



Annales de la Faculté de Droit d'Istanbul

RESEARCH ARTICLE

Green Is the New Black: The Rise of Green Marks and Possible Solutions to Greenwashing

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Abstract

If a popularity contest were to occur among colors nowadays, green would be the winner by far. Fast and alarming global warming has created huge and obligatory changes to consumer habits. This has put some big burdens on companies to massively change their production processes. Due to a significant percentage of consumers having changed their purchasing habits, companies are taunted with being green, and they have started greenwashing practices to take advantage of consumers' new habits without changing their corporate policies. The rise of greenwashing has caused an urgent need to protect consumers and the market. Both Turkish and foreign governments regulate certain markets such as food and agriculture and also bring certain restrictions in terms of advertisement law to eliminate deceptive images from being created in consumers' eyes. However, the gap in green marks shows the urgent need to amend the trademark law approach to protect consumers from greenwashing and to safeguard the proper functioning of the market. This work first examines the definition of green marks and ecolabels, as well as their confusing concepts, followed by present regulations regarding different legal areas. Upon this, the study then discusses the urgent need to regulate trademark law regarding green marks and makes proposals for legislation in line with recent EU regulation proposals regarding green claims.

Keywords

Trademarks, Misleading Consumers, Green Marks, Greenwashing, Ecolabels, Unfair Commercial Practices

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To cite this article: Dincer Ozbey B, Yatagan Ozkan C, "Green Is the New Black: The Rise of Green Marks and Possible Solutions to Greenwashing", (2023) 73 Annales de la Faculté de Droit d'Istanbul 183. <https://doi.org/10.26650/annaes.2023.73.0006>



I. Introduction

Today's often-heard calls for balancing the ecosystem has actually been under discussion for almost 50 years. Concerns for a better and more responsible use of natural resources and producers' urgent need to comply with this approach have resulted in the birth of green marketing. The term was suggested in the late 1980s as a result of discussions that had started in the 1970s that also raised another new term: ecolabels.¹

The fight for a better environment has a strong enemy (i.e., producers' desire for profitability), and green marketing has resultantly brought about the term greenwashing almost at the same time as it came into being. In 1980s, Jay Westerveld came up with the term when he realized the inconsistency in the behaviors of hotels that encourage its customers to use the same towel to help the environment while not even having a recycling plan.²

The incident Westerveld had that resulted in the birth of the term greenwashing sounds quite innocent compared to the recent cases seen on the news nowadays.³ Greenwashing occurs so often that the term is even in dictionaries and defined as "activities by a company or an organization that are intended to make people think that it is concerned about the environment, even if its real business actually harms the environment,"⁴ in addition to the definitions in academic works.⁵ Regardless of whether greenwashing is a subject of litigation or a scandal, the term refers to the actions of firms that overcommit or fail to abide by promised socially responsible activities as a kind of corporate hypocrisy.⁶ It can also be defined as a popular trick or tactic that deliberately overestimates the environmental benefits of a product or service, thereby misinforming and defrauding consumers about the firm's actual environmental performance.

1 Ken Pattie & Andrew Cane, 'Green Marketing: legend, myth, farce or propesy?' (2005) 8(4) *Qualitative Market Research* 357, 358.

2 Tiffany Derville Gallicano, 'A Critical Analysis of Greenwashing Claims' (2011) 5(3) *The Public Relations Journal* 1, 2.

3 For instance, in *Abraham Lizama Marc Doten et al. v. H&M Hennes & Mauritz LP* case numbered 4:22-cv-01170, H&M was accused of selling products that are not "Conscious Choice," more "sustainable," and environmentally friendly because they are not made from sustainable and environmentally friendly materials and misled consumers. Also, in *Greenpeace France et al. v. Totalenergies SE and Totalenergies Electricite Et Gaz France* case in 2022, the defendants were accused of using misleading claims such as "carbon neutral by 2050" and to play a "major role in the transition." Further case examples can be reviewed via the link. <https://truthinadvertising.org/articles/companies-accused-greenwashing/>

4 OxfordLearner's Dictionaries. <https://www.oxfordlearnersdictionaries.com/definition/english/greenwash?q=greenwashing>

5 Pascual Berrone, Andrea Fosfuri, & Liliana Gelabert, 'Does Greenwashing Pay Off? Understanding Between Environmental Actions and Environmental Legitimacy' (2017) 144(2) *Journal of Business Ethics* 363, 363; David Kraus, 'Green Marketing – ein Ansatz nachhaltiger Unternehmensführung aus Sicht des Marketings' (2018) 4 *Erfurter Hefte Zum Angewandten Marketing* 1, 33; L. Ende, M. A. Reinhard, & L. Göritz, 'Detecting Greenwashing! The Influence of Products Colour and Product Price on Consumers' Detection Accuracy of Faked Bio-fashion' (2023) 46 *Journal of Consumer Policy* 155, 156.

6 Ioannis Innaou/George Kassinis/Giorgos Papagiannakis "The Impact of Percieved Greenwashing on Customer Satisfaction and the Contingent Role of Capability Reputation," *Journal of Business Ethics* 2023, Vol 185, 333–347, 334.

