Legality

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Antitrust Law Provisions On The Abuse of Dominant Position

How Digital Disruption Affects Consumer Rights and Responsibilities

The Future of Automotive Industry and Mobility

News from Şengün

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Our Dear Readers,

Last year, we have embodied our need to expand into new areas, inspired by our knowledge and experience gained over thirty years, and we had the happiness of being a pioneer in this field by establishing Şengün Group and Şengün ALSP, in addition to Şengün & Partners Attorney Partnership, which forms the basis of our legal services.

We are proud to see the functioning of our institutions, which we have created with an innovative thought, under the umbrella of Şengün, having its grounds on law, however, aiming not to be limited to a purely legal perspective.

Still, in today's rapidly changing world, we believe that it is an inevitable necessity both to preserve and improve what we currently have. By continuing this development, we are aware of our responsibility to share our work with the public through a more athletic structure and we wish to fulfill it.

Inspired by that awareness and desire, we wish to reach you, our valuable readers, with our monthly bulletin, the first issue of which has been published under the umbrella of Şengün Aca demy. Our aim is to create a unique thinking process and to touch the widest possible masses while still adhering to the legal context.

In this issue, we intended to present you a wide content that introduces how the practice of law can adapt to today's transformations.

In today's transforming world, artificial intelligence continues to infiltrate our lives from different areas with each passing day. In that context, we have put forward new approaches in this issue, by evaluating the Draft Artificial Intelligence Act issued by the European Commission, which is an important study on this subject, from a legal perspective.

Blockchain and NFT, other emerging trends of this transforming world, also get attention in legal circles; therefore, we believe that it is important to address the legal implications of those new concepts.

On the other hand, all this transformation does not eliminate the need for the basic principles of business life; even strengthens their necessity. Therefore, the importance of the protection of competition and the concept of abuse of dominant position within the scope of competition law are among the topics we have included.

In this first issue, which coincides with March, we also owe it to address the International Women's Day on March 8, and to celebrate this precious day of all our women on this occasion. We take this occasion to advocate women's rights and discuss gender inequa lity in a sector that generally targets female audience: the fashion industry.

In addition, we intended to draw attention to how much we know and protect our rights as consumers in our consumption habits, which are transformed with the development of technology, while celebrating the World Consumer Rights Day on March 15.

In this issue, we also took a closer look at the automotive sector and examined the concept of mobility, while at the same time we inclu ded the analysis of the legislation in effect in this sector and the current decisions that we consider to be important.

This issue also explores the automotive industry and the concept of mobility by analyzing the relevant legislation and other key matters.

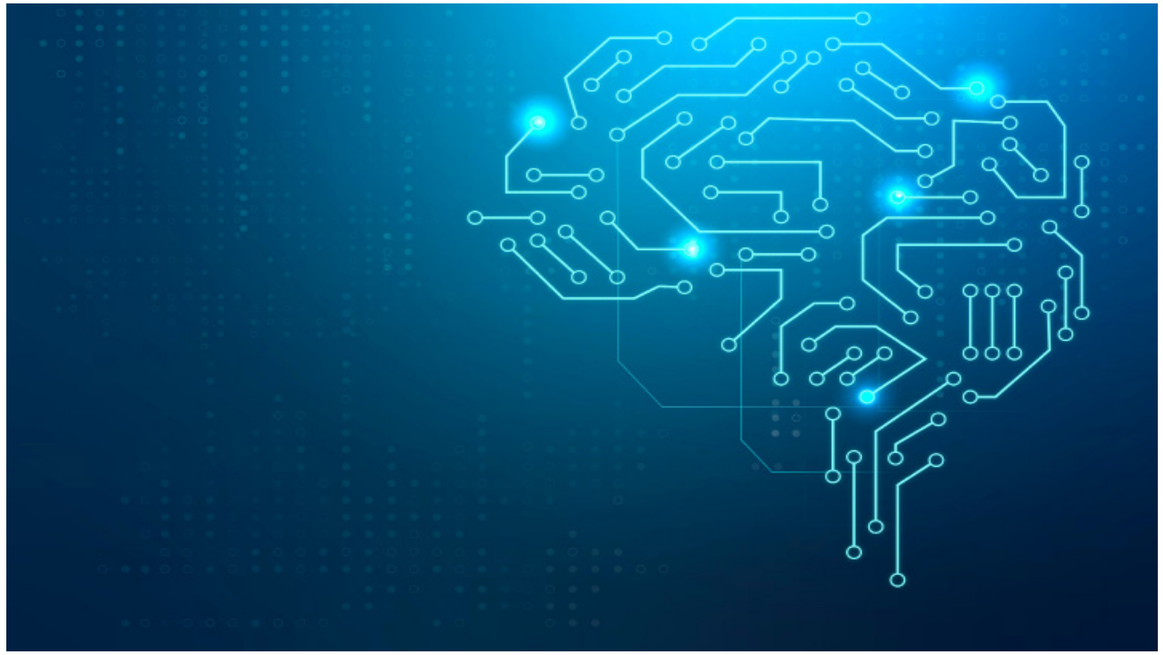
You can also access news on a global scale and the news and events of our institutions under the umbrella of Şengün in this month's bulletin.

We wish you a pleasant reading by emphasizing that we are proud to embark on this path with you, our esteemed readers.

Istanbul, 1 March 2022
Şengün Academy

NEW PERSPECTIVES ON THE LEGAL ASPECTS OF ARTIFICIAL INTELLIGENCE: AN OVERVIEW BASED ON THE DRAFT ARTIFICIAL INTELLIGENCE ACT ISSUED BY THE EUROPEAN COMMISSION

Machine learning accelerates every day with the emergence of new programs and software. Today, artificial intelligence ("AI") is an essential part of our daily lives, which poses certain questions regarding ethics and human rights. In fact, innovations and the latest communication systems drive us to use AI actively in various areas, such as robotics, face recognition, image processing and labeling, speech recognition and analysis. The resultant ethical discourse forces countries and organizations to review their existing legislation and regulations.



Countries' strategies for the use of AI have established certain principles that are embraced across the world. Thus, global ethics and approaches have begun to address

common AI challenges with similar regulations.

As an independent policymaker in the European Union **("EU")**, the European Commission unveiled its "Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts" **("the Draft AI Act")** on 21 April 2021.The draft emphasizes the crucial balance between *"promoting innovation and AI"* and *"addressing the key risks and threats posed by AI"*, noting the sector's concerns, basic needs and potential risks.

The **Adhoc Committee on Artificial Intelligence ("CAHAI")** of the **Council of Europe ("CoE")**, which comprises the EU member states along with Turkey and Russia, works on conventions to inform fundamental principles and key challenges (e.g., transparency, accountability) regarding AI systems for internal regulatory compliance.

EU's and CoE's work on AI and regulation proposals underscore the delicate balance between innovation & technological advances and regulations. Thus, international trends and regulations will guide Turkey in regulating its AI strategies and approaches.

This article covers the messages of the Draft AI Act, the details of the risk-based approach, the obligations of the AI value chain participants, and other considerations.

I.Draft AI Act

Research by international organizations suggests that AI will add USD15.7 trillion to the global economy in 2030. The United States and China continue to compete for leadership in the global AI industry. The EU lags in this race, embracing the principle of *"global leadership in the development of reliable AI"* by emphasizing human rights, democracy, and the rule of law.

