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IMITATION IN ENTREPRENEURIAL ACTIVITY PRACTICE IN THE CONTEXT OF UNFAIR COMPETITION: CONCEPT AND ELEMENTS

Abstract

Engaging in economic activity by illegally benefiting from the fame and reputation that a person or organization has gained in society, usually by spending many years, hard work and serious capital, is seen as the easiest way to engage in economic activity without spending effort and is considered unfair competition.

In general, it is possible to systematize the elements of unfair competition as follows: 1) economic competition 2) compete in illegal ways 3) damage or likelihood of damage. But, imitation, which is a form of unfair competition in the literal sense, and imitation are different concepts. For this reason, the realization of one of the above 3 cases alone is not enough for imitation, which is a form of unfair competition. From the point of view of unfair competition law, the question is not whether or not it is imitation, but how it is. Because all kinds of imitation are not against unfair competition. If the imitation in question leads to a risk of confusion, it is possible to speak of unfair competition. The unfair competition law is not about the possibility of confusing the two signs, but rather the fact that a behavior leads to confusion among the consumers about the origin of the product.

Keywords: *unfair competition, economic activity, imitation, risk of confusing, consumer*

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Sahibkarlıq fəaliyyəti təcrübəsində təqlid haqsız rəqabət kontekstində: anlayış və üsürləri

Xülasə

Bir şəxsin və ya təşkilatın cəmiyyətdə uzun illər zəhmət və ciddi sərmayə sərf edərək qazandığı şöhrət və nüfuzdan, adətən, qeyri-qanuni şəkildə yararlanaraq iqtisadi fəaliyyətlə məşğul olmaq zəhmət sərf etmədən iqtisadi fəaliyyətlə məşğul olmağın ən asan yolu kimi qiymətləndirilir və haqsız rəqabət hesab olunur.

Ümumiyyətlə, haqsız rəqabətin elementlərini aşağıdakı kimi sistemləşdirmək olar: 1) iqtisadi rəqabət 2) qeyri-qanuni yollarla rəqabət 3) zərər və ya zərər ehtimalı. Lakin haqsız rəqabətin bir növü olan təqlid ilə hərfi mənada təqlid fərqli anlayışlardır. Bu səbəbdən də haqsız rəqabət forması olan təqlid üçün yuxarıda qeyd olunan 3 haldan birinin tək cə reallaşması kifayət etmir. Haqsız rəqabət hüququ baxımından məsələ onun təqlid olub-olmaması deyil, necə olmasıdır. Çünki hər cür təqlid haqsız rəqabətə gətirib çıxarmır. Sözügedən təqlid çəşqinlik riskinə səbəb olarsa, haqsız rəqabətdən danışmaq olar. Haqsız rəqabət iki əlaməti qarışdırmaq ehtimalı ilə bağlı deyil, əksinə, bir davranışın istehlakçılar arasında məhsulun mənşəyi ilə bağlı çəşqinliyə səbəb olmasıdır.

Açar sözlər: *haqsız rəqabət, iqtisadi fəaliyyət, təqlid, çəşqinlik riski, istehlakçı*

Introduction

With the continuous and rapid development of civilizations, people's needs have increased accordingly and competition has become severe. It is essential that the competition be conducted in accordance with the game and professional rules and in a gentlemanly manner. Honest, ethical competition in economic, scientific and political life revitalizes society and ensures progress.

In addition to this legitimate competition, professional and moral sanctions are not sufficient in most cases against competition that is contrary to game and professional rules, moral and legal rules. In this case, the law and the legal mechanism must take action (Karayağcın, 1968: 441).

Economic competition can only exist in a system where freedom of economic activity exists. Freedom of economic activity requires the existence of rights such as personal freedom, professional freedom and freedom of contract. Although the scope and areas of these rights may vary over time and place, it is essential that they do not fall below a certain limit in a society that has reached a certain level (Örs, 1958: 3).

The regulation on unfair competition is not intended to prevent freedom of economic activity. It is to prevent the abuse of the right to economic activity through deceptive acts and other means that violate the rules of good faith.

