

Berkay ŞAYİR

Protection of Foreign Well-Known Trademark

A Comparison Between Türkiye and China



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PREFACE

This book aims to deepen the academic knowledge I gained during my master's study at Shanghai University and to contribute to the field of Intellectual Property Law. The study examines the legal concept of well-known trademarks, reviews current debates, and compares the approaches of Türkiye and China. The goal is to present clear findings that have both theoretical and practical value.

During the research process, I learned that academic study is not only about collecting information. It also requires critical thinking, careful methodology, and continuous evaluation. Although Türkiye and China have long commercial relations, their legal systems are still not well known to each other. In addition, comparative studies on well-known trademarks are very limited. As global legal research continues to shift beyond traditional European and U.S. models, I hope this book will encourage Asian-Eurasian further research in this area of Intellectual Property law.

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2025

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ABBREVIATIONS

AIC	: Administrative Industry and Commerce
AYM	: Constitutional Court of Türkiye
BGH	: Federal Court of Justice
CBP	: United States Customs and Border Protection
CPTPP	: Comprehensive and Progressive Agreement for Trans-Pacific Partnership
EU	: European Union
EUROPOL	: European Union Agency for Law Enforcement Cooperation
EUIPO	: European Union Intellectual Property Office
G-7	: Group of Seven
GATT	: General Agreement on Tariffs and Trade
IP	: Intellectual Property
IPRI	: International Property Rights Index
ISO	: International Organization for Standardization
NPC	: National People's Congress
OBOR	: One Belt One Road
OECD	: Organization for Economic Co-operation and Development
OEM	: Original Equipment Manufacturing
PRC	: People's Republic of China
SAIC	: Trademark Office of State Administration for Industry and Commerce
SFAC	: Swiss Federal Administrative Court
SFSC	: Swiss Federal Supreme Court
SPC	: Supreme People's Court of the People's Republic of China
TBMM	: Turkish Grand National Assembly

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TEKEL	: General Directorate of Tobacco, Tobacco Products, Salt and Alcohol Enterprises
TSE	: Turkish Standard Institution
TSEK	: Certificate of Conformity to Criteria
TRAB	: Trademark Review and Adjudication Board
TRABIS	: .tr network information system
TRIPS	: The Agreement on Trade-Related Aspects of Intellectual Property Rights
TURKPATENT	: Turkish Patent and Trademark Office
USTR	: The Office of the United States Trade Representative
USA	: United States of America
USPTO	: United States Patent and Trademark Office
UK	: United Kingdom
WIPO	: World Intellectual Property Organization
WTO	: World Trade Organization

Protection of Foreign Well-Known Trademark: A Comparison Between Türkiye and China

ABSTRACT

This study examines Turkish and Chinese law practices in Foreign Well-Known Trademark Protection. Literature review, comparative analysis, and case analysis methods were adopted as research methodologies. China and Türkiye are among the countries that are the source of trademark infringements in many reports issued by the United States and the European Union. The first research question was determined as there is no significant decrease in trademark infringements despite the countries being parties to the same international agreements. The Criminal Laws of both countries have developed a similar standard, stipulating a 3-year prison sentence and a judicial fine for infringement of registered trademarks. 'Well-known trademark protection,' accepted in the first bis article 6 of the Paris Convention, begins after the 'well-known trademark determination' decision, unlike the principle of protection by registration. For Türkiye, international standards are followed in terms of 'well-known trademark criteria' by directly referencing the Paris Convention in the Industrial Property Code. China generally defines the 'relevant public' in its well-known trademark definition as the public in China, Türkiye defines the relevant public in a limited way about goods or services. In some foreign court decisions, the relevant public may be defined as a specific ethnic group or community speaking the same language. While Chinese law accepts the principle of trust based on registration, Turkish law does not accept the merchants' lack of knowledge of the well-known trademark, even if it is not registered in Türkiye, as a defense. The second research question was whether China should meet the 'international reputation and fame criteria' Türkiye also follows. Contrary to the principle of 'fair and equal treatment in international trade' set out in the General Agreement on Tariffs and Trade (GATT), Chinese investors have more trademark protection in many World Trade Organization (WTO) member countries, including Türkiye. In comparison, foreign investors receive less protection in China. It is anticipated that the universalization of well-known trademark determination standards and their full compliance with the WTO will increase the economic investments of foreign investors in China. China has shown its dedication to

protecting intellectual property rights by applying for membership in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). However, joining the CPTPP would mean that China must comply with international standards and take on greater responsibilities, which will be a significant hurdle to overcome in the long run. The study also examined the 'well-known trademark registry system,' which is not implemented in China but is implemented by the Turkish Patent and Trademark Office (TURKPATENT). It was evaluated that this system increases well-known trademark protection and can be an example for Chinese law.

Keywords: Foreign Well-Known Trademark, Determination Criteria, Trademark Protection, Comparison of Turkish and Chinese Law

摘 要

本文调查了土耳其和中国在外国驰名商标保护方面的法律实践，采用了文献综述、比较法分析和案例分析等研究方法。在美国和欧盟发布的许多报告显示中国和土耳其是商标侵权的来源国。本文研究的第一个问题在于为何两国作为同一个国际协议的缔约国，但商标侵权并没有显著减少。两国的刑法都制定了类似的标准，规定对侵犯注册商标的行为处以 3 年有期徒刑和罚金。《巴黎公约》第 6 条之二规定的“驰名商标保护”始于“驰名商标认定”这一决定做出之后，这与注册保护原则相区别。在土耳其，就“驰名商标标准”而言，遵循国际标准的方式是在《工业产权法》中直接引用《巴黎公约》。相比之下，中国在驰名商标定义中通常将“相关公众”定义为中国公众，而土耳其在定义相关公众时采用较为狭义的方式，主要关于商品和服务。在一些外国法院的判决中，相关公众可能被定义为特定族裔群体中或特定社区内使用同一种语言的人。尽管中国法律接受基于注册的信任原则，但土耳其法律不接受以商人对驰

名商标缺乏了解作为理由的抗辩，即使该商标尚未在土耳其进行注册。本文研究的第二个问题是，中国是否应当满足土耳其同样遵循的“国际声誉和名望标准”。与《关税贸易总协定》（GATT）规定的“国际贸易公平和平等待遇”原则相反，中国投资者在包括土耳其在内的许多世界贸易组织（WTO）成员国拥有更多的商标保护。而相比之下，外国投资者在中国得到的商标保护较少，而中国对于驰名商标认定标准的普遍化及其对WTO的全盘遵守预计将增加外国投资者在中国的经济投资。中国通过申请加入《全面与进步跨太平洋伙伴关系协定》（CPTPP）展示了其保护知识产权的决心。然而，加入CPTPP意味着中国必须遵守国际标准并承担更大的责任，这将是一个长期内需要克服的重要障碍。本文同时审查了“驰名商标注册系统”，这一系统不在中国境内实施，而是由土耳其专利商标局（TURKPATENT）实施的。据评估，该制度将提高对驰名商标的保护力度，并且可以成为中国法律的典范。

关键词：国外驰名商标、认定标准、商标保护、土耳其与中国法律比较