

Arbitration is a more rapid and more economical remedy than courts. In addition, in arbitration, the parties can freely determine that the dispute between them shall be resolved by experts, and they can also choose the procedural rules in accordance with the spirit of the dispute. “Arbitration proceedings are a solution to the need for judicial units to resolve disputes arising between persons subject to the legal rules of different countries due to the globalization of commercial activities by getting rid of their spatial boundaries with the digital transformation.”²⁹⁷ In order to determine the applicability of arbitration to unfair competition disputes arising in the internet environment, it is necessary to reveal the difference between the legal nature of the arbitration agreement and the legal nature of the unfair competition act. Indeed, while unfair competition is a tort in nature, arbitration is a contract. Therefore, since the legal liability arising from unfair competition is a non-contractual type of liability, it is not possible for the

²⁹⁷ Mert Kürşat Akın, *Dijital Mecrada Haksız Rekabet Hukuku Uygulamaları* (Ankara: Seçkin Yayıncılık, 2023), 162.

parties to conclude an arbitration agreement in advance regarding unfair competition disputes. However, according to the Arbitration Law No. 4686, since the parties may conclude arbitration agreements in advance as well as subsequently, it will be possible to resort to arbitration for the resolution of disputes arising from unfair competition acts on the internet.²⁹⁸

DRSP's are entities authorized to resolve disputes arising solely from ".tr" domain names through arbitrators and within the framework of applicable legislation. Prospective DRSPs may obtain an operating license²⁹⁹ by applying to the Information and Communication Technologies Authority with the necessary information and documents demonstrating compliance with the required criteria. Currently, operating licenses have been granted to TOBBUYUM Mediation and Dispute Resolution Center, Istanbul Arbitration Center, and the Information Technologies and Internet Security Association.

3.1.6.1. TOBBUYUM

The TRABİS and its associated dispute resolution mechanism, Dispute Resolution Service Providers, represent a significant development in the Turkish domain name system, particularly in terms of legal protection and rapid dispute resolution. With the activation of TRABİS in 2022, the allocation of ".tr" domain names transitioned from a first-come, first-served basis to a more structured framework, which also included mechanisms to resolve conflicts between trademark holders and domain name registrants. The Dispute Resolution Service Providers system allows complainants to challenge domain name registrations on grounds such as bad faith or infringement of prior rights, especially in cases of cybersquatting or unfair competition. Disputes are resolved by arbitration like

²⁹⁸ Kaplan, *Elektronik Ortamda İşlenen Haksız Rekabet Halleri*,175.

²⁹⁹ Regulation on Internet Domain Names, Article 24, Official Gazette No. 27752, November 7, 2010, Turkey.

panels authorized by institutions such as TOBBUYUM.³⁰⁰ Decisions issued by Dispute Resolution Service Providers panels are binding, and if the panel rules in favor of the complainant, the domain name can be transferred or canceled.³⁰¹ This mechanism contributes to a more effective legal environment by offering a faster and more cost efficient alternative to litigation. Furthermore, the process aligns with international practices such as ICANN's UDRP, while also adapting to local legal norms under Turkish Commercial and Intellectual Property Law.

Decisions rendered by TOBBUYUM under Turkey's domain name dispute resolution system are quasi-judicial in nature and carry binding legal consequences within the scope of TRABİS regulations. These decisions function similarly to arbitral awards and can result in the transfer or cancellation of disputed domain names. One major advantage of the system is its efficiency complaints are resolved in a relatively short period compared to traditional litigation, offering a cost-effective and accessible legal remedy for trademark holders. Moreover, the procedure accommodates local legal principles, such as those relating to unfair competition and trademark infringement under Turkish Commercial and Intellectual Property Law. However, the system still lacks uniform jurisprudence and comprehensive public accessibility to case precedents, which limits its transparency and predictability. Compared to ICANN's Uniform Domain Name Dispute Resolution Policy, the TOBBUYUM process is more localized and formalistic, and it does not yet benefit from the global recognition or extensive panelist experience seen in UDRP proceedings. Additionally, while UDRP decisions are well-documented and serve as persuasive references internationally, TOBBUYUM decisions are less accessible and need further standardization. Enhancing the publication of decisions, adopting clearer procedural rules, and ensuring consistency across rulings

³⁰⁰ TOBB Dispute Resolution Center, "Internet Domain Name Complaint Application," accessed March 2, 2025, <https://tobbuyum.com.tr/internet-alan-adlari-sikayet-basvurusu/>.

³⁰¹ TRABİS "tr" Ağ Bilgi Sistemi. Accessed March 2, 2025. <https://www.trabis.gov.tr/FAQ>.

would increase both the legitimacy and the international comparability of the Turkish system.

In the domain name disputes handled by TOBBUYUM under the Dispute Resolution Service Provider framework, both the “solenis.com.tr” case³⁰² and the “stabauer.com.tr” case³⁰³ decision illustrate how the Turkish system addresses alleged bad faith registrations that infringe on prior trademark rights. In each case, the panel applied TRABİS regulations and examined whether the registrant had a legitimate interest in the domain and whether the registration was intended to exploit the complainant's brand reputation. These decisions highlight the Dispute Resolution Service providers’ focus on protecting intellectual property rights and preventing cybersquatting, similar to the principles found in ICANN’s UDRP process. A key similarity between the two decisions is the identification of bad faith behavior, where respondents lacked any demonstrable right or legitimate use of the domain and registered it in a manner likely to mislead consumers. However, differences likely arise in the scope of the complainants’ trademark recognition for instance, if solenis.com.tr is an internationally recognized mark, the panel may have relied on broader consumer recognition, whereas in stauber.com.tr, the analysis may have focused more on local brand presence and specific evidence of unfair competition. While TOBBUYUM decisions are binding within the national system, they still lack the international exposure and standardization of UDRP decisions. Improvements in the publication and reasoning consistency of Dispute Resolution Service Providers rulings would strengthen the credibility and legal predictability of the Turkish domain name dispute resolution system.

