

# TRADEMARKS (MARKS) IN TURKISH LAW

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Turkish Commercial Law | Chapter 6

## How signs become exclusive commercial assets

For classroom use: 1 hour, 5 Slido polls, 2 case questions, 5-question mini quiz

LEGAL IDENTITY

REGISTRATION

ENFORCEMENT & LIMITS

### Market signs

invoice name • packaging • website • label • logo



## TM

A trademark links a market sign to an exclusive right that can be enforced, licensed, sold, or pledged.

Key message: in trade, reputation travels through signs.

# Session map and learning goals

## Timing plan

- 1** **0–10 min** Why trademarks matter; legal sources; brand vs trademark
- 2** **10–20 min** Concept, distinctiveness, representation, functions, and types
- 3** **20–32 min** Registration structure, refusal grounds, opposition, and priority
- 4** **32–47 min** Rights, confusion, use requirement, limitations, exhaustion, and transactions
- 5** **47–60 min** Enforcement, termination, case discussion, and mini quiz

## By the end of the session, students should be able to:

- identify what can function as a trademark and why distinctiveness matters
- explain first-to-file, specialty, opposition, and priority
- apply confusion, exhaustion, and cancellation logic to practical scenarios

## Interactive design

Five Slido polls appear as concept checks.

## Teaching rhythm

Two cases slow the pace and force legal application.

## This session is built around a single policy question

How far should the law let one undertaking control a sign without shrinking the public domain needed for fair competition?

# Why trademarks matter in commercial life

## Why commercial law pays close attention to marks

- Market participants often meet each other through signs rather than face-to-face identity.
- A mark reduces consumer search costs and supports repeat transactions.
- It protects investment in quality, consistency, and reputation.
- Once registered, a mark becomes an intangible asset that can be licensed, sold, pledged, or enforced.

Business “brand” strategy is broader than the legal trademark. Law protects a sign under defined conditions and within a defined scope.

## TRADEMARKS TURN MARKET REPUTATION INTO A LEGALLY PROTECTED, EXCLUSIVE COMMERCIAL POSITION

### Market trust

Consumers learn to connect a sign with responsibility.

### Consumer choice

A mark acts as a shortcut to information at the point of purchase.

### Competitive differentiation

The law supports investment by limiting confusing imitation.

### Enterprise value

Investors and counterparties treat strong marks as valuable business assets.

# Where trademark law sits in the legal system

Trademarks are mainly governed by the Industrial Property Code, yet commercial law still matters because signs interact with trade names, contracts, unfair competition, and customs controls.

## IPC No. 6769

Primary statute: defines the mark, refusal grounds, procedure, rights, invalidity, and revocation.



## TÜRKPATENT

Examines applications, publishes them, decides oppositions, and maintains the trademark registry.



## IP courts

Review legality, issue injunctions, award damages, and order destruction or removal of infringing goods.



## Commercial overlap

TCC trade name and unfair competition rules, contract law, customs practice, and procedure.

International layer: Paris Convention | TRIPS | Madrid Protocol | Nice Classification. Trademark rights remain territorial, but portfolio strategy is cross-border.

# — A trademark = sign + distinctiveness + clear representation

## Sign

A trademark can be a word, logo, combination, shape, color, or sound if the law can identify what is claimed.

## Distinctiveness

The relevant public must be able to separate one undertaking's goods or services from another's.

## Representation

The registry must show the subject matter of protection clearly enough for authorities and competitors.

## Different from a trade name

A trademark identifies goods or services; the trade name identifies the merchant or enterprise.

## Two important distinctions

- Some signs are inherently distinctive.
- Other signs may acquire distinctiveness through use and recognition.

The legal trademark is narrower than the everyday idea of a “brand.” Brand strategy may exist without registration, while the strong erga omnes right normally depends on registration.

# — What trademarks do — and how they are classified

## Core market functions

### Origin/accountability

Links a product or service to a commercial source so buyers can respond to experience over time.

### Search-cost reduction

Allows quick comparison and repeat choice without re-checking every technical characteristic.

### Advertising/investment

Protects the proprietor's investment in reputation and reduces free-riding by imitators.

## Main types

### Goods / service marks

The same legal logic applies, but the market context of use differs.

### Individual / collective / certification

Ownership and control structure the mark's function.

### Word / figurative / combined / 3D / sound

Protection depends on the overall commercial impression and the sign's ability to distinguish origin.

Turkish law is registration-based, but earlier unregistered use can still matter through opposition, invalidity, or unfair competition logic.



# 1: Which feature is indispensable for a registrable trademark?

# Slido poll 1

**Which feature is indispensable for a registrable trademark?**

A. National advertising campaign

B. Distinctiveness for the relevant goods or services

C. A prior court judgment

D. Use in at least three countries

## Teaching cue

Use this poll to confirm the basic legal definition before moving into registration and refusal grounds.

## Correct answer

B. Distinctiveness for the relevant goods or services

## Classroom note

Invite students to explain why the wrong options are weaker before revealing the answer.