The delicate status of greenwashing affects consumers' choices and has created the need for regulating environmental claims both for ecolabels and trademarks. This work aims to focus on the conceptual confusion between ecolabels and green marks, define them, find alternative solutions, and to propose regulations in order to prevent the abuse of consumers' environmental senses by way of fully enabling trademarks to perform their functions so as to indicate their origin and to inform consumers about the goods and services they provide in their scope.

II. Greenwashing and the Role of Trademarks in Addressing Environmental Awareness

A. Greenwashing and Its Effects on Consumers

Alarming news about the Earth and moreover alarming signals from it have resulted in consumers questioning their purchasing habits. Therefore, customers have very quickly welcomed sustainable products and green marks.⁷ Global Sustainability Study 2022 shows 75% of consumers to believe environmental sustainability is as or more important to them than it had been the year before and 66% of consumers to consider sustainability as one of the top five drivers behind their purchasing decisions, an increase of 16% compared to 2021.⁸

Consumers' encouraging approach to sustainably produced goods and services as well as the speed with which they've augmented their purchasing decisions have put pressure on companies. This has resulted in manufacturing and advertisement changing their habits at increased rates and expediting developments regarding ecolabels and green marks.⁹

While environmentally conscious companies make great investments to satisfy the criteria for ecolabels provided by third party verifiers in order to comply with their policies and their consumers' needs and choices for better produced products and services,¹⁰ the use of green terms as such as eco, natural, organic, and clean as a trademark solely or in combination creates an escape for entities who do not wish to make any commitments while also creating the impression to their customers of being eco-friendly.¹¹ Even though verbal elements are the first thing that comes to

7 Lasse Thiele, *Systemic Accumulation and Cost Re-Externalizations in the Green Economy*, (1st ed. Freie Universitaet Berlin (Germany) ProQuest Dissertations Publishing 2020) 8.

8 Shikha Jain & Olivier Hagenbeek, '2022 Global Sustainability Study: The Growth Potential of Environmental Change' (simon-kucher.com, 23 October 2022). <https://www.simon-kucher.com/en/insights/2022-global-sustainability-study-growth-potential-environmental-change>

9 Ümit Alnaçık, 'Tüketicilerin Çevreye Duyarlılığı ve Reklamlardaki Çevreci İddialar' (2009) 18 Kocaeli Üniversitesi Sosyal Bilimler Enstitüsü Dergisi 48, 53; Abdal Ahmed, Sumera Qureshi, 'A Door To Sustainable Development' (2019) 7(8) JAC: A Journal of Composition Theory 1979, 1979; Ende, Reinhard, Göritz (n 3) 156.

10 Thiele (n 4) 62.

11 Kraus (n 3) 33.

mind when considering green signs, things such as visual elements, colors, or any other sign that can be considered as a trademark as per regulations can be used as a green mark. When evaluating whether a greenwashing effect is present, the elements that compose the trademark should be considered as a whole,¹² as well as the way in which the trademark is used regardless of the lack of any greenwashing-sounding words in it.¹³ This sly profit-oriented approach has resulted in greenwashing. Indeed, companies tend to create the image of being environmentally friendly by using either green credentials or environmental claims to benefit from consumers' purchasing choices. Companies choose to invest in false PR rather than in the goods and services they provide to satisfy the requirements of being perceived as eco-friendly.¹⁴

While the Global Sustainability Study 2022 showed increasing numbers for sustainable consumption, it also underlined important facts that might be considered barriers, one of these being particularly important for this work is a lack of trust. Indeed, the study revealed 21% of consumers with access to sustainable products to not trust the sustainability claims made by companies and to have concerns about greenwashing.¹⁵

While the first thing that comes to mind when thinking about greenwashing usually involves fuel, oil, and automotive businesses being subject to lawsuits, greenwashing has also spread to almost every other single sector.¹⁶ Recently, a world-famous clothing and retail trademark's project with the theme of recycling clothes was chased down by a Swedish newspaper that added a tracking device to the clothes they were given; the newspaper claimed that it had ended up in African countries where they were dumped and eventually burned.¹⁷ Although greenwashing cases had started with different businesses, the fashion industry climbed up the greenwashing ladder very fast, with the 2018 research from Quantis¹⁸ revealing the fashion industry to be one of the largest water consumption sectors and to produce 8%-10% of global CO₂

12 During the stage of examining whether similarity exists between trademarks or whether the trademark is deceptive, the elements constituting the trademark should also be evaluated as a whole. See Sabih Arkan, *Marka Hukuku I* (BTHAE 1997) 99.

13 For further information, please see Sevilay Uzunalli, *Marka Korumasının Kapsamı ve Tazminat Talebi* (Adalet Yayinevi 2012) 90.

14 Kim Sheehan, 'This Ain't Your Daddy's Greenwashing: An Assessment of the American Petroleum Institute's Power Past Impossible Campaign' (2018) *Intellectual Property and Clean Energy* 301, 309.