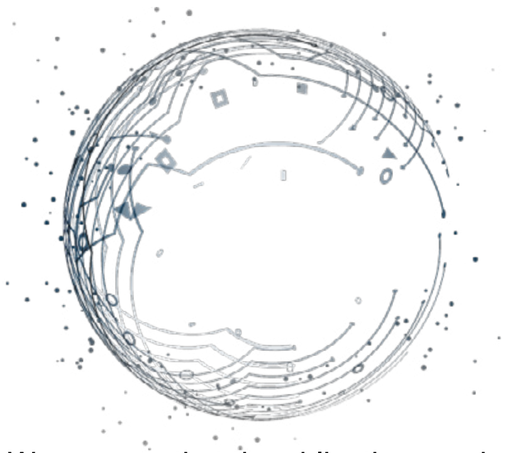
The EU has determined ambitious principles and regulations on AI technologies since AI has started to be regulated, adopting a balanced approach in its strict regulations. The resultant Draft AI Act contains eighty-five articles imposing strict limitations and prohibitions on AI that violates fundamental human rights and poses unacceptable risks. It also proposes obligations that will not impede the development of AI systems. In other words, the Draft AI Act embraces a risk-based approach while promoting technological advancement and innovation.

The Draft AI Act and its implications also concern non-member states that are not within the boundaries of a member state. Thus, paragraph 1 in article 25 in the Draft AI Act proposes that "Prior to making their systems available on the Union market, where an importer cannot be identified, providers established outside the Union shall, by written mandate, appoint an authorised representative which is established in the Union."

Legality | Articles | Ceren Teselli, Attorney at Law

Content of the Draft AI Act and Exceptions

Subject of the Draft AI Act	*a. Propose harmonized rules on the market supply and provision of AI systems within the EU;* *b. Specify prohibited AI practices and certain liabilities for high-risk AI applications;* *c. Suggest harmonized transparency obligations for AI systems that interact with humans (used for emotion recognition systems, biometric categorization systems, and the generation or manipulation of image, audio and video content);* *d. Establish rules for the traceability and supervision of the market.*
Objectives of the Draft AI Act	*a. Ensure that AI systems placed on the Union market and used are safe and respect existing law on fundamental rights and Union values;* *b. Ensure legal certainty to facilitate investment and innovation in AI;* *c. Enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems;* *d. Facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent market fragmentation.*
Scope of the Draft AI Act	*a. Services placed in the market or put into service in the Union, regardless of whether the place is a EU member state or a third party;* *b. Advancements concerning AI users in the Union;* *c. AI systems whose outputs are used in the Union, even if the provider or the developer is a third country;* *d. AI systems used as security components of other products.*
Exceptions	*a. AI systems exclusively developed or used for military purposes;* *b. Services placed in the market or put into service in the Union, whether in member states or a third country, that are used for international agreements with public authorities of a third country or international organizations,* *c. Intermediary service providers.*



Risk-Based Approach

The European Commission ("EC") highlights the potential risks of AI systems, regarding fundamental values and user rights, and its risk-based approach identifies four types of AI systems based on the following risk levels: *(i) unacceptable risk, (ii) high-risk, (iii) limited risk, and (iv) minimal risk.*

We can say that the obligations under the Draft AI Act may be revised during practice. Although the text promotes technological advances in the industry, its main objective is to protect user rights threatened by AI systems.

The risk-based approach of the Draft AI Act and the risk types are as follows:

AI systems posing unacceptable risk

1. AI systems that deploy manipulative and subliminal techniques that might cause harm to the user or another person;
2. AI systems that exploit vulnerabilities of specific vulnerable groups such as children or persons with disabilities in a manner that is likely to cause them or another person psychological or physical harm;
3. AI-based social scoring by public authorities (except for obligatory cases);
4. Real-time remote biometric identification systems used by public authorities (except for certain situations).

High-risk AI systems

1. AI systems that are safety components of products and subject to an ex-ante conformity assessment,

2. Stand-alone AI systems that are not safety components of products.

For instance:

Critical infrastructure that may threaten the safety and health of citizens (e.g. transportation);

Education and vocational training that may determine the professional course of a person's life (e.g. credit scoring);

Safety components of products (e.g. AI in robotic surgery);

Employment, workers management, and access to self-employment (e.g. resume score software used in recruitment processes);

Key private and public services (e.g. social scoring that restricts citizens' access to credits);

Legal practices that concern fundamental human rights (e.g. tools to evaluate the reliability of evidence);

Migration, asylum and border control management (e.g. verification of travel documents);

The administration of justice and democratic processes (e.g. application of the law to a series of events).

Limited risk AI systems

For limited risk systems, the EC proposes only minimum transparency obligations for some specific AI systems, especially when chatbots or "deep fakes" are used (when there are specific risks of manipulation). It states that natural persons must be informed when they are interacting with an AI system.

The EC underlines that in limited risk AI systems, persons must be aware that they are interacting with a machine/AI and be able to decide to use or reverse the output of the system.

Minimal risk AI systems

The EC suggests that all AI systems other than the unacceptable, high-risk and limited risk ones can be developed and used pursuant to the obligations in the existing legislation. In fact, the EC states that the majority of the AI systems used in the Union belongs to this category.

Obligations of Participants across the High-Risk AI Value Chain

The Draft AI Act imposes certain obligations on participants across the AI value chain, which generally concern providers and the value chain participants.

The obligations pertain to the ones between (i) providers, (ii) other operators, and (iii) providers and other operators, along with the ones regarding (iv) conformity assessments for high-risk AI systems, and (v) the registration of high-risk AI systems.

Providers are obliged to meet legal requirements for high-risk AI systems and to inform national competent authorities about serious incidents or malfunctioning relevant to their AI value chain. The Draft AI Act also proposes certain obligations for other participants in the value chain (e.g. storage, transportation conditions, user's manual, conformity approval) in terms of the data flow between providers and other operators. Thus, the EC requires accountability for all the participants in the AI value chain (especially for high-risk AI systems).

High-risk AI systems must be subject to a conformity assessment before being placed in the market or put into service. If approved AI systems experience significant alterations, other than simple modifications such as performance improvements, they must be subject to a new conformity assessment.

Finally, the Draft AI Act proposes registration obligations for high-risk AI systems to be placed in the market or put into service, which necessitates a publicly accessible and auditable European database.

Transparency

The Draft AI Act states that AI systems that interact with humans, detect emotions or determine association with social categories based on biometric data and generate or manipulate content must inform the users that the content is generated by AI, and the interacting entity is not a natural person, before the users take any further action.

Implementation of the Draft AI Act, and Penalties

Implementation

The EU plans to establish a European Artificial Intelligence Board along with national competent authorities that will operate across the Union and ensure coordination between the member states and the Commission to guarantee the supervision of the member states. European Data Protection Supervisor is the established supervisory authority across the EU.

Penalties

The infringements of the Draft AI Act will be subject to administrative fines from EUR10,000,000 to EUR30,000,000 or, if the offender is company, from 2% to 6% of its total worldwide annual turnover for the preceding financial year, whichever is higher, depending on the nature and consequences of the infringement.

Assessment

The AI regulations in progress, proposed by the Draft AI Act, directly concern the member states but also impose certain obligations on the participants in the AI value chain in line with the risk-based approach. The Draft AI Act resembles the General Data Protection Regulation ("GDPR"). However, the CoE is a more comprehensive entity whose work mirrors that of the EU; therefore, the Draft AI Act is likely to provide a global outlook on AI systems while ensuring stability and harmonization worldwide.

