



## **Third Party Intervention**

**In the Case of NAİF ŞAŞMA v. TURKEY (App. No. 39685/19)**

**by**

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An independent non-governmental organization specialized in defending and promoting freedom of expression

## Introduction

1. İFÖD will address in its intervention in the case of *Naif Şaşma v. Turkey* (App. No. 39685/19) the issue of access blocking to a website as part of a “**trademark dispute**”.
2. It is understood from the Court’s communication that the applicant is a lawyer and his website, “www.yurticikargomagdurlari.com” (“**Victims of Yurtiçi Kargo**”, a delivery company), which was created to expose the **complaints of his clients** who had labour law disputes subsequent to dismissals from the delivery company, was blocked access to from within Turkey. The delivery company took legal action and the applicant was ordered to pay 2.000 TL for damages to the delivery company on the grounds that the domain name used by the applicant damaged the company’s commercial reputation.
3. According to the expert report submitted to the Court of First Instance, the content of the website includes news, photos, videos and evaluations about various activities and actions carried out by a number of former employees who were fired by the delivery company to protest this situation. According to the same report, although the name of the relevant company is mentioned in the name of the website in the form of “www.yurticikargomagdurlari.com”, the site did not have a commercial purpose in the form of providing goods and services and/or setting an alternative business in the form of delivery of goods. The website does not contain misleading, unnecessarily damaging or completely false and fictitious information regarding the activities of the relevant company and the website included information describing the situations of persons who filed lawsuits against the company in a number of labour courts.
4. The use of the word “magdurlari” in the domain name of “www.yurticikargomagdurlari.com” stands for “**victims**” and is a reference to the situation of the former employees of the company from their perspective and to express their problems to the public arising from their business relationship to their former employer.
5. In the present case, the blocking decision was requested by a **delivery company** to protect the company’s commercial reputation. To protect its commercial reputation, the company lodged a “**trademark dispute**” subject to article 55/1(a)1 of the Turkish Commercial Code (Law No. 6102) claiming that the domain name was set violating good faith principles and that the website violates competition practices and is unfair as it intends to humiliate the company with the intention of damaging the company’s commercial reputation. Based on this claim, the access blocking request was accepted by an intellectual property court in Istanbul which also ruled for financial damages against the applicant. The court considered that the expression “**victims of Yurtiçi Kargo**”, contained in the domain name of the website, had a negative connotation with regard to the company **Yurtiçi Kargo**, degraded the company and thus created unfair competition in its disadvantage.
6. The **Court of Appeal** rejected the applicant’s appeal with a vote of majority. The dissenting opinion stated that the website was not established with malice and solely to harm the company and that everyone can disseminate their complaints remaining within the limits of freedom of expression. The applicant lodged an individual application with the Constitutional Court.

7. This is the **first time** the Constitutional Court addressed **whole access blocking** to a website as part of a “**trademark dispute**” and more importantly this is the first time that the Court **did not find a violation** of freedom of expression compared to its previous case law involving access blocking to a number of news websites, social media platforms as well as the Wikipedia platform. The **Constitutional Court**, did not find a violation of freedom of expression and dismissed his application with a 4-1 majority decision.<sup>1</sup>
8. The **Constitutional Court** considered the case with regards to **right to property** subject to Article 35 of the Constitution and the Court only assessed the case so far as the “domain name” was concerned but did not include the content of the website in its assessment.<sup>2</sup> The Court’s assessment was only one paragraph<sup>3</sup> and the Court stated that the use of the words “**magdurlari**” (“**victims**”) created a negative connotation in the society on the part of the company. Therefore, the use of this domain name humiliated the company damaging its commercial reputation. According to the Court, with the decision of the first instance court, it has been shown with a relevant and sufficient justification that the intervention corresponds to a pressing social need.
9. In a **lengthy dissenting opinion** which is longer than the Court’s decision, Judge Engin Yıldırım stated that the information about the actions and activities of some former company employees who believe that they have been victimized by the relevant company and who demanded the remedy of their grievances against the company by way of legal action is included within the website in dispute with the purpose of complaining about the company. The dissenting judge was of the opinion that this critical activity is within the framework of the freedom of expression of former employees rather than considered as “unfair competition”. He was of the opinion that interventions to protect commercial reputation should not render freedom of expression unusable.
10. Relying on **Articles 9 and 10** of the Convention, the applicant complains of an interference with his right to freedom of expression as a result of the decision rendered at the end of the civil proceedings in question.
11. As a third party intervener, İFÖD will examine whether the applicant’s website clearly indicates **to a protest/complaint website** with the use of the additional word “**magdurlari**” which stands for “**victims**” in Turkish on the domain name in dispute. Within this context, İFÖD will discuss under which conditions an applicant complaining about the policy and practices of a commercial company through the formation of a protest website should be regarded as a “**social and public watchdog**” consistent with the European Court’s jurisprudence.<sup>4</sup> Furthermore, İFÖD will discuss and assess the criteria established by the Court’s case-law, between the applicant’s right to freedom of expression and the right to protection of the reputation of the delivery company.<sup>5</sup>