The purpose of preventing unfair competition is to prevent the abuse of the right to economic competition. Unfair competition rules aim to protect competitors and competing businesses from unfair, deceptive and dishonest behavior. The underlying idea of unfair competition law is that no one should attempt an unauthorized advantage over another in order to gain his own interests. In other words, as in other competition provisions, the purpose of unfair competition is to ensure the protection of the small against the big, the weak against the strong, and to ensure polyphony in the economy, as required by the society's sense of justice (Aslan, 2001: 17).

It is regulated separately by Article 15 of the Constitution of the Republic of Azerbaijan under the title of Economic Development and State, where unfair competition is prohibited under the law of Azerbaijan. Therefore, considering Article 15:

I. Economic development in the Republic of Azerbaijan, based on various types of property, serves to increase the welfare of the people.

II. The state of Azerbaijan creates conditions for the development of socially oriented economics on the basis of market relations, guarantees free ownership, does not allow expropriation and unfair competition in economic relations (4).

With the aim of implementing constitutional laws and duties, ensuring free and solid competition in the Republic of Azerbaijan, and providing a fair basis for economic activity, including ownership activity, Competition Code was adopted in order to create a legal basis for the negotiations between the parties. Competition Code explains the concept of unfair competition as follows. Unfair competition - competitors by taking advantage of unfair methods that are contrary to the legality and officious principles of the discretionary subsidiarity in order to gain advantage in the appropriate market. These are the actions that harm the people's subordination or harm their busybodies' influence.

Article 19 of the Competition Code determines the forms of unfair competition as follows.

19.1.1. aggressive behavior towards customers;

19.1.2. the release of the rival *təsarrüfat* subject from influence;

19.1.3. imitation of the opponent's entrepreneurialship activity;

19.1.4. misleading and deceiving customers;

19.1.5. unlawful acquisition, use or dissemination of a commercial secret;

19.1.6. Other actions giving rise to unfair competition taken into account in Article 25 of this Code.

Therefore, unfair competition is prohibited in the jerseys specified in Article 19.1 of the Competition Code (5).

Based on Article 22.1 of the Competition Code, the following actions that imitate the ownership activity of the opponent are taken into account:

22.1.1. Imitation of the competitor's product and its uniform, with the exception of the external appearance of the product due to its technical characteristics, without agreeing to the external arrangement or fitting of that product;

22.1.2. the unintended duplication of the competitor's product by violating its property rights;

22.1.3. unlawful use of the competitor's name or company name (with the exception of cases of use of the company name with any distinctive insignia from the own name of the owner of the same name), including its employee insignia;

22.1.4. making use of the name of the competitor's Internet domain, the name of the competitor's Internet domain, or the design of the Internet page, which is so disparaging as to confuse the users, without agreeing to it;

22.1.5. Illegal use of a competitor's geographical indicator that is used lawfully (5).

According to the generally accepted opinion of the law, unfair competition is considered as unfair competition by taking advantage of the right to compete against the requirement of conscientiousness. Is to be son. According to another opinion, deceptive action or abuse of the competition law by other methods contrary to the principle of conscientiousness and therefore any person's access to the commercial establishment or other It is the fact that it harms the economic value or creates the risk of loss. According to another similar idea, unfair competition is a method contrary to conscientiousness, which is used with the aim of crushing rivals and eliminating them from the field of economic activity.

In general, it is possible to systematize the elements of unfair competition as follows:

- economic competition;
- to compete by legal means;
- harm or possibility of harm.

In order to be able to speak of unfair competition, the existence of an appropriate link between the risk of harm and the abuse of competition law is required (Tamer, 2011: 46). In the literal sense of Article 22 of the Competition Code, it can be concluded that for the imitation to take place, it is sufficient for one of the above-mentioned situations and actions to occur. However, we consider that imitation in the literal sense and imitation as a form of unfair competition are two different concepts. Therefore, for imitation, which is a form of unfair competition, to occur, it is not sufficient for one of the above three situations to occur. From the perspective of unfair competition legislation, the issue at hand is not whether it is an imitation, but rather how it is executed (Kohler, Helmut, 2012: 30). Moreover, it is also essential that any action be carried out with the aim of stimulating other market segments. If the recorded action was not carried out with a commercial purpose, that is, to stimulate other market subsections, it is not possible to consider it as unfair competition. For example, if you make a stand similar to the one produced by any person for the purpose of using it at home, even if that person imitates this movement, you can consider it as unfair competition. Addition is not possible.