³⁰² TOBB Dispute Resolution Center, “Solenis.com.tr Domain Name Dispute Decision,” Case No. TOBBUYUM-2025-(353), TRABİS Ticket No. 21000004490986, May 14, 2025, accessed March 5, 2025, <https://tobbuyum.com.tr/wp-content/uploads/2025/05/solenis.com.tr.pdf>.

³⁰³ TOBB Dispute Resolution Center, “Domain Name Dispute Decision,” Case No. TOBBUYUM-2024-(number unknown), October 2024, accessed March 5, 2025, <https://tobbuyum.com.tr/wp-content/uploads/2024/10/karar1.pdf>.

3.1.6.2. Comparative Analysis of Arbitration and the Dispute Resolution Procedure under the Regulation on Internet Domain Names in Resolving Domain Name Conflicts

There are notable differences between the alternative dispute resolution mechanism applied to domain names and arbitration. In Turkish law, arbitration is governed by Articles 407 to 444 of the Turkish Code of Civil Procedure (TCCP) and the International Arbitration Law (IAL).³⁰⁴ While the TCCP regulates domestic arbitration, the IAL applies to arbitrations involving a foreign element. Disputes arising from domain names are regulated by the Regulation on Internet Domain Names, the Communiqué on Internet Domain Names, and the Communiqué on the Dispute Resolution Mechanism for Internet Domain Names.

Pursuant to Article 2 of the IAL, its provisions shall apply where one of the parties is a foreign person; in the absence of a foreign element, the provisions on domestic arbitration under Article 407 of the TCCP shall be applicable. In contrast, Article 25/2 of the Regulation on Internet Domain Names does not impose any limitation based on the existence of a foreign element, merely requiring that the complainant assert the fulfilment of three specific conditions according to the Regulation on Internet Domain Names³⁰⁵. Accordingly, the DRSP for “.tr” domain names may be accessed by any person, regardless of the presence of a foreign element.

As a rule, arbitration is voluntary in nature, and both the arbitration regimes governed by the Turkish Code of Civil Procedure and the Turkish International Arbitration Law are based on party autonomy. For arbitration to be mandatory, it shall be expressly stipulated by law³⁰⁶. In the context of domain name disputes,

³⁰⁴ International Arbitration Law, Law No. 4686, Official Gazette No. 24453, July 5, 2001, Turkey.

³⁰⁵ Regulation on Internet Domain Names, Article 24, Official Gazette No. 27752, November 7, 2010, Turkey.

³⁰⁶ Ebru Yılmazsoy, “Tahkim ve Hakem Sözleşmeleri,” *DergiPark*, accepted January 28, 2020, <https://dergipark.org.tr/tr/download/article-file/1500694> (accessed April 4, 2025).

the domain name allocation agreement concluded with the applicant includes a provision stating that disputes arising from the domain name shall be resolved in accordance with the requirements, standards, policies, procedures, and practices of ICANN, and specifically through the procedure set forth in the UDRP, which is explicitly accepted by the applicant.

Pursuant to the TCCP and the IAL, an arbitration agreement is defined as a contract in which the parties agree to resolve all or certain disputes of a legal nature arising between them through arbitration. Under both the TCCP and the IAL, the existence of an arbitration agreement between the parties is a prerequisite, and such an agreement is binding only upon the parties thereto. In contrast, domain name allocation agreements are concluded with registrars, and therefore third parties are neither parties to the contract nor in any legal relationship with the registrar.³⁰⁷ However, since ICANN rules are accepted within the scope of domain name related disputes, it is possible for third parties who are not parties to the allocation agreement to initiate proceedings before the DRSP, and such applications are not contested by the domain name holder. Pursuant to the TCCP and the IAL, the presence of a valid arbitration agreement obliges the parties to refer their dispute to arbitration, thereby precluding recourse to the courts. By contrast, in domain name disputes, although the allocation agreement imposes a contractual duty to comply with ICANN policies and to submit the matter to the relevant DRSP, there is no statutory impediment to filing a civil action directly without first invoking that procedure.

Pursuant to the TCCP and the IAL, arbitral awards become final and binding upon the parties once finalized, thereby acquiring the effect of *res judicata*, and neither a new arbitration proceeding nor a lawsuit may be initiated for the same dispute. As a result, neither a new arbitration proceeding nor a court action may be initiated regarding the same dispute. In contrast, under Article 25/ 2 of the

³⁰⁷ Bilal Gezer, *Türk Hukukunda İnternet Alan Adı Uyuşmazlıkları ve Çözüm Mekanizmaları: TRABİS ve UÇHS Uygulaması*, 1st ed., May 2025, 108.

Regulation on Internet Domain Names, it is possible for a complainant to re-submit a complaint to the DRSP concerning the same issue after receiving a final decision.³⁰⁸ Furthermore, the parties retain the right to file an action before the competent civil courts against decisions rendered by the DRSP. Such court proceedings are not considered as a legal remedy or annulment action against an arbitral award, but rather as proceedings in which the merits of the dispute between the parties are re-examined by the court.