15 Shikha & Hagenbeek (n 5); Kraus, (n 3) 27 *ibid* 34.

16 Simon Jessop, Gloria Dickie, & Benjamin Mallet, 'Environmental groups sue TotalEnergies over climate marketing claims' (reuters.com, 3 March 2022). <https://www.reuters.com/business/sustainable-business/environmental-groups-sue-totalenergies-over-climate-marketing-clyani-yaims-2022-03-03/>; Russell Hotten, 'What is Volkswagen accused of?' (bbc.com, 10 December 2015). <https://www.bbc.com/news/business-34324772>

17 Staffan Lindberg, 'Aftonbladet's investigation into H&M's recycling in 9 points' (aftonbladet.se, 13 June 2023). <https://www.aftonbladet.se/nyheter/a/jlME1e/aftonbladet-investigation-into-h-m-s-recycling-airtags-in-items>

18 Measuring Fashion, Environmental Impact of the Global Apparel and Footwear Industries Study (quantis.com, 2018). https://quantis.com/wp-content/uploads/2018/03/measuringfashion_globalimpactstudy_full-report_quantis_cwf_2018a.pdf

emissions.¹⁹ This and other similar news people are exposed to everyday show they are right to worry about greenwashing and also the urgent need to regulate the market so as to prevent similar incidents.

B. Trademarks' Greenwashed Advertising and the Problems Arising from a Lack of Legislation

Although Turkish and foreign governments apply rather strict regulations in terms of advertisement law and unfair commercial practices regulations based on misleading claims, as well as control certain industries according to their own regulations, trademarks continue to create an escape for companies who would like to benefit from fake green claims.

When examining the current Turkish legislation in light of these trends alongside Türkiye's harmonization policy with EU legislations, some regulations are found that either directly or indirectly aim to prevent greenwashing. Türkiye has set principles to be applied to agricultural goods and inhibits the use of misleading expressions based on the Regulation on the Principles and Implementation of Organic Agriculture ("Organic Agriculture Regulation").²⁰ The Energy Labeling Framework Regulation was also prepared based on the Product Safety and Technical Regulations Law No. 7223 and serves as an example for labelling on energy products and services.²¹ In addition, the Regulation on Commercial Advertising and Unfair Commercial Practices ("Advertising Regulation") explicitly states that advertisements cannot contain statements or images that directly or indirectly mislead consumers with regards to the product's environmental effects. As per this regulation, Turkish legislation authorizes the relevant bodies to monitor the market and prevent the spread of false environmental claims in accordance with the relevant regulations on advertisement laws, with regulatory bodies taking the initiative to guide market actors.²² Besides these, certain regulations and general laws such as regulations on the Law On Consumer Protections²³ and the Environmental Law,²⁴ the Turkish Commercial Code has no up-to-date regulations for protecting consumers and other competitors on the market regarding the gap in trademark law.

19 Ende, Reinhard, & Göritz (n 3) 156.

20 *Organik Tarımın Esasları ve Uygulanmasına İlişkin Yönetmelik* [Regulation on the Principles and Implementation of Organic Agriculture], RG 18.8.2010/27676.

21 *Ürün Güvenliği ve Teknik Düzenlemeler Kanunu, (Product Safety and Technical Regulations Act)* RG 12.3.2020/31066.

22 *Çevreye İlişkin Beyanlar İçeren Reklamlar Hakkında Kılavuz (The Guideline for Environmental Claims in Advertising)*, (tuketici.ticaret.gov.tr, 2023). <https://tuketici.ticaret.gov.tr/data/63ada5bc13b876a1c8715f73/2023%C3%87evreye%20%C4%B0li%C5%9Fkin%20Beyanlar%20%C4%B0%C3%A7eren%20Reklamli.pdf>

23 *Tüketicinin Korunması Hakkında Kanun* [Consumer Protection Act], Kanun Numarası: 6502, Kabul Tarihi:7.1.2013, RG 28.11.2013/28835.

24 *Tüketicinin Korunması Hakkında Kanun* [Consumer Protection Act], Kanun Numarası: 2871, Kabul Tarihi:9.8.1983, RG 11.8.1983/18132

The lack of legal control over trademark filings for green claims creates unfair advantages among competitors at a certain level, which also misleads consumers by effecting their purchasing decisions. Therefore, an urgent need exists for a new approach to green trademark applications, both to protect consumers as well as to set a balance among competitors. The need to regulate the market for self-declared environmental claims and green marks presents itself before consumers as trust issues.

These societal initiatives,²⁵ lawsuits against greenwashing,²⁶ alerting from non-governmental organizations (NGOs), and academic opinions have triggered the EU to re-examine and regulate self-declared claims. The fact that the Commission has declared almost half of the examined 232 active ecolabels in the EU to have either weak verifications or to lack any at all based on its preparatory studies is significant. Consumers also do not explicitly know the difference between third-party verified labels and self-certified labels.²⁷ Ultimately, the Green Claims Directive suggests a ban on self-certification and Member States to bear the burden of regularly monitoring the application of the Green Claims Directive.²⁸

Even though several publications and discussions have occurred regarding ecolabels and the positive and negative effects of self-certification, only a few academic works have referenced green trademarks.²⁹

1. Ecolabels³⁰

Ecolabels are defined as signs, the essential function of which are to ensure that the goods and services bearing an ecolabel satisfy environmental standards.³¹ Ecolabels are non-statutory and aim to ensure that the products or services bearing them have the potential to reduce negative environmental effects compared to the same or similar products and services on the market; what ecolabels claim must be non-deceptive,

25 Staffan Lindberg, 'Aftonbladet's investigation into H&M's recycling in 9 points' (aftonbladet.se, 13 June 2023). <https://www.aftonbladet.se/nyheter/a/jlME1e/aftonbladet-investigation-into-h-m-s-recycling-airtags-in-items>