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<sup>1</sup> Naif Şaşma, App. No: 2015/3782, 09.01.2019.

<sup>2</sup> See Naif Şaşma, App. No: 2015/3782, 09.01.2019, § 29.

<sup>3</sup> See Naif Şaşma, App. No: 2015/3782, 09.01.2019, § 31.

<sup>4</sup> *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 08.11.2016, §§ 165, 166, 168, ECHR 2016; *Falzon v. Malta*, no. 45791/13, § 57, 20.03.2018; *Arif Cangı v. Turkey*, no. 24973/15, 29.01.2019.

12. İFÖD will also bring to the attention of the Court the **WIPO Uniform Domain Name Dispute Resolution Policy** as well as **WIPO Panel’s decisions** on domain name disputes involving “sucks” websites as the WIPO policy as well as the WIPO Panel’s decisions should be part of this consideration.

### **The Applicant should be considered as a Social and Public Watchdog**

13. First of all, İFÖD believes that the applicant should be considered as a social and public watchdog consistent with the European Court’s recent jurisprudence. The Court has previously established that the press,<sup>6</sup> as well as NGOs,<sup>7</sup> exercise watchdog functions and that the function of bloggers and popular users of the social media<sup>8</sup> may be also assimilated to that of “**public watchdogs**” in so far as the protection afforded by Article 10 is concerned.<sup>9</sup> Therefore, the manner in which **public watchdogs** carry out their activities may have a significant impact on the proper functioning of a democratic society.<sup>10</sup> The Court reiterates that a **high level of protection also extends to academic researchers<sup>11</sup> and authors of literature** on matters of public concern.<sup>12</sup>

14. In *Magyar Helsinki Bizottság v. Hungary* [GC], the Court also noted with reference to *Delfi AS v. Estonia*<sup>13</sup> that given the important role played by the Internet in enhancing the public’s access to news and facilitating the dissemination of information as well as the **function of bloggers and popular users of the social media**<sup>14</sup> may be also assimilated to that of “**public watchdogs**” in so far as the protection afforded by Article 10 is concerned.<sup>15</sup> Within this context, a lawyer has been previously considered as a “public watchdog” in the case of *Arif Cangı v. Turkey*<sup>16</sup> in relation to a freedom of information request. In the present application, the applicant is not only a lawyer but also the owner of a protest website as explained above with a public interest element. It has been recognised by the Court that civil society makes an important contribution to the discussion of public affairs<sup>17</sup> and İFÖD believes that this also extends to informing the public about the policy and practices of a well-known delivery company in Turkey.

<sup>5</sup> *Steel and Morris v. the UK*, no. 68416/01, §§ 94-95, ECHR 2005 II; *Kuliś and Różycki v. Poland*, no. 27209/03, §§ 35-40, 06.10.2009; *Uj. v. Hungary*, no. 23954/10, 19.07.2011, § 22; *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary*, no. 22947/13, 02.02.2016, §§ 66-7; *OOO Regnum v. Russia*, no. 22649/08, 08.09.2020, §§ 64-81; *Tête v. Fance*, no. 59636/16, 26.03.2020.

<sup>6</sup> *De Haes and Gijssels v. Belgium*, 24.02.1997, § 37, Reports 1997-I; *Falzon v. Malta*, no. 45791/13, § 57, 20.03.2018.