3.1.7. The Anticybersquatting Consumer Protection Act (ACPA)

In the beginning of the 2000s, the USA regulated many statutes regarding domain name. Most important statute which is regulated by the U.S. Congress is "Anticybersquatting Consumer Protection Act ("ACPA"), codified at 15 U.S.C. §1125(d)³⁰⁹. With ACPA regulation, trademark owners have protection if there is a cybersquatting "The ACPA enable to facilitate the recovery of domain names by their rightful owners and provides protection against the bad-faith registration of a domain name made in order to economically profit from a distinctive mark³¹⁰."

According to the ACPA, in order to claim cybersquatting, plaintiff which is the trademark owner shall prove trademark had a distinctiveness at the exact time that the domain name was registered by the infringer and the infringer registered domain name that is identical or confusingly similar to plaintiff's trademark name and the infringer had a bad faith intent to profit from that trademark name.³¹¹ The ACPA listed nine examples of which actions may constitute as domain name registration with bad faith. However, these are not

³⁰⁸ Regulation on Internet Domain Names, Article 25/2, Official Gazette No. 27752, November 7, 2010, Turkey.

³⁰⁹ James Grimmelmann, *Internet Law: Cases & Problems*, 384 (12th ed.; Semaphore Press, 2022).

³¹⁰ 15 U.S.C. § 1125(d)(1)(A); Attison L. Barnes, III et al., "Fourth Circuit Finds 'Re-registration' of a Domain Can Be Cybersquatting – A Prudential Clarification to the ACPA," Wiley Rein, LLP, January 25, 2023, quoted in Vera Glonina, "Back to the Future with Blockchain Domain Names: Toward a Global Policy to Fight Cybersquatting in Web 3.0," *The Trademark Reporter* 114, no. 4 (July–August 2024): 595.

³¹¹ 15 U.S.C. § 1125(d)(1)(A).

exclusive factors, courts may decide bad faith of registrant in order to register domain name in the case even if the action is not listed in the ACPA. But court will consider these factors which is listed in the ACPA for determining.

If the trademark owner wins the case regarding cybersquatting, there are some remedies that trademark owner can receive such as monetary damages, and order for canceling the infringer's registration of domain name or transferring domain name to the trademark owner; and also, court may award attorneys' fees to a trademark owner.³¹² Moreover, the ACPA regulated Reverse Domain Name Hijacking Provision ("RDNH"). "This regulation aims to ensure protection of domain name registrants against unreasonable and unjustified cybersquatting claims by the infringers."³¹³

The ACPA regulation protects domain name registrars from liability for actions like refusing, removing, transferring, or canceling domain names if these actions done in order to apply court order or for apply trademark protection policies. Registrars are also not liable for registering or maintaining a domain unless they act in bad faith for profit. However, they may face injunctive relief if they transfer a domain without a court order, fail to comply with one, or do not submit required documents. Also, it should be noted that this regulation cannot be apply if the case is in a foreign court and not enforcing U.S. trademark law³¹⁴.

To sum up, the ACPA ensures a protection of domain name rights and trademark rights against bad-faith registration and cybersquatting actions. Even if the ACPA is comprehensive regulation which ensures protection of domain

³¹² 15 U.S.C. § 1125(d)(1)(A); Barnes et al., "Fourth Circuit Finds 'Re-registration' of a Domain," quoted in Glonina, "Back to the Future," 595.

³¹³ 15 U.S.C. § 1114(2)(D)(iv); Ned T. Himmelrich, "Reverse Domain Name Hijacking Can Lead to Liability," Gordon Feinblatt LLC, June 24, 2021, accessed March 28, 2025, <https://www.gfrlaw.com/what-we-do/insights/reverse-domain-name-hijacking-can-lead-liability>.

³¹⁴ Zohar Efroni, "A Barcelona.Com Analysis: Toward a Better Model for Adjudication of International Domain Name Disputes," Fordham Intellectual Property, Media & Entertainment Law Journal 14 (2003): 29, 48-51, quoted in Vera Glonina, "Back to the Future with Blockchain Domain Names: Toward a Global Policy to Fight Cybersquatting in Web 3.0," The Trademark Reporter 114, no. 4 (July-August 2024), 596.

name, the litigations which are based on the ACPA are usually time consuming and costly process. Also, this process cannot be applicable to the international domain name cases.

In foreign jurisdiction there are only a few comprehensive regulations regarding cybersquatting like the ACPA. In the EU law, there is no unified regulation regarding cybersquatting. In most of the European countries, if there is a dispute regarding cybersquatting, plaintiffs usually claim on the basis from trademark rights and unfair competition regulations. However, a few countries have regulated comprehensive legislations like ACPA. For example, "Finland regulated a comprehensive Domain Name Act that specifically lists the examples for revocation process of a .fi domain name."³¹⁵ Also, in doctrine, scholars suggested harmonizing cybersquatting legislation for The Europe Union like the ACPA legislation.³¹⁶

3.1.8. THE UDRP VS. THE ACPA

The UDRP rules are similar to the ACPA. According to the UDRP, "the trademark owner which is plaintiff in the dispute, shall prove that the infringing domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and shall prove the alleged infringer has no rights or legitimate interests in the domain name; also, the allegedly infringing domain name has been registered and is being used in bad faith."³¹⁷

Furthermore, the UDRP procedures regulated similar mechanisms like the ACPA for ensure the balance of interests and protection of the domain name owners. According to Rule 15(e) of the UDRP, "if after considering the submissions the Panel finds that the complaint was brought in bad faith, for

³¹⁵ Domain Name Act (228/2003; amendments up to 397/2009 included) (Fin.), accessed March 28, 2025, https://www.finlex.fi/en/laki/kaannokset/2003/en20030228_20090397.pdf

³¹⁶ Waddah Alrawashdedh, In ccTLD, Old Style gTLD and New Style gTLD Systems: Comparative Analysis of the US, EU and International Approaches (2017), University of Szeged, 117., accessed March 28, 2025, https://doktori.bibl.u-szeged.hu/id/eprint/4093/1/Waddah_Alrawashdedh_Ertekezes.pdf.