26 'Companies Accused of Greenwashing-When companies green it, they better mean it' (truthindadvertising.org, 13 June 2023). <https://truthindadvertising.org/articles/companies-accused-greenwashing/>

27 Commission, 'Proposal for a Directive of the European Parliament and of the Council on substantiation and communication of explicit environmental claims (Green Claims Directive)' COM (2023) 166 final. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2023%3A0166%3AFIN>

28 Green Claims Directive (n 21) prg. 1.1, 6.4 and Art. 42.

29 Wynn Heh, 'Who Certifies the Certifiers?' (2015) 16(4) Vermont Journal of Environmental Law 688,691; n 17.

30 Even though ISO recognizes and describes the fundamentals of self-declared labelling as will be discussed in the work, the authors of this article disregard self-declared labels due to their controversial status when referring to ecolabels. In this work, ecolabels will be referred to using third-party verifiers' labels only. Self-declared labels will be discussed and examined separately under heading 2.2.2 *Green Marks*.

31 Kraus (n 3) 27; Jeffrey Belson, 'Ecolabels: Ownership, Use, and the Public Interest' (2012) 7(2) Journal of Intellectual Property Law & Practice 96, 96; 'Introduction to Ecolabels and Standards for Greener Products' (epa.gov 12 September 2022). <https://www.epa.gov/greenerproducts/introduction-ecolabels-and-standards-greener-products#:~:text=standards%20and%20ecolabels-,What%20is%20an%20ecolabel%3F,therefore%20deemed%20%E2%80%9CEnvironmentally%20preferable%E2%80%9D>

accurate, and grounded on scientific information.³²

Ecolabels function to inform consumers of products' quality and sustainability, and consumers' positive approach to eco-friendly trademarks also motivates manufacturers to use them due to the rather strong effect they have on consumers in determining or at least influencing their purchasing habits.³³ Because ecolabels are aimed at providing accurate information to consumers based on companies' commitments or contributions in favor of the ecosystem, the first important question involves understanding who grants these companies the right to use these signs. Currently, they are awarded by either governmental bodies, nonprofit environmental advocacy organizations, or private sector entities.³⁴

The second question arises as to how they are granted. An entity may be willing to use an ecolabel and may be ready to commit to changing its activities, but understanding what kind of impacts will be evaluated as an environmental impact is still important. The answer to this question lies in the principles of a life-cycle analysis (LCA).³⁵ LCA, also known as a cradle-to-grave analysis, is a methodology for determining how much a product affects the environment over its lifetime and for increasing resource use efficiency while decreasing liabilities.³⁶ LCA assesses the identification and quantification of relevant environmental loads such as the energy or amount of raw materials consumed, their potential environmental impacts, and the alternative options for reducing these impacts.³⁷

Currently, different classifications are found regarding ecolabelling that are based on different standards, while the evaluative aspects of LCA have been categorized by the International Standards Organization (ISO).³⁸ The current edition of ISO 14024:2018³⁹ refers to the Type I labelling program as a multiple criteria-based, third-party program where they have the authorization to award a license for use on relevant goods and services.⁴⁰ On the other hand, ISO 14021:2016 describes Type II labelling and sets out the requirements for environmental claims that are self-declared (i.e., claims that are made by producers, importers, distributors, or anyone likely to benefit

32 Council Regulation (EC) 1980/2000 of 17 July 2000 on a revised Community eco-label award scheme [2000] OJ L237/1 art 1.

33 Jeffrey Belson, 'Environmental Trademarks' (2014) 104(3) *The Trademark Reporter* 822, 822.

34 Belson, 'Ecolabels' (n 25) 98.

35 *Ibid.*

36 Life Cycle Assessment, see <https://www.eea.europa.eu/help/glossary/eea-glossary/life-cycle-assessment>

37 Life Cycle Assessment (n 30).

38 Belson, 'Ecolabels' (n 25) 98; Miroslav Rusko, Anton Koraus, 'Type I, II and III of Ecolabels' (2013) 2(1) *Journal of Environmental Protection, Safety, Education and Management* 1, 2.

39 'ISO 14024:1999 Environmental labels and declarations — Type I environmental labelling — Principles and procedures' (iso.org, March 1999). <https://www.iso.org/standard/23145.html>

40 'ISO 14024:2018(en), Environmental labels and declarations — Type I environmental labelling — Principles and procedures' (iso.org, February 2018). See Art. 3.1 at <https://www.iso.org/standard/72458.html#:~:text=ISO%2014024%3A2018%20establishes%20the,for%20assessing%20and%20demonstrating%20compliance>

from such claims) and include symbols, signs, and declarations such as compostable, recyclable, and refillable.⁴¹ These labels can be used without certification provided that they are precise, verifiable, and specific to the environmental aspect of the subject and that they take the important aspects of the product's life cycle into account.⁴² Lastly, ISO 14025:2006 describes Type III labelling as the declarations provided by one or several organizations that are based on either independently verified full life cycle assessment data, life cycle inventory analyses data, information modules according to the relevant ISO standards, or additional environmental information where relevant.⁴³