Ceren Teselli, Attorney at Law

ANTITRUST LAW PROVISIONS ON THE ABUSE OF DOMINANT POSITION

INTRODUCTION

Antitrust laws aim to ensure and sustain fair competition to obtain economic, social and political benefits from business practices. The world's first example of an antitrust law was the United States' Sherman Antitrust Act of 1890, which was the first effort to govern free trade. As for Turkey, the country has taken solid measures to ensure and maintain a healthy competition environment by imposing certain liabilities on the government with article 167 in the Constitution, enacting Act no 4054 on the Protection of Competition ("the Act") and establishing the Turkish Competition Authority as an independent institution.

The first article in Act no 4054 on the Protection of Competition states, *"The purpose of this Act is to prevent agreements, decisions and practices preventing, distorting or restricting competition in markets for goods and services, and the abuse of dominance by the undertakings dominant in the market, and to ensure the protection of compe-*

tition by performing the necessary regulations and supervisions to this end." Thus, it can be said that the Act mostly concerns undertakings. The Act aims to identify and prevent dominant undertakings, which intend to increase profitability and have a higher market share, from restricting other players in the market, reducing the welfare of consumers, and abusing their dominant position.

To this end, the Authority must first determine what is meant by dominance and whether there is an abuse of dominance or a restriction of competition.

Determination of Dominant Position

To understand the abuse of a dominant position, firstly, the "dominant position" must be defined. Article 3 in the Act defines the dominant position as *"the power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers."* In other words, the Act acknowledges that undertakings which can prevent competition due to their market dominance, regardless of their competitors and customers, have a dominant position. Thus, the legislation does not forbid a dominant position by itself; otherwise, the successes or innovations of undertakings would have been punished[1].

The Act prescribes that a dominant position can be achieved by multiple undertakings. The abuse of dominant position by multiple undertakings, specified in article 6 in the Act, occurs when multiple undertakings collude or act like a single undertaking. The undertakings in question must be independent entities that collaborate only to achieve a dominant position.

The guidelines published by the Competition Authority[2] state that the criteria used for the determination of a dominant position are the following: the undertaking's economic potential, indicated by its market position, market share, field of operation, and operation period in the market; the undertaking's ability to act independently of other undertakings; the difficulty of market entry; the consumer's purchasing power; and the continuity of the dominant position.

1 Hâkim Durumun Kötüye Kullanılması, Hasan Celal Kıratlı, Ankara 2021

2 Hâkim Durumdaki Teşebbüslerin Dışlayıcı Kötüye Kullanma Niteliğindeki Davranışlarının Değerlendirilmesine İlişkin Kılavuz, Kabul Tarihi: 29.01.2014 Karar Sayısı: 14-05/97-RM

How To Define The Abuse of Dominant Position?

Articles 6 and 7 in the Act do not provide a limited number of definitions and criteria for the exact determination of cases demonstrating the abuse of dominant position. Therefore, cases can be identified, other than the ones defined in the Act.

However, the most common abusive cases, defined in the Act, are refusing to make an agreement or delaying an agreement to indirectly deprive the other party from the expected revenue or benefits. Another example occurs when the product subject to a conditional or unconditional contract is indispensable, distorts other undertaking activities in the sub-market, and causes a decrease in consumer welfare.

Other abusive cases concern an undertaking that prevents the market entry of competitors, complicates the activities of competitors, avoids providing goods or services, or

restricts the sale of its products to earn unlawful profit or deter competitors from the market, benefiting from its dominant position. The Act also mentions conducts that aim to “distort competitive conditions in another market for goods or services by means of exploiting financial, technological and commercial advantages created by dominance in a particular market”.

Likewise, dominant undertakings can complicate the market entry through predatory pricing at the expense of their own profitability for a while to deter competitors from entering into their market and to maintain their dominant position, or to complicate the activities of competitors.

However, the abuse of dominant position affects consumers along with other undertakings. The Act stipulates that “making direct or indirect discrimination between purchasers with equal status by offering different terms for the same and equal rights, obligations and acts” is also an abusive case. Other examples are asserting unfair terms, determining additional liabilities, tying a good or service to the condition of displaying another good or service, or imposing limitations. The Act also considers predatory pricing and the limitation of production and marketing to be abusive cases.

Legality | Articles | Ezgi Çamiçi, Attorney at Law

Consequences of The Abuse of Dominant Position

We can divide the penalties of antitrust laws into two categories: penalties imposed as per the Act and penalties imposed as per other laws.

The Competition Authority inflicts two types of penalties: administrative fines and the termination of infringement.

The amount of administrative fine increases based on the period of infringement and in case of the following: concerted practice, intent, incorrect or incomplete information, and false or misleading document.

The abuse of dominant position is also penalized as per other laws. Article 49 in the Turkish Law of Obligations no. 6098 and article 57 in the Act stipulate the right to compensation as per antitrust laws, and article 58 in the Act sets forth that if the case fulfills the necessary terms, the judge may award compensation by threefold, which is a type of penalty found in no other Turkish law. Thus, we can infer the degree to which the Turkish legislation prioritizes fair competition.

CONCLUSION

States must supervise whether dominant undertakings abuse their dominant position to the detriment of other undertakings and consumers to protect and sustain fair competition in free markets. The Competition Authority safeguards and maintains competition by supervising the market and deciding in unfair competition practices pursuant to the Act and sub-legislation. It aims to compensate for any damages of consumers and to prevent the abuse of dominant position, thus ensuring wealth and efficiency today and in the future.

Ezgi Çamiçi, Attorney at Law

REGULATORY IMPLICATION OF DIGITAL TRANSFORMATION: BLOCKCHAIN AND NFT

Innovations lead us to an unimagined future and drive extraordinary transformations, creating different trading venues that grow with new employment opportunities. Meanwhile, we share huge volume of data on social media and create posts about our current emotions and daily life, including family photos, music collections, and drawings. Our posts no longer remain in the digital environment but marketed on digital platforms via NFTs (i.e., non-fungible tokens) with unique identification codes. The hype for NFTs is heating up, with a trading volume increasing from USD13.7 million in the first quarter to USD2.5 billion in the second quarter in 2021.[1]

2021 has been the turning point for NFTs; however, they actually date back to 2014. An artist named Kevin McCoy paired with Anil Dash to create the first NFT, Quantum. They told a group of art-lovers, in the New Museum in New York City, that “you can make money with digital art”. Back then, most people underestimated the idea, but a few blockchain developers supported it, helping it gradually transform into today’s NFTs.[2] The major driver of the current hype around NFTs has been the growth of e-commerce, which contributed to NFTs, cryptocurrencies, and the initiator of all, the blockchain technology.[3]

Blockchain is more popular than ever, which triggers legal questions on one of its by-products, NFTs. The popularity of digital assets has led to discussions regarding their disclosure to third parties and their trading similar to that of physical assets.

To understand NFTs and their legal status, firstly, certain concepts must be explained. A “blockchain” is a safe, transparent and decentralized digital ledger that allows to encrypt, record and transfer timestamped data online.[4] A “cryptocurrency” is a decentralized digital asset created via different encryption methods as an instrument of monetary exchange and transfer.[5]

The unique nature of NFTs differentiates them from cryptocurrencies. We can define NFTs as non-interchangeable data stored on a blockchain with uniquely identifiable codes.[6][7] NFTs differ from cryptocurrencies in that they are unique and non-interchangeable; however, both depend on the blockchain technology, working via a blockchain database.