³¹⁷ Glonina, "Back to the Future with Blockchain Domain Names, 605.

example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain- name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”³¹⁸

According to ACPA rules, there shall be distinctive mark at the time of registration of domain names. However, according to UDRP rules, trademark right owner’s mark does not have to be distinctive or popular at the time of the domain name registration. “Therefore, even holders of after- acquired trademark rights may seek relief under the UDRP.”³¹⁹ The UDRP rules regulated remedies in dispute as to the transfer or cancellation of the infringing domain name by the domain name registrar. Unlike the ACPA rules, there is no monetary damages for plaintiff and there is no award for the plaintiff’s attorney’s fees.³²⁰ For this reason, UDRP rules have disadvantages compared to ACPA rules.

Additionally, if there is a re- examine case for the dispute which is settled by UDRP panel, national law in this case may overrule UDRP decisions. For this reason, UDRP Panel’s decision does not prevent a national court from applying national regulations in domain name disputes³²¹. If the register of the domain name registers the domain through an ICANN, the register will automatically accept the be subject of the Rules of UDRP³²². If the parties of the UDRP proceeding are not happy with the decision, parties may file a civil action in court even if they have settlement by the UDRP proceeding.³²³

Usually, UDRP proceedings are less costly and rapidly than litigation. However, litigation procedure has some advantages than UDRP proceedings

³¹⁸Int’l Corp. for Assigned Names & Numbers, Rules for Uniform Domain Name Dispute Resolution Policy accessed March 7, 2025, <https://www.icann.org/resources/pages/udrp-rules-2015-03-11-en>

³¹⁹ Glonina, "Back to the Future with Blockchain Domain Names, 606.

³²⁰ "WIPO Disputes Guide for Mobile Apps," WIPO, accessed March 7, 2025, <https://www.wipo.int/documents/d/mobile-apps/docs-wipo-disputes-guide-mobile-apps.pdf>.

³²¹ Glonina, "Back to the Future with Blockchain Domain Names606.

³²² Final Report of the WIPO Internet Domain Name Process, supra note 106.

³²³ Glonina, "Back to the Future with Blockchain Domain Names, 607.

such as more detailed examination of dispute and plaintiff may receive monetary damages.³²⁴ Therefore, plaintiffs shall decide carefully to choose which procedure at the time of dispute regarding domain names. Also, it should be noted that, if infringer in the different jurisdiction than plaintiff, it may be difficult to bring a lawsuit and it may be difficult to stop infringement therefore choosing the UDRP procedure may be better for plaintiff.

Moreover, there is another legal procedure for domain names which are coordinated by ICANN, for ensure to protection of trademark right owners. This procedure is called Uniform Rapid Suspension (URS) and this procedure regulated that trademark right owners may file a complaint and may request suspension of a registered domain name. Examiners will determine the suspension. "If the examiner's determination is in favor of the complainant, the domain name is suspended and will not be able to be transferred, deleted, or modified for the life of the registration."³²⁵ Furthermore there is a post procedure which is called, Post-Delegation Dispute Resolution Procedures ("PDDRP"). This mechanism ensures the solve disputes when a domain name registrant deliberately infringed trademarks within its TLDs, this infringement may occur directly or occur by actions of third parties.

WHOIS is an international database that contains publicly accessible information about registered domain names, promoting transparency in the domain name system. Upon registration, the registrant is generally required to provide accurate contact information to the registrar. However, due to the enforcement of the General Data Protection Regulation (GDPR), certain registrant details may be redacted from public view. Consequently, trademark rights holders may request access to the registrant's information through legal procedures or administrative channels, particularly in the context of domain

³²⁴ Glonina, "Back to the Future with Blockchain Domain Names, 607.

³²⁵ Glonina, "Back to the Future with Blockchain Domain Names, 608.

name disputes.³²⁶ Finally, the ACPA and the UDRP rules ensure to help trademark right owners to protect their trademark names against bad faith registration of domain names.

3.2. New Trends and Technologies in Order to Prevent Domain Names Infringements on Trademarks

Every day technology is developing more, and more and new concepts and new methods are emerging. Blockchain and Artificial Intelligence are widely used today and have become a growing field. Trademark owners may use analyzing of big data, blockchain systems, smart contracts, AI (artificial intelligence), machine learning and monitoring tools in order to protect their trademarks from the infringers. These issues will be discussed in more detail below.

3.2.1. Blockchain Domain Name System as an Alternative Domain Name System

In the beginning of 2010s, development of blockchain system has increased and from this increasement, there happen to a creation of blockchain-based alternative domain name systems. One of the first blockchain based domain name system is Namecoin and this blockchain system used “.bit” TLD and “this is the equivalent of a second-level domain name.”³²⁷ According to a study by Oxford Informational Labs researchers, “blockchain domain names are a new alt-root with a wide literature gap that requires critical attention.”³²⁸ Blockchain-based domain names do not use “ICANN-controlled DNS servers to connect an

³²⁶ ICANN About Whois, accessed March 7, 2025.