Blauer Engel [Blue Angel] is the mother of ecolabelling and was established through an initiative from Germany's Federal Ministry of the Interior as a resolution taken by the environmental ministers of German federal states.⁴⁴ Other examples of signs managed by the governmental bodies are the European Union's official ecolabel EU Flower, which is awarded to enterprises by the European Commission and Member States based on the criteria set forth in the Strategic Working Plan for the EU Ecolabel,⁴⁵ as well as ecolabels such as Energy Star, Safer Choice, and SmartWay as run by the US Environmental Protection Agency.⁴⁶ On the other hand, well-known examples of ecolabels managed by non-profit organizations include the Rainforest Alliance,⁴⁷ which is managed by the NGO with the same name, and Leaping Bunny, which is run by nine organizations.⁴⁸ Home Depot's EcoAction is also a good example of private sector's role in ecolabelling.⁴⁹

For harmonizing with EU regulations and regulating ecolabels in line with the questions mentioned above, Türkiye has taken steps to improve ecolabelling culture and also has NGOs such as Ecocert for obtaining certification for goods and services.⁵⁰ Within the framework of the harmonization process with the European Union in Türkiye, the Ministry of Environment and Urbanization initiated the Türkiye National Environmental Labeling Infrastructure Project. The Environmental

41 'ISO 14021:2016(en) Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling)' (March 2016). See art 3; (n 24) at <https://www.iso.org/standard/66652.html>.

42 Rusko, Koras (n 32) 5.

43 'ISO 14025:2006(en) Environmental labels and declarations — Type III environmental declarations — Principles and procedures' (July 2006). <https://www.iso.org/standard/38131.html>

44 Fabio Iraldo, Rainer Griesshammer, & Walter Kahlenborn, 'The Future of Ecolables' (2020) 25 *The International Journal of Life Cycle Assessment* 833, 833; 'Ecolabel with history'. <https://www.blauer-engel.de/en/blue-angel/our-label-environment/eco-label-history>

45 European Commission Directorate General Environment Circular Economy, Sustainable Production and Consumption 'Strategic EU Eco-label, Work Plan 2020 w– 2024' 2020, 3. <https://ec.europa.eu/environment/ecolabel/documents/EU%20Ecolabel%20Work%20plan%202020-2024%20Dec%202020.pdf>

46 'Buying Green for Consumers'. <https://www.epa.gov/greenerproducts/buying-green-consumers>

47 'Rainforest Alliance'. <https://www.rainforest-alliance.org/>

48 'Eco-label index'. <https://www.ecolabelindex.com/>

49 Belson, 'Ecolabels' (n 25) 96.

50 Stratejik Çevresel Değerlendirme Yönetmeliği (*Regulation on Strategic Environmental Assessment*) RG 8.4.2017/30032.

Product Declaration (EPD) System was also established in 2012.⁵¹ In accordance with the Regulation on Environmental Labeling⁵² that entered into force in 2018, the Türkiye Environmental Labeling ecolabel was established under the management and coordination of the Ministry of Environment, Urbanization and Climate Change of the Republic of Türkiye. In parallel with the European Green Deal, the Ministry of Trade of the Republic of Türkiye also published the Green Deal Action Plan⁵³ in 2021 with the aim of popularizing the Turkish Environmental Labeling System.

While the important questions of who and how have been answered, the instability and unreliability of self-declared claims and green marks remain the same. Ecolabels can only be used by producers with a license or other similar authorization.⁵⁴ However, Type II certification does not require a certificate, and the standards set by ISO or noted under LCA can be interpreted broadly. In this study's opinion, this cannot be considered a standard for ecolabels. The difference between ecolabels and green marks is the necessity for proving the criteria set by the verifier have been satisfied. As this does not exist in the Type II ecolabels, they more resemble green marks as they have no control over self-declared ecolabels, thus further blurring the difference between green marks and ecolabels.

2. Green Marks

Unlike ecolabels, green marks have no explicit description and therefore its definition rather stays in a grey area despite containing the term green. The Trademark Trial and Appeal Board of the United States Patent and Trademark Office has explained the term “green” to mean “anything environmentally friendly” while evaluating exclusivity of trademarks, a different aspect of the matter.⁵⁵

While one way to use such claims is to use a self-labelling system as described under ISO 14021 standards without registration, another and also very popular way to be able to use it on products is to file a trademark application for their registration with the relevant national intellectual property authority.

Indeed, the rise of environmental awareness among consumers has led some producers to file trademark applications with green connotations.⁵⁶ Not set wording

51 Gökür Şişman Aydın, 'Eko-Etiketleme ve Türkiye Çevre Etiketleri' (2019) 4(1) Harran Üniversitesi Mühendislik Dergisi, 40, 45; Mehmet Emin Birpınar, Serkan Atay, & Ülku Yetiş, 'Sürdürülebilir Üretim ve Tüketimde Eko-Etiketlerin Önemi: Türkiye Çevre Etiket Sistemi' (2023) 3 Çevre Şehir ve İklim Dergisi 60, 73.

52 Çevre Etiketleri Yönetmeliği (Eco-Label Regulations) RG 19.10.2018/30570.