<sup>7</sup> *Animal Defenders International v. the United Kingdom* [GC], no. 48876/08, § 103, *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, 14.04.2009, § 27; *Youth Initiative for Human Rights v. Serbia*, no. 48135/06, 25.06.2013, § 20.

<sup>8</sup> *Delfi AS v. Estonia* [GC] (no. 64569/09, § 133, ECHR 2015).

<sup>9</sup> *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 08.11.2016, §§ 166, 168, ECHR 2016.

<sup>10</sup> *Ibid*, § 167.

<sup>11</sup> *Başkaya and Okçuoğlu v. Turkey* [GC], nos. 23536/94 and 24408/94, §§ 61-67, ECHR 1999-IV; *Kenedi v. Hungary*, no. 31475/05, 26.05.2009, § 42; *Gillberg v. Sweden* [GC], no. 41723/06, 03.04.2012, § 93.

<sup>12</sup> *Chauvy and Others v. France*, no. 64915/01, § 68, ECHR 2004-VI; *Lindon, Otchakovsky-Laurens and July v. France* [GC], nos. 21279/02 and 36448/02, § 48, ECHR 2007-IV.

<sup>13</sup> *Delfi AS v. Estonia* [GC] (no. 64569/09, § 133, ECHR 2015).

<sup>14</sup> *Rebechenko v. Russia*, no. 10257/17, 16.04. 2019;

<sup>15</sup> *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 08.11.2016, § 168, ECHR 2016.

<sup>16</sup> *Arif Cangı v. Turkey*, no. 24973/15, 29.01.2019.

<sup>17</sup> *Steel and Morris v. the United Kingdom*, no. 68416/01, § 89, ECHR 2005-II, and *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, 08.11.2016, § 166.

## **European Court’s Criteria on Balancing the Right to Freedom of Expression Against the Right to Reputation of Commercial Companies**

15. As regards the importance of Internet sites in the exercise of freedom of expression, the European Court has found that in the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet has played an important role in enhancing the public’s access to news and facilitating the dissemination of information in general.<sup>18</sup> At the same time, according to the Court, the risk of harm posed by content and communications on the Internet to the exercise and enjoyment of human rights and freedoms, particularly the right to respect for private life, is certainly higher than that posed by the press.<sup>19</sup>
16. The right to freedom of expression is protected by Article 10 and equally the right to protection of reputation is guaranteed by Article 8 of the Convention as part of the right to respect for private life. When it is called upon to adjudicate on a conflict between two rights which enjoy equal protection under the Convention, the European Court must weigh up the competing interests. However, the Court has long held that “political expression”, including **expression on matters of public interest and concern**, requires a high level of protection under Article 10.<sup>20</sup>
17. The European Court generally holds that a private company undisputedly has a right to defend itself against defamatory allegations. In this context the Court accepts that, in addition to **the public interest in open debate about business practices**, there is a competing interest in protecting the commercial success and viability of companies, for the benefit of shareholders and employees, but also for the wider economic good.<sup>21</sup> The State therefore enjoys a margin of appreciation as to the means it provides under domestic law to enable a company to challenge the truth, and limit the damage, of allegations which risk harming its reputation.<sup>22</sup> However, there is a difference between the commercial reputational interests of a company and the reputation of an individual concerning his or her social status. Whereas the latter might have repercussions on one’s dignity, for the Court **interests of commercial reputation are devoid of that moral dimension**.<sup>23</sup>
18. In the Court’s view, the following criteria are relevant in the assessment of the necessity of an interference where the right to freedom of speech and/or the media is to be weighed against the competing right to reputation of a commercial company: **the subject matter of the impugned publications**, that is, whether they concerned a matter of **public interest; the content, form and consequences of the publications**; the way in which the information **was obtained and its veracity**; and the **gravity of the penalty imposed** on the publication, media outlet or journalists.<sup>24</sup>

<sup>18</sup> *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 48, ECHR 2012.

<sup>19</sup> *Egill Einarsson v. Iceland*, no. 24703/15, § 46, 7.11.2017.

<sup>20</sup> *Thorgeir Thorgeirson v. Iceland*, no. 13778/88, 25.06.1992, Series A no. 239.

<sup>21</sup> *Uj. v. Hungary*, no. 23954/10, 19.07.2011, § 22.