For this reason, we must say that, in order for imitation, which is a form of unfair competition, to occur, it is necessary for the situations specified in the law to occur, and it is also necessary for these situations to occur with the aim of deceiving other market subsections (Pedrazzini, 2002: 84).

Under normal circumstances, it is accepted that a person who produces and sells any product that belongs to someone else without permission does this action with the purpose of confusing other market segments. However, everyone should be given the opportunity to prove that this move was not intended to provoke other market segments.

For this reason, it has been stated that in order for imitation, which is a form of unfair competition in many countries' legislation, to be realized, it must be fulfilled with the aim of stimulating other market subsections.

According to the first paragraph of Article 2 of WIPO's Model Provisions on the Prevention of Unfair Competition dated 1996, titled "Creating Confusion with the Business and Activities of Another Person"; Any act or conduct directed at an industrial or commercial activity that creates or may create interference with the business or activities of another, especially the products and

services of that business, constitutes unfair competition. In the 2nd paragraph, examples of confusion are listed. According to this; Confusion occurs especially in trademarks, whether registered or not, in trade names, in a commercial distinguisher other than the trademark or trade name, in the appearance of the product, in the presentation of the product or service, in a celebrity or a well-known fictitious character (WIPO, 1996: 17).

Based on legal experience, we can say that elements of unfair competition through imitation contains the following: 1) trying to create a confusion with another's commodity, work products, activity or business 2) violation of the use made by another person based on a valid reason 3) necessity of expert review 4) it is not necessary to have a competitive relationship, for example, it shows that being in a competitive relationship is not a requirement for confusion to be considered to exist, and even if two companies are in different cities and cannot compete with each other, confusion may exist due to the business names they use (Çevik, 1993: 219) 5) occurrence or likelihood of damage 6) possibility of confusion and possibility of connection 7) customer base. In unfair competition due to confusion, the most important element is the understanding of the customer who is the target of confusion and is intended to be deceived, rather than the personal views of the rival trader who claims confusion (Kaniti, 1961: 236). 8) product feature. While the end buyers and customer environment to which the products are addressed are taken into account in detecting confusion, the quality, technical specifications and even the price of the product subject to confusion also play an important role in determining the possibility of product confusion. 9) the same or similar identification sign must be used. Confusion may occur by using the same or similar identification mark (Poroy, 2001: 250). It is obvious that the same sign is used. The difficulty arises when a similar identification sign is used. Since verbatim use, that is, quotation, occurs as a result of the verbatim use of identification marks, it is almost certain that recipient groups will be confused and deceived. In case of confusion, the buyer groups must have an objective similarity so that they can mix the goods.

Conclusion

In parallel with social and economic developments, there have been important developments in unfair competition law, the idea of only protecting competition between rival traders has been abandoned, and efforts have been made to ensure competition in accordance with the rules of honesty in the struggle for economic interests.

According to this purpose, the basic condition of acting in accordance with the rule of honesty is that everyone earns profit based on their own labor. For this reason, it is prevented from gaining unfair profit that is not based on labor, based on a value that is aimed at gaining profit created by someone else's physical or mental labor and economic expenses. For this purpose, a more effective combat system has been adopted by granting the right to fight against such unfair competition situations not only to the injured competitors, but also to buyers and even professional organizations when necessary.

In the face of developments in the field of intellectual and industrial rights, international and national regulations, and against the danger of confusion between the general unfair competition provisions, more effective and strong regulations have been introduced to the rights holders with special decree laws, including Competition Code.

The rules of unfair competition, which aim to use the right of economic competition within the framework of the rules of honesty, will also be applied in terms of the use of unregistered experimental rights, if there are conditions. Imitation of a certain original but unregistered right by others may cause consumers to be mistaken about the origin of the product and thus be protected by the provisions of unfair competition.

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