1 tr.euronews.com, “Popüler kripto para fenomeni NFT pazarının işlem hacmi yılın ilk yarısında 2,5 milyar dolara çıktı”, E.T.:28.01.2022, https://tr.euronews.com/2021/07/07/populer-kripto-para-fenomeni-nft-pazar-n-n-islem-hacmi-y-l-n-ilk-yar-s-nda-2-5-milyar-dola

2 avrupabulten.com, “NFT’lerin gerçek tarihi hakkındaki bu hikâyeyi okuyun”, E.T.:28.01.2022, https://www.avrupabulten.com/haber/nft-lerin-gercek-tarihi-hakkinda-ki-bu-hikayeyi-okuyun-214.html

3 Bozdoğanoğlu, Burçin, Haspolat Kaya, Iraz. Dijitalleşmenin Vergilendirme Sürecinde Yarattığı Sorunlar: Dijital Ekonomik Modellerin Vergilendirilmesi, Mali Hukuk Dergisi, Cilt:15, Sayı:176, s.1660.

4 Senkardes, Çağla Gül, Blokzincir Teknolojisi ve NFT’ler: Müzik Endüstrisi Üzerine Bir İnceleme, Pressacademia Dergisi, Yıl:2021, Cilt:8, Sayı:3, s.155.

5 Özsoy, İlker Mete, Kripto Para Haczi, Seçkin Yayınları, Ankara 2021, s.30.

6 wikipedia.org, “NFT”, accessed on 28.01.2022, https://tr.wikipedia.org/wiki/NFT

7 Senkardes, Çağla Gül, Blokzincir Teknolojisi ve NFT’ler: Müzik Endüstrisi Üzerine Bir İnceleme, Pressacademia Dergisi, Year: 2021, Volume: 8, Issue: 3, pp. 155

The creators of games, clips, audios, videos, images and sound files certify their assets with the relevant software and add their signature to their metadata, thus creating a digital version of their work. As an illustrative example, the first Turkish NFT can be referred: The acclaimed artist Tarık Tolunay introduced his digital artwork "Fractal İstanbul Pandemi" in March 2021.[8]

Tarık Tolunay's work is unique and non-interchangeable, featuring a digital certificate. In short, NFTs resemble a digital stamp or signature for artworks.

NFTs generally appears in the format of images or sound files. However, various other content and work can be sold as NFTs. The first post by Twitter's CEO, *"just setting up my twttr",* was sold for USD2.9 million while Mike Winkelmann's work *"Everydays: The First 5000 Days",* containing the photographs released since 2007, was sold for USD69.3 million.

As the hype around NFTs continues, they have started to turn into subjects of litigation, just like other units of data stored on blockchains.

NFTs mostly concern artworks; therefore, firstly, they must be discussed in connection with Law no. 5846 on Intellectual and Artistic Works. The definition of "work" provided in article 1/B in the Law enables us to consider NFTs as artworks. Pursuant to article 52 in the Law, the disposal of the economic rights (dissemination, copying, representation, processing, disclosure, sharing and monitoring rights) of the work contained in the metadata of NFT must be in writing. NFTs are sold on digital environment via smart contracts, which prescribe the economic rights for the transfer of NFTs. However, regulators have not yet decided whether we can recognize smart contracts as legally binding

[8] bloomberght.com, "NFT ile gündeme gelen Türk çizer işlerini anlattı.", E.T.:28.01.2022, https://www.bloomberght.com/tarik-tolunay-nft-islerini-anlatti-2276959

agreements.Since blockchain transactions are timestamped, NFTs and all of their data are transparent. Therefore, the owner of the work is recognized, and the copyrights are protected more easily.

The transparency via blockchain ensures permanent evidence of ownership. However, since all the information on the NFT is public (including the creator, the transfer details, and the price), the issue of confidentiality comes up. Therefore, we must also refer to Law no 6698 on the Protection of Personal Data. Topics of discussions related to this are as follows: (i) whether the owner of the registered data on blockchain has submitted their express consent; (ii) the fact that NFTs cannot be deleted or changed due to their unique nature even if the storage period of data expires; (iii) who will be held responsible for violations; and (iv) who will be the data controller.

When we consider the taxation of NFTs, we see that the Tax Procedure Law still does not provide specific terms on the matter, which causes an uncertainty in this regard. Therefore, an often-discussed topic is how to impose taxes on the revenue gained from the sale of NFTs.[9]

As for Turkey's blockchain environment, the country placed a "Ban on the Use of Cryptocurrencies in Payments"[10], which stipulates that cryptocurrencies cannot be used directly or indirectly in payments. However, Turkey has not enacted any law, regulation, or resolution on NFTs. Still, NFTs cannot be traded via cryptocurrencies pursuant to the Ban.

The lack of regulations concerning NFTs does not mean that NFTs will be used less or become less popular. We can be sure that regulatory bodies will enact the necessary regulations and provide a legal basis for NFTs in due time.

Merve Kale, Attorney at Law

[9] vergialgi.net, "NFT (Non- Fungible Token) Nedir? Vergisel Bir Fikir Yürütme", accessed on 28.01.2022, https://vergialgi.net/nft-non-fungible-token-nedir-vergisel-bir-fikir-yurutme

[10] Official Gazette of the Republic of Turkey, 16.04.2021, Issue: 31456, https://www.resmigazete.gov.tr/eskiler/2021/04/20210416-4.htm

THE FUTURE OF AUTOMOTIVE INDUSTRY AND MOBILITY

2020 was a challenging year for businesses: the worldwide pandemic affected all the industries, forcing them to revise their business strategies and future goals. This transformation leveraged some industries' profitability and unprecedented growth whereas others struggled and experienced substantial hits.

The automotive industry has always been a leading and competitive sector, assuming a decisive role in this transformation once again. It was among the industries that suffered a large hit in 2020-2021, but it recovered quickly by acknowledging the acceleration of digital transformation, thus endeavoring to catch up with this transformation to bounce back. Hence, it adopted and paved the way for radical changes.

The first gasoline-powered automobile with an internal-combustion engine was invented by Karl Benz, a German engineer, in 1885. At that time, automobile stood out with its "auto" features which greatly improved daily lives, enabling the transportation of passengers and goods between places. However, today's consumers expect much more than that in a world where future technologies are beyond imagination. Thus, the initial attention and admiration created by the "auto" have moved towards "mobile" features, which are surely more exciting and valuable now for both the industry and the consumer. Today, customers expect automobile manufacturers to not only produce means of transportation but also find customized mobility solutions.

What is mobility?The word essentially means movement; transition from one state to another.It still preserves its initial meaning; however, the "mobility" that we see everywhere these days, along with digital transformation, industry 5.0 and technological evolution, describes all the necessary tools, instruments and systems to keep up with today's fast-paced world with commercial activities, market trends, and advanced technologies becoming ever more dynamic.

Nowadays, we tend to think, possibly more than ever, that time is money: we expect from everyone to become more active, to travel more often, manage time more effectively, and be everywhere at the same time. Today's circumstances have zero toleration for people to be detached from the outside world while getting from one place to another without being engaged with anything else the entire time. Consequently, people's current expectations from the automotive industry pass beyond transportation. Now, drivers and passengers wish to be engaged with the outside world, have instant access to all the information and documents that they need, check their e-mails, watch videos, and even join a meeting like they were in their office. That is where mobility comes in: it enables individuals to communicate anywhere anytime, having an active work-life.