53 'Yeşil Mutabakat Eylem Planı ve Yeşil Mutabakat Çalışma Grubu 2022 Faaliyet Raporu' (*Green Deal Action Plan and Green Deal Working Group 2022 Annual Report*) (ticaret.gov.tr 2022). <https://ticaret.gov.tr/data/643ffd6a13b8767b208ca8e4/YMEP%202022%20Faaliyet%20Raporu.pdf>

54 Belson 'Ecolabels' (n 25) 100.

55 Hetu and Kramer 2.

56 Belson 'Environmental' (n 27) 822.

exists for a trademark application to be considered green; however, trademark owners do commonly use words such as green, eco, clean, and naturally to promote their goods and services to consumers as being environmentally friendly. As of 2023, 2,638 trademark filings starting with the term eco had either been registered or are pending registration before the Turkish Patent and Trademark Office (TPTO), while this number is 4,066 for filings including the term green, 8,361 for bio, 1,320 for organic, and 3,174 for natural. The terms should also be noted to be able to be used in different languages as well, with 2,442 filings including the Turkish term *organik* [organic] and 5,028 filings including the Turkish term *doğal* [natural].⁵⁷ The list can be made even longer, as many other words are found referring to being green. Even this short basic search reveals the presence of over 27,000 trademarks with green claims just for verbal elements only, and this raises the question of whether or not these trademarks keep their word at being environmentally conscious.

Such vague and unclear statuses on self-declared labels and green marks form the need for controlling and clarifying green claims to prevent misleading consumers' choices.⁵⁸ Making similar points, the European Commission published the Green Claims Directive on March 22, 2023, a proposal for ensuring consumer protection and empowering their contribution to green transition in line with the 2022 proposition to update the Union Consumer Law.

As self-certification becomes an emerging issue to be regulated in order to protect consumer rights and the environment, as well as to balance competition among producers, this will also surely warm up the status of the green marks.

3. The Importance of Controlling Green Marks and How It Should Be Done

The essential and historically first function of trademarks is to distinguish one enterprise's goods and services from those of another. However, the advertising function of trademarks has become prominent these days, and although no legal obligation exists, trademarks have become signs guaranteeing the quality of offered goods or services in the eyes of consumers.⁵⁹ Such functions serve the favor of both consumers and trademark owners.⁶⁰ While trademarks indicate the origin and let consumers link the product with the producer and a known expected quality, they

57 *Türk Patent ve Marka Kurumu Çevrimiçi Arama Motoru* [Online Trademark Search Tool of the Turkish Patent and Trademark Office] (turkpatent.gov.tr, August 2023). <https://www.turkpatent.gov.tr/arastirma-yap?form=trademark>

58 Heh (n 23) 691.

59 Rıza Ayhan, Hayrettin Çağlar, Burçak Yıldız, & Dilek İmriioğlu, *Sınai Mülkiyet Hukuku* (Adalet 2021) 46. The guaranteed function of a trademark, which means that a good or service has certain qualities and is produced in such a way as to preserve these qualities, is not a legal obligation, but has great economic importance. See Arkan 'Marka' 39; Ünal Tekinalp, *Fikri Mülkiyet Hukuku* (Vedat 2012) (n 59) 378.

60 Heh (n 23) 692.

also help the trademark owners maintain their reputation and gain a loyal customer profile.⁶¹

When considering the fact that green marks claim a sensible approach to the environment, how they split off into trademark subgroups (i.e., ordinary trademarks, certification marks, or collective marks) should be examined carefully.

4. Ecolabels and Their Status as a Trademark

The story of *Blauer Engel* was established shows that, while NGOs first introduced the world to ecolabels, governments adapted themselves to the idea very quickly and started using the same labelling system.⁶² Recently, both NGOs and governmental bodies have been found working as third-party verifiers and owners of certain ecolabels. While no obligation exists to register an ecolabel through the relevant registry offices,⁶³ the question still arises as to what their nature was when they registered.

The first thing to come to mind is certification marks resulting from ecolabels being a means to an end.⁶⁴ Several enterprises use certification marks under the control of a trademark owner to guarantee common characteristics, production methods, geographical origin, and quality of goods or services. Under the Turkish trademark law system, a certification mark can be used by anybody without needing to obtain a license, provided they act in line with the technical specifications.⁶⁵ The governmental and private organizations owning these marks have registrations for them such as EU Flower and Energy Star.⁶⁶ Indeed, the proprietors of such marks cannot use their trademark; they instead determine the conditions to be met by the producers, examine producers' applications to determine if they've satisfied the criteria, and then give them the right to use the relevant signs.⁶⁷ In the event that the owner of a certification mark fails to carry out the necessary checks regarding the use of the trademark and remains silent about the use of a mark by unauthorized persons, the certification mark may be revoked for being deceptive.⁶⁸

61 Arkan 'Marka' (n 53) 39; Tekinalp (n 59) 378; David Bainbridge, *Intellectual Property* (9th ed. Pearson 2012) 753; 'The Principle of Uniqueness of Trademark Owner and the Examination of This Principle in the Context of Its Transfer (an Assessment in Context of the Decision of the Constitutional Court That Cancelled the Article 16/5 of the Decree No. 556)' (2016) 1 YBHD 229, 238; Heh (n 23) 693; Kraus (n 3) 22.

62 Gabriele Engels & Ulrike Grubler, 'Sustainable Brands, Eco-Labels and the New EU Certification Mark', (2017) 264 *Managing Intellectual Property* 88, 91.

63 Engels & Gruber (n 56) 90.

64 Belson 'Ecolabels' (n 25) 102.

65 Sabih Arkan, 'Marka Tescil Başvurusunun Lisans Sözleşmesine Konu Olması – Bazı Sorunlar' (2019) 35(3) *Banka ve Ticaret Hukuku Dergisi* 39, 40.