# How trademark rights are acquired

The Turkish system is structured around first-to-file and the principle of specialty: protection depends on the filing date and the goods/services claimed.

## 1. Application

Identify the applicant, represent the sign clearly, and define the goods/services list.

## 2. Office review

TÜRKPATENT checks formal requirements and examines absolute grounds ex officio.

## 3. Publication + opposition

Publication in the Bulletin opens space for earlier rights holders to raise relative grounds.

## 4. Registration

If the application survives review, the mark is registered for 10 years and can be renewed.

### Three structural ideas

- first-to-file
- principle of specialty
- partial refusal is possible

Registration gives a strong presumption of validity and ownership, but re-examination, judicial review, later invalidity, and revocation keep the registry legally accountable.

# Public-domain limits versus earlier private rights

## Absolute grounds (public interest, examined ex officio)

- Lack of distinctiveness
- Descriptive or customary terms
- Misleading signs
- Public order or morality concerns
- Protected state symbols / geographical indications
- Functional shapes or characteristics

## Relative grounds (earlier rights, usually raised by opposition)

- Earlier identical or similar mark + likelihood of confusion
- Earlier reputed mark: unfair advantage, dilution, tarnishment
- Earlier trade name or unregistered sign used in trade
- Conflict with personal rights or earlier IP rights
- Agent or representative filing without authority

Bad faith is the safety valve: first-to-file does not legitimize opportunistic capture of another party's sign or market entry.



**2: Which issue is usually raised as a relative ground through opposition rather than examined ex officio as an absolute ground?**

## Slido poll 2

Which issue is usually raised as a relative ground through opposition rather than examined ex officio as an absolute ground?

A. Descriptiveness

B. Conflict with an earlier similar mark

C. Public order

D. Misleading quality claim

### Teaching cue

This question helps students separate public-interest grounds from earlier-right conflicts.

### Correct answer

B. Conflict with an earlier similar mark

### Classroom note

Invite students to explain why the wrong options are weaker before revealing the answer.

# Territorial rights, international filing strategy

## Paris priority

A later filing made within the convention period can claim the earlier filing date. For trademarks, the practical benchmark is a six-month window.



## Madrid route

One international filing through WIPO can designate multiple countries, but each designated state still applies its own domestic law.



## Well-known marks

Turkish law can protect famous marks against opportunistic local filings even without domestic registration, if recognition is proven.

Key practical lesson: rights remain territorial, but portfolio planning is global. Classification, transliteration, translation, and cross-language similarity all affect how a sign travels.

# How registration protects the mark in the market

## Use in the course of trade

Trademark law targets commercial use that affects the sign's origin function — on goods, packaging, ads, online listings, imports, or exports.

## Identity

Identical sign on identical goods/services. Protection is strongest because confusion is obvious.

## Confusion

Similar sign on identical or similar goods/services. Courts ask whether the average consumer may assume a common source or economic link.

## Reputation

A reputed mark can reach dissimilar goods/services if later use takes unfair advantage, dilutes, or tarnishes.

## Likelihood of confusion is contextual

Relevant factors include visual similarity, phonetic similarity, conceptual association, relatedness of goods/services, and the level of consumer attention.

## Case 1: Bad-faith filing against an earlier user

### SCENARIO

LeafLine Organics has used LEAFLINE on tea packaging and online sales for four years but never filed a trademark. A former distributor, after the commercial relationship ends, files LEAFLINE in its own name for tea, herbal drinks, and retail services. The earlier user discovers the application during publication in the Official Trademark Bulletin.

Prompt students to connect earlier use in trade, bad faith, and agent/representative logic.

### Discuss

- What grounds can the earlier user raise?
- Why does the distributor's prior knowledge matter?
- Does first-to-file always defeat earlier market use?

# — Use requirement, lawful reference, and exhaustion

## Genuine use

An unused trademark can be revoked if it is not genuinely used in Türkiye for a continuous five-year period.

## Descriptive / referential use

Competitors may describe their goods or refer to a mark for compatibility or intended purpose if they act honestly and do not mislead.

## Exhaustion

Once genuine goods are lawfully put on the market with the proprietor's consent, control over those specific goods is generally exhausted.

## Legitimate reasons to object

The proprietor may still intervene if the goods are altered, impaired, or presented in a way that harms the mark's functions.

Parallel imports are not automatically the same as counterfeit goods. The real question is whether genuine first sale and later market presentation leave trademark functions intact.



**3: In a parallel-import scenario involving genuine goods first marketed with the proprietor's consent, which doctrine is most relevant?**

## Slido poll 3

In a parallel-import scenario involving genuine goods first marketed with the proprietor's consent, which doctrine is most relevant?

A. Genericization

B. Exhaustion of rights

C. Assignment

D. Priority

### Teaching cue

Use this poll to distinguish unauthorized channel use from true counterfeiting.

### Correct answer

B. Exhaustion of rights

### Classroom note

Invite students to explain why the wrong options are weaker before revealing the answer.

# How trademark rights move in commerce

## Assignment

Ownership can be transferred entirely or only for certain goods/services. Recordal gives publicity to the market.