These expectations drive the automotive industry to design and manufacture automobiles that enable drivers and passengers to perform their ordinary tasks without being

detached from the outside world. Now, we do not look for speed, impressive sound, or a cool frame but for mobility to have an engaging automobile. The industry wishes to make ordinary tasks much more enjoyable and the idea of travelling much more appealing with our cars, while assisting drivers and passengers.

Mercedes' 2021 campaign for S-Class testified to customers' current desires and the automotive industry's wish to fulfill them, running as follows: *"Mercedes Maybach S is set to change its class' standards with its elegant interior, innovative technologies, and special features."* With that car, Mercedes renounced its previous priorities, i.e. safety and comfort, in favor of more trendy and exciting features: digitalization and driver assistance systems.

"Assistance" has a key role in the scope and features of the brand-new in-vehicle infotainment systems. Prof. Dr. Uwe Ernstberger, the Head of S-Class and C-Class Product Group, says, *"Our innovative driver assistance systems in the new S-Class do more than helping while driving. It displays features, such as 'interior assistant'*, *that detect and meet the needs of passengers."* Thus, the launch of an automobile giant's popular

product group shows us the future expectations from automobiles.

Surely, information technology is crucial in applying mobility to vehicles to fulfill mobility demands. Software that is developed and enhanced for the interior systems of automobiles is key for automotive innovations to realize customers' expectations; that is why new automobiles are designed with impressive software. As a result, the industry seeks to collect data, develop software and create smarter products.

The key source of mobility software is "data", which encourages the industry to develop software that will fulfill the needs of drivers and passengers by way of data.

Another industry giant, Ford, explained that according to their data, drivers spent much time for managing their air-conditioning systems. Therefore, they designed heated seat belts. Here, the collected data corresponds to drivers' problem of heating, to which Ford's solution was heated seat belts with heating elements sewn into the seat belt webbing.The future will show us whether this was an appealing idea for customers, following their use of and feedback for the feature.

Therefore, we can collect the data that we need to develop software only when customers are introduced to new vehicles, which means that the data will be based on volatile demands in this world of technology that takes hold of the automotive industry. These factors will also affect the creation and development of mobile solutions.

To conclude, we are excited about what the future holds for the automotive industry, being sure that if the digital transformation accelerates at this speed, it will offer us capabilities that remind us of sci-fi movies.

Merve Çetinkaya, Attorney at Law

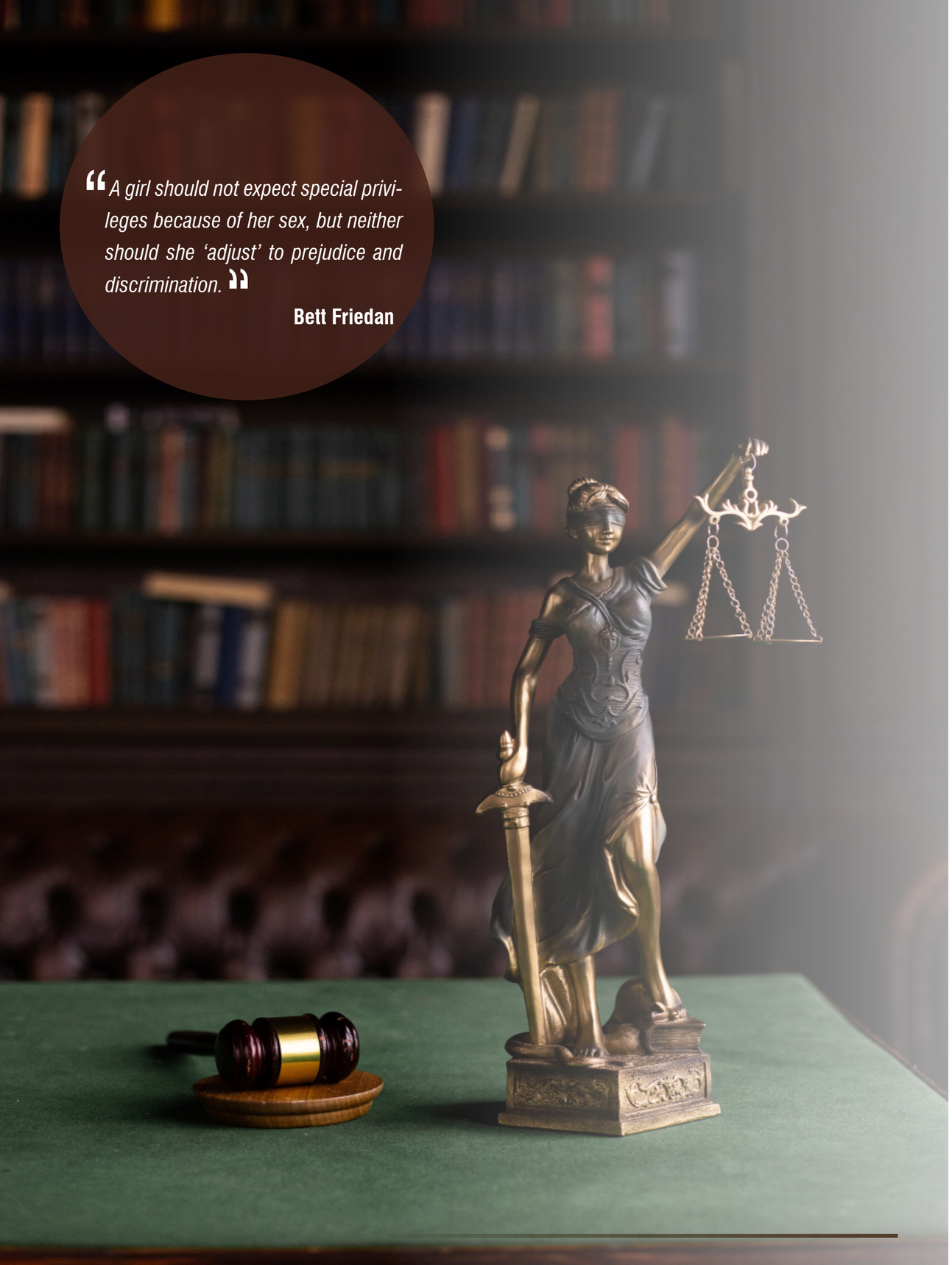
GENDER GAP IN THE FASHION INDUSTRY

Fashion is arguably the most effective and diverse mode of self-expression on a platform where dreams come true. In fact, fashion has been a tool for some and a purpose for others over the years. However, there is an ugly truth behind the tags, and it will grow bigger if we continue to ignore it, destroying lives along the way.

Women play a crucial role in the production of clothing, from design to manufacturing and supply. However, while they constitute 80% of the production stage, they form less than 25% of the managerial positions. Moreover, regardless of their role, they have to deal with physical and social problems such as sexual harassment, pay gap, and glass ceiling.

Bett Friedan says, *"A girl should not expect special privileges because of her sex, but neither should she 'adjust' to prejudice and discrimination."* Unfortunately, women experience gender inequality even in the fashion industry where they constitute the majority of the consumer segment: they have not acquired "liberty", as Frances Wright puts it.