66 Belson 'Ecolabels' (n 25) 99.

67 Belson 'Ecolabels' (n 25) 100; Arkan 'Marka' (n 53) 47; Aslan Kaya, *Marka Hukuku* (Arkan 2006) 54; Ayhan Çağlar Yıldız İmirlioğlu (n 53) 46.

68 Please see Industrial Property Code Art. 26 Para. 1-c and IPC Art. 5 Para.1-f: "Absolute grounds for refusal in trade mark registration: Signs that will mislead the public about the nature, quality or geographical origin of the goods or services"

Although certification marks represent a good fit for ecolabels, some countries are found to not cover certification marks under their legislations, and other countries choose not to implement the certification mark regulations for these signs despite having the provisions.⁶⁹ In these circumstances, collective marks⁷⁰ stand as an alternative option for covering ecolabels as registered marks because their definition also provides the ability to serve as a certifier for the goods and services of the members of the proprietor's association, in addition to the association also setting the standards to be met to be able to use their mark.⁷¹ When considering the natural fit of certification marks to ecolabels and their present regulation under the Turkish legal system, certification marks stand as the best option to be applied to ecolabels if they desire to be registered.

5. Green Marks: Non-Distinctive, Deceptive, or Both?

Unlike ecolabels, green marks can be filed by anybody as an ordinary trademark. Although both ordinary trademarks and certification marks are related to quality perceptions, certification marks function in this respect rather strictly and statutorily.⁷²

While governments and NGOs are working hard on ecolabels to set a standard that primarily protects consumers and provides them with a stable market, registering green trademarks carries a risk of wasting these efforts, as doing so allows trademark owners to cut corners for using green signs on goods and services and even enforcing these signs over third parties.⁷³ The fact that a trademark can be registered without submitting any further document provided that it is in line with the trademark regulation of the relevant country can result in having a green claim become a registered trademark without actually doing anything green.⁷⁴ Therefore, checking the registry records for trademarks that claim to be green but that have failed to realize being green is important. In order to be able to do this, green marks need to be divided into two subgroups and examined, one being the signs consisting of green claims only, and the second being the trademarks bearing a green claim with another trademark element.

Registering solely as a green mark raises a question as to the presence of distinctiveness.⁷⁵ Indeed, Article 5/1(b) of the Intellectual Property Code (IPC) sets

⁶⁹ Engels & Gruber (n 56) 91.

⁷⁰ Under Art. 31 of the IPC, collective mark is defined as "a sign used by a group of manufacturing or trading or service enterprises". For further information, please see Bainbridge (n 55) 754; Arkan 'Marka' (n 53) 45; Kaya (n 61) p.55; Ayhan Çağlar Yıldız İmirlioğlu (n 53) 39; Tekinalp (n 44 45) 372.

⁷¹ Belson 'Ecolabels' (n 25). 103

⁷² Alexandra Mogyoros, 'Improving eco-labels: are green certification marks up to the task?' (2023) 18(5) Journal of Intellectual Property Law & Practice 367, 368.

⁷³ Mogyoros (n 66) 368.

⁷⁴ Mogyoros (n 66) 370.

⁷⁵ Thomas Watson, 'Green Marketing: It's not All Bunnies and Flowers' (2010) 27(6) Intellectual Property Law 34, 35;

ex-officio refusal of a sign that has no distinctiveness, while Article 5/1(c) regulates the refusal of signs that have a descriptive nature in commerce or that define the source or qualification of a product or service. In order to be able to talk about the possibility of misleading the consumer, the trademark must contain false information that is objectively suitable for misleading, and the element of misleadingness should be evaluated in terms of the consumer group that the goods and services used by the trademark address.⁷⁶ Research clearly reveals that green marks obviously have this feature.⁷⁷

TPTO's approach to the descriptive and/or non-distinctive nature of green marks that solely involve a green verbal claim is rather stable, and the signs are rejected based on these *ex-officio* grounds when they are directly linked to their aim. A short search through the online TPTO's database for trademarks consisting of *organik* [organic] reveals five trademark applications have been rejected either completely or just for the relevant goods/services based on the classification scope of the applications due to being descriptive for these goods and/or services. TPTO rejected another 19 trademark applications containing the term *doğal* [natural] and one application for *ekolojik* [ecological]. However, when searching for trademarks containing the term *eco*, 14 of the 27 trademark applications had been rejected; the reason for most of them being rejected had occurred on grounds other than a descriptive nature or lack of distinctiveness. In addition, the term *yeşil* [green] had been subject to 22 filings, of which only 10 were deemed invalid, with the reasoning being the same as in the *organik*, *doğal* and *ekolojik* filings.

While the search for green marks can be extended, their outcome will be the same. Wven though TPTO has a rather stable approach to green trademarks only consisting of this green term with no distinctive element, TPTO has no settled approach to other terms that can be interpreted as green. The fact that green marks have no established terminology or settled rule regarding intellectual property offices' approaches to these kinds of marks results in different decisions to the same kind of filings. The changes in consumers' and producers' approach to environmentally friendly goods has also been reflected in language, which is also alive and changing, and some terms have gained additional importance. For instance, *Yeşil* has been a registered trademark for shoes in Nice Class 25 since 1990, and the experts who examined the application back then had not considered *yeşil* to be a trademark that could eventually lead to a green claim. Despite *Yeşil* simply being the surname of the authorized person of the applicant company in the referred trademark, its impression as a word has changed

Jennifer M. Hetu & Anessa Owen Kramer, 'It's Not Easy Being Green: Use of the Terms Organic, Sustainable, and Natural in Trademarks and Advertising' (2011) 4(1) *Landslide* 46, 46; Belson 'Ecolabels' (n 25) 101.