<sup>22</sup> *Steel and Morris v. the United Kingdom*, no. 68416/01, § 94, ECHR 2005-II; *Kuliś and Różycki v. Poland*, no. 27209/03, § 35, ECHR 2009.

<sup>23</sup> *Margulev v. Russia*, no. 15449/09, 08.10.2019, § 45.; *OOO Regnum v. Russia*, no. 22649/08, 08.09.2020, § 66.

<sup>24</sup> *OOO Regnum v. Russia*, no. 22649/08, 08.09.2020, § 67; *Satakunnan Markkinapörssi Oy and Satamedia Oy*, no. 931/13, 27.06.2017, § 165.

### **Matter of Public Interest**

19. The European Court considered that “in a democratic society even small and informal campaign groups, such as London Greenpeace, must be able to carry on their activities effectively and that there exists a strong public interest in enabling such groups and individuals outside the mainstream to contribute to the public debate by disseminating information and ideas on matters of general public interest such as health and the environment”.<sup>25</sup> Within this context, İFÖD recalls that a campaign website that includes information about labour law disputes should also fall within this category. In the current case, the blocked website included news, information and photos involving labour union protests organised against the delivery company on the website. Considering that Yurtiçi Kargo is a well-known delivery company, the content on the website seemed to convey information of considerable public interest.

### **Content, form and consequences of the publication**

20. For the Court, **the content, form and consequences** of the publications in dispute are important factors to assess especially when the content involves matters of public interest.

21. İFÖD is of the opinion that in disputes concerning commercial reputation not only the claims concerning trademark rights, but also the content of the website and the purpose of the Publisher should be taken into consideration. Therefore, İFÖD believes that the use of a company name together with the addition of the word “**victims**” on a domain name requires an assessment from an Article 10 point of view.

### **Sources of the information published and its veracity**

22. İFÖD is of the opinion that the European Court should assess further whether the purpose of the applicant’s website was primarily to accuse a commercial company of committing offences or morally reprehensible acts or, on the contrary, whether the website was formed with the intention of criticising the company’s policies and treatment of its employees. İFÖD believes that the most careful scrutiny on the part of the European Court is called for when, as in the present application, the measures taken or sanctions imposed by the national authority **are capable of discouraging the participation of citizens** in debates over matters of legitimate public concern.

### **Penalty imposed on the applicant**

23. The European Court has established that indefinite access blocking to whole websites has serious repercussions for freedom of expression protected by Article 10 of the Convention.<sup>26</sup> In this case, the applicant’s website was **not only blocked indefinitely**, but he was also **prevented from using the disputed domain name** as a result of the “unfair competition” decision of the court of first instance. This kind of measure undoubtedly can have a “**chilling effect**” on the applicant’s freedom of expression discouraging the applicant’s participation in debates over matters of legitimate public

<sup>25</sup> *Steel and Morris v. the United Kingdom*, no. 68416/01, § 89, ECHR 2005-II.

<sup>26</sup> *Ahmet Yıldırım v. Turkey*, no. 3111/10, 18.12.2012; *Cengiz and Others*, nos. 48226/10 and 14027/11, 01.12.2015; *OOO Flavus and Others v. Russia*, no. 12468/15 23489/15 19074/16, 23.06.2020; *Bulgakov v. Russia*, no. 20159/15, 23.06.2020; *Engels v. Russia*, no. 61919/16, 23.06.2020; *Vladimir Kharitonov v. Russia*, no. 10795/14, 23.06.2020.



concern as a “**public watchdog**”. Within this context, it should be recalled that the Court has established that Article 10 applies not only to the content of information **but also to the means of dissemination**, since any restriction imposed on the latter necessarily interferes with the **right to receive and impart information**.<sup>27</sup>

24. In the context of new media, the Court has previously held that a Google service designed to facilitate the creation and sharing of websites within a group constituted a means of exercising freedom of expression.<sup>28</sup> Similarly, a video-hosting website represented an important means of exercising the freedom to receive and impart information and ideas. The blocking of these services was found to have **deprived users of a significant means of exercising their right to freedom to receive and impart information** and ideas.<sup>29</sup>
25. Therefore, İFÖD believes that the Court should assess further whether by putting too much emphasis on the use of the words “**victims**” together with a well-known company name and trademark, the local courts including the Constitutional Court demonstrated convincingly the existence of a pressing social need capable of justifying an interference with freedom of speech.