It has been 165 years since 120 female workers lost their lives during a strike at a textile



factory in New York on 8 March 1857. They aimed to reduce the daily working hours to 10 hours, ensure humane working conditions, and increase their wages. However, most of what they fought for have not been achieved yet.

Each year, garments worth nearly £200 million are thrown into garbage while workers earn $35 per month on average in Bangladesh, a leading country in apparel manufacturing, and only $26 per month in Ethiopia. Women constitute more than 80% of 40-60 million workers in the textile industry. They are forced to work more than 60 hours a week, exposed to gender-based discrimination along with pregnancy discrimination, and experience physical and psychological abuse. Olivia, a garment worker, says, *"I think the real problem about the factory is that they treat us like machines, not like women, mothers, sisters, or daughters. They only see cheap labor when they look at us."* In fact, on-site visits show that garment factories do not ensure humane working conditions and employment protection for workers.

Last year, 1,132 women died after the collapse of a garment factory, Rana Plaza, and more than 300 people were killed in a fire in Lahore, Pakistan; they were reportedly trapped behind locked doors. A 2013 interview by CBS is helpful to understand whether there is any improvement: in the interview, a Bengali garment worker says that they no longer experience physical abuse when they make a mistake, which, he thinks, is a great improvement.

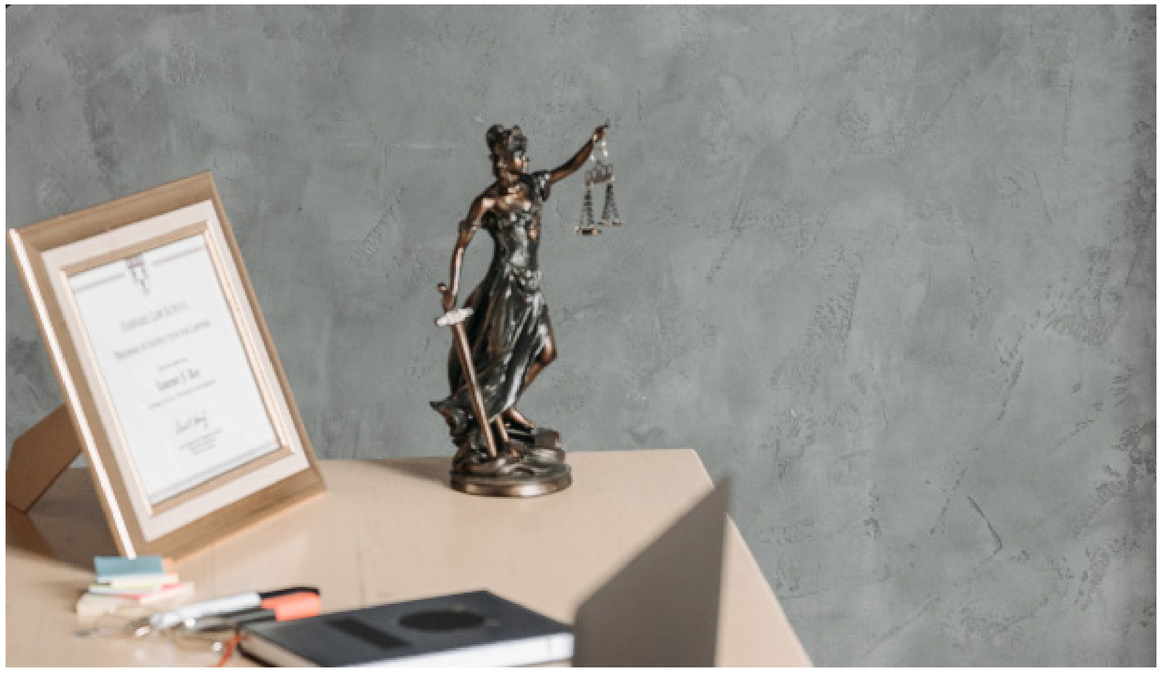
Gender-based discrimination is not limited to the manufacturing industry. Although women make up almost 80% of graduates from major fashion schools across the world, only 14% of them get executive titles.

Women are the laborers, designers and audience of the fashion industry; nevertheless, men still dominate managerial positions. A survey made in garment factories in Bangladesh shows that men are promoted quicker than women due to gender-based discrimination.

Today, the number of female CEOs in the fashion industry is fewer than those in the aviation, space, or finance industries. Even during recruitment, hiring managers are more likely to hire a man over a woman for managerial positions, with mothers being less likely to be hired.

Melissa Wheeler, a London-based journalist and consultant in fashion retail marketing, says, *"Men's social role has dominated the fashion culture."* Currently, women constitute only 25% of board-level positions. As for global fashion brands, only two women have seats on LVMH's executive committee while there is only one woman among the eight executives of Hermes.

A Glamour/McKinsey study shows that gender-diverse companies are 22% more likely to outperform their competitors. We must observe that diversity in social and economic terms in the fashion industry where women have theoretical and practical knowledge with perspective-taking capability.



A person should not doubt that they can get the position for which they have the necessary skills in the fashion industry and other industries. Achieving that will require consolidation. We are grateful to all those pioneering women who advanced women's rights, especially Coco Chanel, Donatella Versace, Katherine Johnson, and Marie Curie: they led the change that they hoped to see in the world to become a constant source of inspiration for us.

Remembering that collective action is key to make a difference, we must ask ourselves:

"If not me, then who?
If not now, then when?"

Selin Ceren Canbulut, Legal Intern

HOW DIGITAL DISRUPTION AFFECTS CONSUMER RIGHTS AND RESPONSIBILITIES

Each creature must consume to live. However, human beings have the most complex consumption pattern which has drastically changed over time with our commercial activities from barter to electronic commerce (e-commerce). Industrial innovations improved products' variety, standards, features, and quality while rapid technological changes created numerous trading platforms along with a desire to find global business opportunities.

Consumption initially had a simpler form but became more complex in time due to industrial developments and new technologies. The growing variety in products urged consumers to compare the qualities, values, and prices of their purchases, which created problems due to more complex consumption trends. These technological and industrial developments brought consumer rights into question.

In that context, the World Consumer Rights Day has been invaluable in improving and respecting consumer rights and finding permanent solutions to current issues. The event

is observed every year on March 15 to advocate protecting consumer rights. To understand its significance, we must first learn about its history.

On 15 March 1962, the U.S. president John Fitzgerald Kennedy introduced Consu-

mer Rights during his speech at the U.S. House of Representatives. In 1985, the "United Nations Guidelines for Consumer Protection" were proposed by the International Organization of Consumer Unions and adopted by consensus at the UN General Assembly. Then, the day of the speech, 15 March, started to be observed as the "World Consumer Rights Day". Turkey also celebrates the World Consumer Rights Day on 15 March to raise awareness about consumer rights and needs.

Governments initially ensured consumer protection through the supervision of manufacturers and the regulation of the market. The United Nations Guidelines for Consumer Protection, adopted in 1985, and the efforts of the European Union increased the general knowledge of consumer rights worldwide.[1] In Turkey, the turning point for consumer protection was the enactment of article 172 in the Constitution.[2] The article holds the government responsible for taking informed and effective measures for consumers and promoting consumer awareness.