[https://www.icann.org/resources/pages/what-2013-03-22-en#:~:text=Whois%20is%20an%20Internet%20protocol,name%20\(or%20IP%20address](https://www.icann.org/resources/pages/what-2013-03-22-en#:~:text=Whois%20is%20an%20Internet%20protocol,name%20(or%20IP%20address)

³²⁷ Glonina, "Back to the Future with Blockchain Domain Names,"609.

³²⁸ Glonina, "Back to the Future with Blockchain Domain Names,"609.

IP address to the Internet.” Blockchain-based domain names use decentralized networks³²⁹.

In the development of alternative domain name systems, BDNs is important. “BDNs are NFTs that can be bought, sold, or transferred.”³³⁰ and “NFTs are digital certificates that authenticate the ownership of assets.”³³¹ NFTs are not fungible, so they are not exchangeable³³². “BDNs are managed by decentralized domain registrars and can be owned and controlled by individuals or organizations, rather than by centralized entities such as ICANN and accredited registrars³³³.” There are different types of BDN extensions and TLDs exist for example “. nft”, “. crypto”, and “. blockchain.”³³⁴ BDNs may have advantages than traditional ICANN based domain names such as flexibility and ability to control by any single entity. ³³⁵ BDNs describe in a doctrine as a new development for ownership to domain name ownership. Even if, ICANN has not made statements regarding BDNs, some BDN providers may make collaboration with ICANN regarding developing BDNs However, it is unclear whether ICANN would be open to this partnership³³⁶. From these developments, BDNs has risks regarding infringement of trademark rights and unfair competition through domain names, because of the characteristic of the BDNs. If ICANN coordinate and regulates the BDNs domain names, risks of the BDNs might decrease.

³²⁹ Chen Wang and Jin Zhao, "Network Approaches in Blockchain-Based Systems: Applications, Challenges, and Future Directions," Computer Communications, accessed, March 7, 2025, <https://www.sciencedirect.com/science/article/pii/S0140366423003298>.

³³⁰ John Melcher, "The Rise of Blockchain Domain NFTs," 2022, perma.cc, accessed March 28, 2025 <https://perma.cc/8U7X-HESQ>

³³¹ Glonina, "Back to the Future with Blockchain Domain Names, 609.

³³² Busch, Kriten, *Non- Fungible Tokens (NFTs)*, Congressional Research Service, accessed March 28, 2025, <https://www.congress.gov/crs-product/R47189>

³³³ "Web2+Web3 In One Powerful Domain," Box, accessed March 28, 2025, <https://www.my.box>.

³³⁴ Freename.io, accessed March 28, 2025. <https://freename.io>.

³³⁵ Web3 Domains," GrowthChain, accessed March 28, 2025, <https://www.growthchain.io/blog/web3-domains>.

³³⁶ Glonina, *Back to the Future with Blockchain Domain Names*, 615.

Due to development of blockchain technology, has introduced a new digital domain name. This digital domain names are different than traditional Domain Name System. These traditional domain names are governed by established protocols such as the ICANN and its UDRP. However, blockchain-based domains like “. crypto" and “. eth" has many challenges for competition and trademark protection. Blockchain technology offers opportunities for decentralization, transparency, and security.³³⁷ One of the significant innovations originating from blockchain is the blockchain-based domain names. These domain names, such as “. crypto" and “. eth," operate independently from the traditional DNS and do not adhere to the rules and protections offered by centralized authorities such as ICANN. Due to many people use blockchain technologies trademark owners may challenge with the protecting of their intellectual property rights within this new domain landscape.³³⁸

Traditional domain names, regulated by ICANN, operate within a centralized framework. They are allocated and managed by accredited registrars, and disputes concerning ownership or infringement are generally resolved through UDRP.³³⁹ By contrast, blockchain-based domain names function on decentralized networks and rely on blockchain technology the same infrastructure underlying cryptocurrencies. These domain names often have extensions such as ‘. crypto’ or ‘. eth’, and may be used for a variety of purposes, including as website addresses, cryptocurrency wallet identifiers, and components of decentralized digital identities. The key difference between traditional and blockchain domains is the lack of centralized oversight. Blockchain domains are registered and

³³⁷ Andrea L. Calvaruso, Matthew C. Luzadder, *Unauthorized Blockchain Domain Names: What's a Brand to Do?*, Kelley Drye, March 7, 2022, accessed March 28, 2025. https://www.kelleydrye.com/viewpoints/client-advisories/unauthorized-blockchain-domain-names-whats-a-brand-to-do?utm_source=chatgpt.com.

³³⁸ Blockchain Technology: A Revolution in Legal Evidence?, Dreyfus, October 30, 2024, accessed March 28, 2025. <https://www.dreyfus.fr/en/category/new-technologies-law/>

³³⁹ International Trademark Association (INTA). "The Trademark Reporter, Vol. 114, No. 04." International Trademark Association, 2023, accessed March 28, 2025. https://www.inta.org/wp-content/uploads/public-files/resources/the-trademark-reporter/TMR-Vol-114-No-04-Secured.pdf?utm_source=chatgpt.com

maintained on the blockchain itself. Therefore, there is no specific regulatory processes that may apply to these domain names. Moreover, due to there is no specific regulatory process, there is a gap in legal protections for trademark owners. So, there can be unfair competition and trademark infringements.