#### **WIPO Uniform Domain Name Dispute Resolution Policy (“UDPR”)**

26. Within the context of domain names related disputes İFÖD would like to refer and bring to the attention of the Court, the **WIPO policy** on uniform domain name dispute resolution policy as well as WIPO Panel decisions involving protest and “sucks” websites as both the WIPO policy as well as the panel decisions are relevant for this application. Generally, the overriding objective of the WIPO Uniform Domain Name Dispute Resolution Policy<sup>30</sup> is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. WIPO panels considered the question of whether a domain name consisting of **a trademark and a negative term** (“sucks cases”) confusingly similar to a complainants’ trademark in the past.
27. A domain name consisting of **a trademark and a negative or pejorative term** (such as <[trademark]sucks.com> and <trademark.sucks>) usually triggers an investigation upon request by WIPO panels which then assesses any potential infringement. In such cases, the complainants’ must show and prove **bad faith**<sup>31</sup> which is broadly understood under the UDRP to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark.
28. Particular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include:<sup>32</sup>

<sup>27</sup> *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 50, ECHR 2012.

<sup>28</sup> *Ahmet Yıldırım v. Turkey*, no. 3111/10, § 49, ECHR 2012.

<sup>29</sup> *Cengiz and Others v. Turkey*, nos. 48226/10 and 14027/11, § 54, ECHR 2015 (extracts).

<sup>30</sup> See <https://www.icann.org/resources/pages/policy-2012-02-25-en>

<sup>31</sup> See section 3.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) at <https://www.wipo.int/amc/en/domains/search/overview3.0/>

<sup>32</sup> See section 3.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) at <https://www.wipo.int/amc/en/domains/search/overview3.0/>

- i. the **nature of the domain name** (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion),
  - ii. the **chosen top-level domain** (e.g., particularly where corresponding to the complainant’s area of business activity or natural zone of expansion),
  - iii. the **content of any website** to which the domain name directs, including any changes in such content and the timing thereof,
  - iv. the **timing and circumstances of the registration** (particularly following a product launch, or the complainant’s failure to renew its domain name registration),
  - v. any **respondent pattern of targeting marks** along a range of factors, such as a common area of commerce, intended consumers, or geographic location,
  - vi. a **clear absence of rights** or **legitimate interests** coupled with no credible explanation for the respondent’s choice of the domain name, or
  - vii. **other indicia** generally suggesting that the respondent had somehow targeted the complainant.
29. İFÖD believes that the above criteria is important and a similar criteria can be developed or adopted by the European Court so far as the current application as well as future similar applications involving protest website claims are concerned.

### **WIPO Panel’s Decisions on Domain Name Disputes Involving “Sucks” Websites**

30. Within this context, İFÖD believes that an overview of WIPO panel decisions would assist the Court further to understand how the UDRP is applied with regards to potential protest websites and related domain names.
31. UDRP jurisprudence recognizes that the use of a domain name for fair use such as non-commercial free speech, would in principle support a respondent’s claim to a legitimate interest under the Policy. However, to support fair use under UDRP paragraph 4(c)(iii), the respondent’s criticism “**must be genuine and non-commercial**”.<sup>33</sup> WIPO panels find that even a general right to legitimate criticism does not necessarily extend to registering or using **a domain name identical to a trademark** (i.e., <trademark.tld> (including typos)). In fact, even where such a domain name is used in relation to genuine non-commercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation.<sup>34</sup>
32. Where the domain name is not identical to the complainant’s trademark, but it comprises the mark plus a derogatory term (e.g., <trademarksucks.tld>), WIPO panels tend to find that the respondent has a legitimate interest in using the trademark as part

<sup>33</sup> See in particular sections 1.13, 2.6, 3.1 and 3.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) at <https://www.wipo.int/amc/en/domains/search/overview3.0/>

<sup>34</sup> *Ibid*, section 2.6.2. See for example *Joseph Dello Russo M.D. v. Michelle Guillaumin*, WIPO Case No. D2006-1627, <dellorusso.info> and <dellorussosucks.com>, Transfer, Denied in Part.