Turkey's key legislation on consumer rights is surely Consumer Protection Law no. 6502 ("the Law").[3] The Law aims to protect the health, safety, and economic interests of consumers, compensate their damages, ensure protection against environmental hazards, advocate consumer awareness, and inspire voluntary organizations to create relevant policies for public welfare. Turkish consumers often refer to the Consumer

[1] Tüketiciyi Destekleme Derneği, "Evrensel Tüketici Hakları", E.T.:11.02.2022. http://www.tukdes.org/?sec=1&menuid=117.
[2] Constitution of the Republic of Turkey, Official Gazette No.: 17863, Date: 09.11.1982, Law No.: 2709, article 172.
[3] Consumer Protection Law, Official Gazette No.: 28835, Date: 07.11.2013, Law No.: 6502.

Arbitration Committee for consumer protection. If a consumer observes any defect or deficiency in their purchases, they can apply to the Consumer Arbitration Committee within the relevant compensation limits. This application only concerns consumer transactions and practices.[4]

Wider adoption of the internet has revolutionized our lives, introducing benefits along with unlawful practices regarding consumer rights. Moreover, the market has evolved with the emergence of e-commerce, which resulted in new challenges for consumer protection. Today, access to information is easier than ever. Although consumers still refer to the Consumer Arbitration Committee for their applications and actions, they can also use online platforms to submit their complaints. In that case, vendors are forced to solve the problem quickly for the complaint's removal from the platform to maintain their brand reputation. Still, consumers can benefit from conventional protection mechanisms, knowing their right to seek redressal and to consumer education.

Consumers are the drivers of the rapid growth of e-commerce; as such, they must be aware of practices working against them. Consumer awareness is now a key issue and a priority that is regulated in the Law at length. However, do we know our rights as consumers, especially in online purchases?

Turkey's *"Survey on Consumer Protection and Awareness"*, conducted in 12 provinces, shows that[5] nearly a third (62.2%) of consumers seek remedies when they encounter an issue with their purchases even if they do not know their rights. The survey suggests that 78.8% of consumers seek remedies when they have shopping problems whereas 88.4% of them pay attention to get warranty for their purchases.

[4] Aktürk, A. İ. & Acar Umut, A. (2019). Tüketici Hakem Heyetleri ve İşleyişine Genel Bir Bakış. İstanbul Aydın Üniversitesi Hukuk Fakültesi Dergisi, pp.34.
[5] Tüketici ve Çevre Eğitim Vakfı, "Tüketicinin Korunması ve Tüketici Haklarına İlişkin Bilinç Düzeyi Araştırması," accessed on 10.02.2022. http://www.tupadem.hacettepe.edu.tr/arastirmarapor1.pdf

When asked about why consumer rights are infringed, 30% of consumers answered: *"Laws and institutions protecting consumers are insufficient"*; 29.1% answered: *"Consumers do not know about the authorities protecting their rights"*; 24.5% answered: *"Consumer rights are not taken seriously"*; and 13.3% answered: *"People are not aware of consumer rights"*.

Following that data, the survey indicates that consumers have not reached the expected level of awareness since the enactment of the Law. Therefore, consumers must learn helpful and harmful practices and how to manage the process effectively when they encounter a shopping problem.

Issues relevant to purchasing can cause disputes for which consumers seek remedies. Therefore, when we consider the challenges associated with the historical development of consumer rights, we can say that consumer protection must be considered as a key topic in legal policies. Consumer protection includes customer support within the framework of preventive law. The latest developments in the legal landscape show that legislators continue to offer legal protection for new problems of emerging technologies and e-commerce. However, consumer awareness is also crucial along with laws. In today's consumer society leveraged by technological advances, consumers tend not to inquire the quality of goods and services and whether they need them. Therefore, consumer education is necessary to protect consumer rights against policies disadvantaging consumers.

Merve Kale, Attorney at Law

Legality | Special Day | Merve Kale, Attorney at Law

ARIZONA ELIMINATES THE ETHICS RULE PROHIBITING NON-LAWYER OWNERSHIP IN LAW FIRMS.

Arizona has eliminated the American Bar Association's ethics rule 5.4 forbidding non-lawyer ownership and investment in law firms as of the last year, thus setting an example for other states, including California, Florida and North Carolina, where discussions continue on the ownership of lawyers and nonlawyers in law firms.

Rule no. 5.4 was first discussed by judges with the following questions: *"Are these rules necessary to protect the public? Or are they restraints on the practice of law?"* The reform's supporters stated that access to justice was unaffordable, and right to legal aid services was blocked; thus, they voted for the elimination of the rule.

Even before the change, legal paraprofessionals could offer legal consulting and perform simple legal tasks; however, the elimination of ethics rule 5.4 marks the beginning of a new era with legal paraprofessionals' "authorization to represent clients in court". Arizona Supreme Court Chief Justice Robert Brutinel says, *"The court's goal is to improve access to justice and to encourage innovation in the delivery of legal services,"* signaling numerous future reforms.

Legal paraprofessionals are expected to be affiliate members of the state bar and to pass a professional abilities examination and a character and fitness process while meeting experience requirements. They will have limited but effective jurisdiction in civil and criminal matters, especially administration law, family law, and debt collection.

The elimination of ethics rule 5.4 also grants other rights such as licensing "alternative business structures". Dave Byers, the director of Arizona's Administrative Office of the Courts, says, "*I'm sure there will be models tried that will be less expensive than hiring a lawyer in a traditional way and having them take care of your entire case. I'm looking forward to seeing these become a reality,"* thus underlining the significance of Alternative Legal Service Providers ("ALSP") in this process.

Acquiring the status of the first licensed ALSP in the state after the merger of the ALSP Elevate and the legal firm ElevateNext; Elevate notes that it is the first law firm that employs non-lawyers in the United States, thus putting the emerging business model into practice.

FRANCE APPROVES THE VACCINE PASS LAW, GETS NEGATIVE REACTIONS.

France approved Law no. 2022-46 on 22 January 2022, causing protests among lawyers and the public.

The new law requires a vaccine pass to access events, restaurants (except for collective catering), fairs, trade shows, etc. as of 24 January 2022. It also authorizes officials to request an identity card from people that arouse suspicion during access to businesses, fairs, and other public places.

Paris Bar Association and certain members of the parliament applied to the Constitutional Council, claiming that the new law's authorization of officials to perform identity checks was against the Constitution. The Constitutional Council dismissed the case but stated that the criteria for identity check must be applied without any discrimination.

If a person presents another person's vaccine pass or lends their vaccine pass to another person, they will be punishable by a fine of €1,000 while those who present fake vaccine passes will be punishable by up to 3 years in prison plus a fine of €45,000.

Two lawyers applied to the Council of State to bring an exception to vaccine pass requirement in long distance public transport on the grounds that if applied to attorneys, this new law would hinder their clients' right to a fair trial. The Council is expected to rule on the matter next week.

UEFA SUES RESTAURANT OVER MUSHROOM PIZZA

The Union of European Football Associations ("UEFA") is set to file a lawsuit against a pizzeria, "Pizza Wolke", in Gießen, alleging that the restaurant violates the UEFA's license rights by selling a frozen mushroom pizza named *"Champignons League"*. The Union claims that the pizza's name violates the UEFA's trademark due to similarity to the phrase *"Champions League"*. The boss of the European football has not commented on the issue because of the ongoing trial.

The lawyers demand the removal of the pizza name that resembles the UEFA's trademark, "Champignons League". Shadi Souri, the defendant restaurant's manager, has stated that Champignons League is a pizza name and cannot be mistaken as *Champions League.*

GERMAN COURTS ALLOW PAYPAL AND SOFORTÜBERWEISUNG SURCHARGES.