3.2.2. The Risks of Blockchain Domain Names for Trademark Owners

The decentralized nature of blockchain domains have risks for trademark owners, unlike traditional domain names, which fall under the governance of ICANN and related dispute resolution procedures, blockchain domains are not regulated by any central authority. This lack of oversight makes it difficult for brands to assert control over their trademarks and intellectual property rights in this new domain environment.³⁴⁰ Blockchain domains may allow users to register domains anonymously. Due to this anonymity there will be challenges for identify infringing parties in the infringement cases. Also, this anonymity may challenge legal enforcement actions. Moreover, blockchain domains may link to a cryptocurrency platform and this may create confusion for trademark identity. For instance, an unauthorized use of a trademark name as a blockchain domain may mislead consumers and may harm the trademark owner's reputation.³⁴¹

³⁴⁰ Furkan Çolhak, Mert İlhan Ecevit, Reiner Creutzburg, ve Hasan Dağ, "SecureReg: Combining NLP and MLP for Enhanced Detection of Malicious Domain Name Registrations," CCIP, Center for Cyber Security and Critical Infrastructure Protection, Germany March 2024, accessed March 28, 2025. <https://arxiv.org/pdf/2401.03196>

³⁴¹ Çolhak et al., SecureReg.

CONCLUSION

The widespread use of the internet and the increasing number of internet users have increased the unfair and unlawful use of domain names. The main purpose of the persons operating through their web pages is to increase the advertising of the goods and services they offer by ensuring that a large number of users visit their pages. For this purpose, domain names may be used in a way that constitutes unfair competition or trademark infringements. With the widespread use of the Internet in commercial life, new legal problems have emerged. This situation has caused an increase in problems, especially related to intellectual rights and competition law. Businesses often register domain names that incorporate elements such as trademarks, trade names, or business names in order to participate in the digital marketplace with identifiers that distinguish them from other enterprises. However, the fact that the same domain name is allocated to only one person on the Internet and the application of the first come first served rule appears to be a problem.

Domain name infringement and unfair competition occur due to the malicious use of the first come, first served principle in the registration of domain names. Trademark rights owners and consumers are negatively affected by this. This principle also leads to many disputes. Current data from WIPO also shows that domain name disputes have increased rapidly since 2010.

In the first part of this study, the definition and legal nature of domain names, domain name registration, the institutions responsible for domain name registration, and the legal regulations concerning domain names were examined. Within the framework of the Regulation on Domain Names, particular attention was given to the identification of websites and the technical aspects related to domain names.

In the second part of the study, the concepts of competition and unfair competition were analyzed. Basically, unfair competition can be defined as the misuse of an individual's right to compete, resulting in actions contrary to the law and the principles of good faith. Article 55 of the Turkish Commercial Code No. 6102 sets out six clauses and twenty-one exemplary acts that constitute unfair competition. Although the Code provides examples of unfair competition, these examples are not exhaustive. The legislator did not adopt the principle of *numerus clausus* in the regulation of unfair competition. This approach stems from the understanding that acts constituting unfair competition are subject to change in accordance with the constant evolution of economic life, particularly in response to technological developments. Therefore, the flexible structure of the Code in this regard is appropriate. The field of competition, which forms the basis for the application of unfair competition law, is dynamic and continuously evolving. Additionally, a broad definition of unfair competition is provided in Article 54/2 of the TCC. This provision has been subject to debate in legal doctrine. The article employs both the terms "unfair" and "unlawful," although one concept already encompasses the other. An act may be unlawful without fulfilling all the elements of an act of unfair competition. However, every act of unfair competition necessarily includes the element of unlawfulness. For this reason, in line with certain doctrinal views to which I also agree, it would have been more accurate for the provision to refer only to acts that are "unfair."

Following this, the study examined acts of unfair competition that may arise in relation to domain names, including the use of a trademark, name, or distinctive sign associated with another person as a domain name, or acts involving the same or similar use, as well as the use of a well-known trademark as a domain name. Also, the use of a registered trademark belonging to another as a domain name may also constitute a trademark infringement, and such acts can be protected under the provisions of the Turkish Industrial Property Code.

This study focuses on the most prevalent forms of unfair competition arising from domain name disputes, with particular emphasis on doctrinal debates and relevant case law. Up to the present, cybersquatting has represented the most common type of infringement involving domain names. Cybersquatting is one of a type of domain name infringement when someone registers well-known trademark as a domain name with the malicious intention. In cybersquatting, infringer offers transfer of a domain name to trademark right owner for aims to obtain money from this. This type of infringement also leads to unfair competition. Also, this type of infringement raised important questions for legal debate in domain name law, particularly concerning the treatment of passive holding as evidence of bad faith. The Telstra doctrine is a turning point that originating from *Telstra Corporation Ltd v Nuclear Marshmallows* case. In this case there is a debate whether passive non-use registration of domain name may constitute bad faith or not. Before this case UDRP did not consider passive holding of domain name as a bad faith. But after this case, The Telstra doctrine has accepted that not only active misuse but also non-use can constitute bad faith depending on the context. In this respect, it has become an important precedent in favour of brand owners in UDRP decisions. In doctrine some scholars argued that the risk of overextending the Telstra doctrine to penalize domain name holders who may have legitimate reasons for non-use, and the potential for inconsistency with broader principles of fair use. In my point of view, the expansion of the concept of bad faith through the Telstra doctrine is appropriate. The reasoning behind the Telstra doctrine, as it rightly recognizes that bad faith in domain name disputes can manifest not only through active misuse but also through passive non-use, depending on the surrounding circumstances. In the digital age, where domain names carry significant commercial and reputational value, the mere act of holding a domain identical or confusingly similar to a well-known trademark, without any legitimate purpose or use, can be just as harmful as overt misuse. The Telstra decision appropriately takes into account factors such as the distinctiveness of the trademark, the lack of any rights or legitimate interests by the respondent, and the absence of plausible good faith use, thereby

preventing cybersquatters from exploiting legal loopholes by simply remaining inactive. By broadening the interpretation of bad faith in this way, the doctrine provides stronger protection for trademark owners and upholds the integrity of the UDRP framework against bad faith domain registrations.