**TRADEMARK**  
=  
**BUSINESS ASSET**

## Licensing

The owner authorizes use under agreed conditions. Quality control protects the mark's reputation and source function.

## Pledge, seizure, and due diligence

Marks can secure debt, be seized in enforcement, and form part of enterprise value in M&A, financing, and capital contributions.

Recordal protects third parties.

Portfolio hygiene matters in corporate deals.

# From detection to injunction and damages

1

## Detect

Offline imitation, online listings, domain names, or social accounts using the sign.

2

## Secure evidence

Evidence determination and interim measures matter because goods and listings move fast.

3

## Civil remedies

Determination, cease-and-desist, seizure, destruction, removal of effects.

4

## Financial relief

Material damages, profits, reasonable royalty logic, and in some cases moral damages.

5

## Border / criminal route

Customs controls and, for deliberate counterfeiting, possible criminal sanctions.

Trademark claims often work together with unfair competition claims because the same conduct may both infringe the registration and mislead the market.



**4: Which response is most urgent when suspected counterfeit goods are intercepted at the border?**

## Slido poll 4

**Which response is most urgent when suspected counterfeit goods are intercepted at the border?**

A. Renewal request

B. Customs seizure and interim measures

C. Nice reclassification

D. Voluntary surrender

### Teaching cue

This poll shifts the class from abstract rights to procedural speed and enforcement architecture.

### Correct answer

B. Customs seizure and interim measures

### Classroom note

Invite students to explain why the wrong options are weaker before revealing the answer.

## Case 2: Parallel imports and exhaustion

### SCENARIO

A cosmetics company places genuine DERMALUX skincare products on the market abroad with its consent. An independent Turkish importer buys the goods and imports them into Türkiye outside the official distributor network. The importer adds Turkish-language relabeling but does not alter the formula. The proprietor sues for trademark infringement.

Ask students to separate unauthorized distribution channels from genuine counterfeiting.

### Discuss

- Are rights exhausted if the goods are genuine?
- When can the proprietor still object?
- Why do relabeling and product condition matter?

# How trademark rights can come to an end

## Expiry or surrender

The right ends if the registration is not renewed or if the proprietor voluntarily renounces it. The sign can return to the public domain.

## Invalidity

Looks backward: the registration should never have been granted because an absolute or relative defect already existed at filing/registration.

## Revocation

Looks forward: later developments such as non-use, genericization, or misleading use remove the justification for continued exclusivity.

The deeper policy is dynamic register hygiene: trademark law protects valuable signs, but it also clears away monopolies that no longer serve legitimate market functions.



## 5: Which statement best distinguishes invalidity from revocation?

# Slido poll 5

**Which statement best distinguishes invalidity from revocation?**

A. Invalidity looks to defects existing at registration; revocation looks to later developments

B. Revocation is only a criminal remedy

C. Invalidity applies only to famous marks

D. They are identical remedies

## Teaching cue

Use this poll to consolidate cancellation logic before the mini quiz.

## Correct answer

A. Invalidity looks to defects existing at registration; revocation looks to later developments

## Classroom note

Invite students to explain why the wrong options are weaker before revealing the answer.



**Quiz Question 1: The primary statute governing trademarks in Türkiye is:**



**Quiz Question 2: Which sign is most likely to face refusal on absolute grounds?**



**Quiz Question 3: Under Paris Convention priority, what is preserved if the later filing is made in time?**



## Quiz Question 4: Which statement about exhaustion is correct?



**Quiz Question 5: Which mechanism attacks a registration because it should not have been granted at the time of filing?**



**Name Surname**

## Mini quiz (1/2)

- 1 The primary statute governing trademarks in Türkiye is:

  - A. Industrial Property Code No. 6769
  - B. Turkish Commercial Code No. 6102
  - C. Turkish Civil Code
  - D. Customs Law
- 2 Which sign is most likely to face refusal on absolute grounds?

  - A. An invented word for software
  - B. A purely descriptive term for the goods
  - C. An arbitrary logo for consulting services
  - D. A distinctive sound mark
- 3 Under Paris Convention priority, what is preserved if the later filing is made in time?

  - A. The earlier filing date
  - B. Automatic worldwide registration
  - C. The right to skip examination
  - D. Permanent immunity from opposition

## Mini quiz (2/2)

- 4 Which statement about exhaustion is correct?
- A. The proprietor controls every later resale forever
  - B. Lawful first sale with consent generally exhausts control over those goods, subject to legitimate reasons to object
  - C. Exhaustion applies only to services
  - D. Parallel imports are always counterfeit

- 5 Which mechanism attacks a registration because it should not have been granted at the time of filing?
- A. Renewal
  - B. Licensing
  - C. Invalidity
  - D. Pledge

## Key takeaways

Distinctiveness is the entry gate to protection.

Registration structures the right; genuine use keeps it alive.

Limits and termination protect fair competition as well as owners.

Answer key is provided in the separate Word handout.

## Thank you

Discuss, then reveal the answer key after students commit to their choices.