of the domain name of a criticism/protest website **if such use is prima facie non-commercial, genuinely fair, and not misleading or false.**<sup>35</sup> Therefore, in some instances, WIPO panels decided that such websites amount to “legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark” in accordance with paragraph 4(c)(iii) of the WIPO Policy.<sup>36</sup>

33. For example, in the <wallmartcanadasucks> decision, the WIPO panel stated that the “Respondent has not intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s website” and that there was “**no likelihood of confusion** between wallmartcanadasucks and Wal-Mart’s products and services”.<sup>37</sup>
34. More importantly and relevant to the current application, a WIPO panel dealt with the use of the word “**magdurlari**” as in the current application together with the trademark of a well-known Turkish bank, namely Akbank. The respondent in this case registered three separate domain names, <akbankmagdurlari.com>, <akbankmagdurlari.net> and <antiakbank.com>. These websites were set for the purposes of complaining about the financial services offered by Akbank and those who posted on the websites claimed to be victims of the bank. The panel was of the opinion that the use of the word “**magdurlari**” in two of the disputed domain names clearly showed the intention of the respondent at the registration stage of the domain names. Moreover, the domain names chosen for the websites in dispute clearly showed that **the websites would not be used in the banking area** where the complainant’s trademark is used and that the websites were used to express the complaints of the consumers.<sup>38</sup> The Panel, however, argued that the use of the word “**anti**” may have a purpose of criticism, but this purpose was **not clearly understood** and **there was no other evidence to support** this. According to the Panel, the respondent acted in bad faith so far as the use of the word “anti” was concerned. So, the bank’s application was accepted only so far as the <antiakbank.com> was concerned.
35. İFÖD believes that, the WIPO Panels’ decisions on domain name disputes involving the word “**magdurlari**” (“**victims**”) also indicates that the content of such websites can be considered within the limits of freedom of expression if their purpose is not to compete with the original name holder in the same field of commercial activity and that the website owner did not act in bad faith.

## Conclusion

<sup>35</sup> *Ibid*, section 2.6.3. See for example *Amylin Pharmaceuticals, Inc. v. Watts Guerra Craft LLP*, WIPO Case No. D2012-0486, <byettacancer.com>, Denied; *Nix Solutions Ltd. Limited Liability Company v. WhoisGuard Protected/Shawn Ferguson*, WIPO Case No. D2014-1475, <nixsolutions-sucks.com> and <nixsolutionssucks.com>, Denied.

<sup>36</sup> See for example *Ironfx Global Limited v. MR Qaisar Saeed Butt / Moniker Privacy Services*, Case No. D2015-1221

<sup>37</sup> *Wal-Mart Stores, Inc. v. wallmartcanadasucks.com and Kenneth J. Harvey*, Case No. D2000-1104, <wallmartcanadasucks.com>, Denied.

<sup>38</sup> *Akbank Türk A.Ş. v. Nurullah Akın*, Case No. D2011-1411.

36. İFÖD respectfully **invites** the Court to consider the applicant, as a **public watchdog**, as the applicant through the establishment of the disputed website and acting as a lawyer providing legal assistance to former employees of the delivery company in labour courts seems to be disseminating information and ideas on matters of general public interest questioning the practices and policies of a commercial company.
37. İFÖD respectfully invites the Court **to evaluate** whether the applicant’s website was clearly a protest website and whether the use of the word “**magdurlari**” (“**victims**”) on the domain name of the website created unfair competition with the trademark owner considering that the website did not seem to be set with the purpose of promoting alternative commercial services.
38. İFÖD also respectfully invites the Court **to evaluate** the WIPO UDPR Policy as well as its application to criticism/protest websites and the use of “victims” and/or “sucks” together with a well-known trademark as in the current application.
39. Therefore, the Court should evaluate further whether the applicant’s website competes or confuses Internet users concerning the owner and content of the website or whether the content provided on the website is set with the purpose of informing the general public on issues of public interest.

**01.02.2021**

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**İfade Özgürlüğü Derneği (İFÖD)** has been set up formally in August 2017 protect and foster the right to freedom of opinion and expression. The new Association envisions a society in which everyone enjoys freedom of opinion and expression and the right to access and disseminate information and knowledge.