This study also addresses various other forms of unfair competition that may arise from the use of domain names. These include the unauthorized and persistent sending of advertising content via email (spamming), the use of domain names in a manner contrary to the principle of good faith, and the creation of unfair competition through methods such as framing and hyperlinking. In addition, technical tools such as meta tags, banner advertisements, and pop-ups may also be used to infringe upon domain names. In such cases, Internet users may be misled and directed to a website other than the one they originally intended to visit. This type of manipulation especially when it interferes with consumer decision making may constitute unfair competition. Another form of unfair competition occurs when domain names are used in a misleading way that may deceive Internet users. A domain name shall not include deceptive signs concerning the nature, quality, or other characteristics of a business or the services provided through the website. Similarly, when a domain name or its associated website directly or indirectly disparages a competitor, this too may give rise to unfair competition.

The third part of the thesis examines the protection against domain name infringements in the context of unfair competition. Legal remedies available in cases of unfair competition are regulated under Articles 56 and following of the Turkish Commercial Code. These remedies include actions for determination, prevention, restitution, and compensation. In cases where domain name usage results in unfair competition, these legal actions may also be initiated. The global nature of the Internet transcending time and territorial boundaries means that acts of unfair competition resulting from domain name infringements can affect markets worldwide. Under Turkish law, in cases involving a foreign element, Article 37 of the Law on Private International Law and Procedural Law provides

that the law of the country whose market is affected shall apply. However, in practice, determining the applicable law may be difficult when multiple jurisdictions are simultaneously affected. From my perspective, Article 37 of the Law on Private International Law and Procedural Law should explicitly regulate this issue to provide clearer guidance for cross border domain name disputes.

Also, there is alternative dispute resolution methods for domain name infringements. In global domain name infringements, there was no settlement mechanism for trademark holders. WIPO developed UDRP procedure. Internationally, the UDRP has become the most widely used dispute resolution mechanism for asserting trademark rights against domain names. The UDRP establishes a new substantive standard to protect the rights of a trademark owner. Under the UDRP, the complainant shall prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights, the defendant has no rights or legitimate interests in respect of the domain name, and the domain name has been registered and is being used in bad faith.

The UDRP policy was adopted by ICANN in 1999. Today, the UDRP is implemented by all domain name registrars accredited by ICANN and organizations that manage specific country domain names. Article 1 of the UDRP states that the purpose of the Policy is to determine the procedures and principles for resolving disputes between domain name registrants and third parties claiming rights in connection with the domain name. The UDRP was introduced in response to the commercialization of the Internet and the growing recognition of the collective value of domain names as assets. It serves as a framework policy, while its application is further shaped by WIPO and ICANN practice, as well as by emerging case law.

The ICANN arbitration procedure under the UDRP offers a number of advantages, including low cost, the ability to pursue parallel litigation in national courts, expedited resolution, and applicability to international disputes.

However, it has been criticized in the legal doctrine for being limited in scope, as it applies only to certain top-level domains and provides only for the transfer or cancellation of domain names. Plaintiffs are not entitled to claim monetary damages for harm suffered due to unfair competition, as the UDRP does not provide a remedy beyond domain name cancellation or transfer. Therefore, this procedure fails to fully compensate right holders. From a legal standpoint, it is suggested that the UDRP be improved to also allow for compensation in appropriate cases.

There is an alternative dispute resolution mechanism for domain names with “.com.tr” extension in Turkey, which is organized in parallel with the UDRP. The UDRP is used for disputes over generic first-level domain names and some country-coded domain names. Anyone can file a complaint for domain names covered by the UDRP, regardless of the nationality and geographical location of the complainant. In this procedure same as the UDRP, plaintiffs cannot receive compensation for the damages they suffer due to unfair competition through domain name. In my view, also this procedure shall improvements for the cover of plaintiff’s damages.

The ICANN arbitration procedure is considered a highly advantageous dispute resolution mechanism due to its relatively short duration of approximately 45 days, low cost, non-preclusive effect on litigation in national courts, and its international applicability. However, this procedure has been criticized in legal doctrine for being limited to disputes involving specific top-level domains and for only allowing decisions concerning the transfer or cancellation of the domain name. Under the ICANN arbitration system, authorized dispute resolution service providers attempt to resolve disputes in accordance with the Uniform Domain Name Dispute Resolution Policy. In many aspects, this procedure differs from classical arbitration. According to Paragraph 4(a) of the UDRP, the complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights, that the respondent lacks any rights or legitimate interests in respect

of the domain name, and that the domain name has been registered and is being used in bad faith. Although ICANN's UDRP mechanism constitutes an effective remedy, it also has certain disadvantages foremost among them being the requirement to prove bad faith. By contrast, under alternative dispute resolution mechanisms concerning domain names with the ".tr" or ".eu" extensions, it is sufficient to prove bad faith either at the time of registration or during use.