A German long-distance bus operator started to sell its tickets online and allowed customers to pay by debit card, credit card, PayPal, and Sofortüberweisung. If the customer chose to pay with PayPal or Sofortüberweisung, the company would charge an additional fee.

The German Competition Authority claimed that this situation constituted unfair competition as per article 3/a in Antitrust Law and article 270/a in Civil Code.

Pursuant to article 270/a in Civil Code, a customer cannot be charged an additional fee for making SEPA (Single Euro Payments Area) credit transfers, SEPA B2B payments, money transfers, or using a debit or credit card.

Munich I Regional Court granted an interim injunction. Munich Higher Regional Court dismissed the appeal of the bus operator, considering the payment via Sofortüberweisung as a SEPA payment transaction as defined in article 270/a in Civil Code.

However, the Federal Supreme Court has overturned that decision on the grounds that although Sofortüberweisung payments are considered as a SEPA payment transaction pursuant to the legislation, the surcharge in question is not imposed for the transaction itself but to enable the payment initiation service that provides other payment services, which does not violate the ban on surcharges.

NIKE SUES STOCKX FOR CREATING AND MARKETING NIKE-BRANDED NFTS.

Yet again, the highly competitive market of NFTs has caused the filing of a lawsuit. Nike sued StockX, an NFT marketplace, at the United States District Court of New York on 3 February 2022, alleging that StockX *"is 'minting' NFTs that prominently use Nike's trademarks, marketing those NFTs using Nike's goodwill, and selling those NFTs at heavily inflated prices to unsuspecting consumers who are likely to believe that those 'investible digital assets' (as StockX calls them) are, in fact, authorised by Nike when they are not."* Nike stated that it had filed several applications to sell NFTs of its products in the metaverse, accelerating its metaverse collaborations, and that the sale of its products via another channel would cause monetary damages.

Nike argued that it did not authorize and make an agreement with StockX to sell Nike-branded NFTs, stating that *"Those unsanctioned products are likely to confuse consumers, create a false association between those products and Nike, and dilute Nike's famous trademarks."* .

Detroit-based StockX earned more than $3.8 billion last year with its platform for reselling sneakers, handbags, and other items. StockX currently sells 76,537 products under "Nike" on its website, and the data shows that it sold more than 500 Nike-branded NFTs, one of which was worth $7,500.

Nike demands from StockX to stop selling NFTs with Nike brand, destroy such NFTs created, compensate any damages of customers, and quit speculating that physical Nike products will be purchased with NFTs in the future.

VISITS

31 January 2022 – Visit from the Trakya Office Representative of İDHD

• Umut Kahraman, the Representative of Business World and Law Association Thracian Office visited Şengün & Partners Attorney Partnership and Nedim Korhan Şengün, Founding Lawyer, on 31 January 2022. The agenda of the meeting included: the completion of the establishment and schedule of the İDHD Thracian Office; the increase in İDHD activities in Thrace where business and economy continue to grow; and the necessary steps to be taken for the future of İDHD.

01 February 2022 – Business World and Law Association Meeting in İzmir

• The executives and members of Şengün & Partners Attorney Partnership (an affiliate of Şengün Group) and the Business World and Law Association (İDHD; a partner of Şengün Group) met in İzmir to exchange views on the Aegean Region, especially İzmir and Manisa, on 1 February 2022. The participants of the meeting included Nedim Korhan Şengün (the president of İDHD), Gazali Soysal (the vice president of İDHD), Birgi Sucuer (İzmir representative of İDHD), and Ceren Teselli (Supervisory Board member of İDHD). They discussed how to address the commercial activities in the Aegean Region from a different perspective. Nedim Korhan Şengün underlined the significance of the Aegean Region for İDHD, announcing that the association would continue its operations relevant to the region.

03 February 2022 – Regional Director of Manisa Organized Industrial Zone Visits Our Office

• Funda Karaboran, the Regional Director of Manisa Organized Industrial Zone (MOSB), visited Şengün & Partners Attorney Partnership on 3 February 2022. A productive conversation has been made in this meeting and the ongoing projects and investments in MOSB were discussed.

INTERVIEWS

• Funda Karaboran, the Regional Director of Manisa Organized Industrial Zone (MOSB), and Nedim Korhan Şengün, the President of the Business World and Law Association, discussed the purposes, phases, and the Turkish status of the Facility and Sheltered Workshop for Mentally Disabled Individuals (ZEKİ), which is an unprecedented project in Turkey, in line of the current Sheltered Workshop Regulation. İDHD assumes a crucial role in this project through its legal consulting offerings. Please click on https://lnkd.in/eCUPw-XB to access the conversation released on Haber Dönüşüm.

WEBINARS

Restrictions on Competition in Relationships between Employers, Employees, and Third-Parties

• Şengün & Partners Attorney Partnership paired with the German-Turkish Chamber of Commerce and Industry in today's online session titled **"Restrictions on Competition in Relationships between Employers, Employees, and Third-Parties"**. They hosted the webinar at 11.00 – 12.30 on Thursday, 10 February 2022, with the participation of Yeşim Yetik, Senior Manager Attorney, and Ayşe Gültekin Tibet, Senior Attorney, LL.M. They discussed and analyzed legal matters relevant to preventive law such as duty of loyalty, non-compete clauses, and anti-competitive agreements in light of the resolutions of the Supreme Court.

LEGISLATION UPDATES

•You can access **"Clauses of Remote Healthcare Services Regulation no. 31736 Published on Official Gazette of 10.02.2022"** written by Burak Batuhan Birtane, an attorney of Şengün & Partners Attorney Partnership, on https://www.linkedin.com/posts/sengunpartners_uzaktan-sa%C4%9FI%C4%B1k-hizmetleri-bilgi-notu-activity-6897947503971352577-el6n.

•You can read our article titled **"Ministry of Trade Amends the Regulation on Commercial Advertisements and Unfair Commercial Practices"** by Ezgi Çamiçi, an attorney of Şengün & Partners Attorney Partnership, on https://www.linkedin.com/posts/sengunpartners_ticari-reklam-ve-haks%C4%B1z-ticari-uygulamalar-activity-6895291998102716416-VnGr.

INTERNAL TRAINING

Internet of Things and Current Legal Issues

•Şengün Academy proudly presents another training as part of its Internal Discourse series: "Internet of Things and Current Legal Issues", designed and offered by Ceren Teselli, an attorney of Şengün & Partners Attorney Partnership. The training topics included the Internet of things and its usage areas, as well as the relevant legal issues in light of the current national and international regulations, especially the work of the European Union and the European Commission.

UPCOMING EVENTS

FinTech and Current Regulations

New practices with the wide adoption of FinTech technologies encourage investors to adopt innovative business models in Turkey. Meanwhile, innovations require new regulations in Turkey and across the world. Şengün & Partners Attorney Partnership and the German-Turkish Chamber of Commerce and Industry will host "FinTech and Current Regulations" at 11.00 - 12.30 on 24 March 2022 to discuss opportunities and risks relevant to the activities and key legal issues of FinTech startups. Please click on https://www.dtr-ihk.de/tr/etkinlikler/etkinlik-bilgileri/fintek-ekosistemi-ve-guencel-hukuki-uygulamalar to register for the event.

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