Moreover, the binding nature of decisions rendered through alternative dispute resolution mechanisms may give rise to certain legal challenges, particularly when court proceedings are initiated concurrently. If one of the parties' initiates litigation during the ADR process, the arbitral proceedings may be stayed, and any decision rendered by the ADR body may become unenforceable. In such cases, if a court judgment is subsequently issued, the final authority rests with the domestic court, overriding the arbitral outcome. For instance, under Turkish law, a person who suffers harm due to the unfair registration of a domain name with a ".tr" extension may choose either to file a complaint through the ADR mechanism or to pursue litigation before domestic courts. Should the court grant a preliminary injunction during the course of ADR proceedings, any arbitral decision will lose its enforceability, and the dispute will be subject to the final outcome of the litigation. Conversely, if the domain name in dispute carries a generic extension such as ".com" instead of ".tr", recourse to the Turkish ADR framework is not available, as the Internet Domain Names Regulation is limited exclusively to ".tr" country code top level domains.

In cases where unfair competition arises from the use of a domain name with a non-".tr" extension, such as ".com" or ".eu", and the affected party seeks legal remedies before Turkish courts, the available relief is typically limited to access restrictions within Turkey. The court may issue a decision to block access to the infringing website domestically; however, the domain name in question will remain operational and accessible outside of Turkey. Unlike the broader remedies available through the UDRP mechanism, Turkish courts are not authorized to order the transfer or cancellation of such domain names due to

jurisdictional limitations. Nevertheless, if the conditions set forth in Article 4 of the UDRP are met, the injured party may pursue resolution through the UDRP system, which offers an international and effective framework for addressing domain name disputes, including the possibility of transferring or cancelling the infringing domain name.

Dispute Resolution Service Providers, including the TOBBUYUM mechanism in Turkey, play a crucial role in the efficient resolution of domain name disputes that give rise to unfair competition. These mechanisms share core procedural similarities with the internationally established UDRP, such as providing expedited proceedings, cost-effective solutions, and specialized expertise aimed at reducing the burden on national courts. TOBBUYUM, as Turkey's localized dispute resolution service, offers tailored benefits by addressing domain name conflicts under the ".tr" country code, reflecting the specific regulatory and commercial context of the jurisdiction. While both UDRP and TOBBUYUM prioritize rapid dispute settlement and equitable outcomes, TOBBUYUM's integration within the Turkish legal framework enhances access to remedies for trademark owners and contributes to the harmonization of national dispute resolution standards with international practices. Nevertheless, the scope limitations inherent to DRSPs, including TOBBUYUM's focus on country-code domains, highlight the ongoing need for complementary legal instruments to comprehensively address unfair competition stemming from domain name infringements across all domain categories.

Also, there is an The Anti cybersquatting Consumer Protection Act in US Law which is an unique act in the world regarding regulating the cybersquatting. In most of the cybersquatting disputes, plaintiff only claim on the basis from trademark rights and unfair competition regulations. However, if countries have comprehensive legislation like an ACPA, trademark right owners may claim infringements more easily and compensate rapidly. Therefore, I believe that Turkish law would benefit from the introduction of new legislative measures specifically aimed at resolving domain name disputes. A comprehensive legal

framework, similar in scope and purpose to the ACPA, could be adopted to address various forms of domain name abuse, including cybersquatting. Such a legal reform would not only provide clearer substantive and procedural rules for domain name conflicts but also enhance legal certainty for both right holders and registrants. Furthermore, it would allow plaintiffs to seek and obtain compensation for their losses arising from unfair competition in a more effective and timely manner.

Moreover, there is a new domain name systems called Blockchain Domain Name Systems. As blockchain domains may not governed like traditional domain name disputes. While in traditional domain names disputes resolve by the UDRP, is not applicable to blockchain domains may not resolve by UDRP because they are not in the ICANN's jurisdiction. Since there are no regulations regarding blockchain domain names, there will be violations and therefore unfair competition will occur. In summary, there is an existence of legal gap regarding dispute resolution mechanism for blockchain domain names and there is necessity of governing cryptocurrencies and decentralized networks. Otherwise, there will be many disputes arising from infringements and existence of unfair competition through domain name.

Lastly, in the light of ongoing developments in internet area and domain name law, several recommendations can be made to strengthen the legal framework and ensure greater consistency and fairness. The UDRP system could be strengthened by incorporating compensation mechanisms similar to those available under the ACPA, so as to more effectively deter bad faith domain name registrations and to provide right holders with more comprehensive and meaningful remedies. Also, in Turkey legislators should consider adopting specific regulations for domain name infringements similar to ACPA, to ensure transparency and prevent unfair practices in domain registration process. The Internet Domain Names Regulation No. 27752 should be further developed, particularly with a focus on preventing domain name infringements and ensuring adequate remedies for aggrieved parties. In addition, enhancements

should be made to the TRABIS system in order to strengthen the efficiency, transparency, and fairness of the domain name dispute resolution mechanism. Moreover, with the growing use of crypto related domain names, future infringements may lead to serious unfair competition issues, especially given the lack of clear ownership rules and decentralization. Therefore, it is crucial to develop new legal standards to address violations involving blockchain based or decentralized domain names. Finally, to prevent domain name disputes from giving rise to widespread unfair competition, international cooperation and harmonized regulations are essential, particularly through frameworks that balance the interests of trademark holders and domain name registrants at the global level.

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