76 Sevilay Uzunalli, *Avrupa Birliği'ne Uyum Sürecinde Markanın Köken Ayırt Etme İşlevi ile Bağlantılı Kavramların Yorumu 'Köken Ayırt Etme'* (Çağ 2008) 128–129.

77 Please see Section 2.2.

among consumers since its registration date. Therefore, previously registered trademarks may pose the risk of being deceptive after a certain time.

The example trademark searches mentioned above were based on verbal elements only, as the online database of the Office does not have a search tool for colors or other signs seeking to be registered as trademarks. Still, a trademark can undoubtedly create the impact of being green throughout its colors, logo, other visual elements, or any other sign that can be registered as a trademark, even if the verbal elements contain no green claims. Therefore, the overall impression of a sign needs to be reviewed when determining the applicant's intention to register it as a green mark or not, and this should be done by including but not being limited to verbal elements. While trademark applications solely consisting of green signs may face the problem of being descriptive or of lacking distinctive character, the more important and mostly disregarded problem remains in their deceptiveness, both for those trying to register solely as well as those trying to register with another distinctive element. Just like in ecolabels, deceptiveness can be another valid ground for refusal of trademark applications *ex-officio*, provided that they mislead the public about the nature, quality, or geographical origin of the goods or services or other revocable grounds. This raises the question as to whether the tens of thousands trademark applications filed before TPTO with green claims in one way or another have in fact kept their word at being environmentally responsible or not. Although most of them have been examined and rejected based on their deceptive nature, obviously not all of them were rejected.

TPTO's 2021 Guideline⁷⁸ on Examination of Trademarks Based on Article 5 of IPC No. 6769 (the 2021 Guideline) stated how *ex-officio* refusal regulations are to be applied to the trademark applications by also giving examples. The 2021 Guideline stipulates a two-staged examination in terms of the deceptiveness examination and seeks answers to two questions. The TPTO first answers whether or not the application includes a deceptive or misleading term regarding the nature, quality, or geographical origin of the goods or services. A positive answer raises the second question of whether the targeted consumers may in fact be misled because of the term/sign or not.⁷⁹

Although the explanations in the 2021 Guideline seem fitting for signs with green claims, it has yet to solve the problem, as the TPTO justifiably seeks answers to these queries based on the signs and the goods and/or services listed in their scope. For instance, TPTO considers the trademark application "Chicken Deluxe Sandwich Crunchy" as deceptive for the goods "sandwiches with meat, sandwiches with pork, and sandwiches with fish," because the term chicken in the application directly

⁷⁸ Turkish Trademark and Patent Office, *Marka İnceleme Kılavuzu* [Trademark Examination Guideline], (turkpatent.gov.tr, August 2023) <https://www.turkpatent.gov.tr/duyurular/marka-inceleme-kilavuzu-guncellendi-18082021>

⁷⁹ Trademark Examination Guideline (n 71) 305.

creates the impression of the goods in its scope to be made of chicken while actually covering other type of products.⁸⁰ Because Turkish trademark law does not require any supporting documents to be submitted when filing a green trademark, the 2021 Guideline narrowly interprets the grounds for refusal for green marks and rejects applications provided the goods and/or services listed in their scope include goods and/or services that can be directly understood from the wording to be environmentally unfriendly.

6. Alternative Courses of Action to End Greenwashing and Protect Consumers

Registering a green mark benefits from a gap in trademark legislation, as this provides the trademark owner legitimate grounds to use the term on its offered goods and/or services without requiring to any documented proof about being green and results misleading consumers. The EU, the US, and Türkiye have all attempted to overcome the negative effects of such uses on consumers by regulating certain markets for the use of green marks and by preventing their use in advertisements.

In Türkiye, Organic Agriculture Code No. 9085 and the Organic Agriculture Regulation set the principles and conditions of organic agriculture and also monitor producers through the Ministry of Food, Agriculture and Livestock as well as organizations authorized by the same Ministry. They can administer both administrative fines and other sanctions to producers who act counter to these regulations. This affects the aspect of trademark law regarding actual use. Indeed, a trademark owner who registers a trademark containing the term organic cannot use it for goods that are not produced in line with these regulations. However, this is a very limited area, and the rest of the trademark filings in other sectors with green claims remain unattended as they are not covered within the scope of these regulations.

The common points between trademark law and advertising law are to inform consumers correctly, to prevent them from being misled, to not include deceptive elements in trademarks, and to prevent unfair gain and thus unfair competition.⁸¹ As a result, another aspect of advertising law is to protect consumers and other competitors. Article 17 of the Advertising Regulation⁸² stipulates that advertisements cannot be made in a manner that exploits consumers' environmental sensitivity or possible lack of knowledge in this area and that environmental signs, symbols, and

80 Trademark Examination Guideline, (n 71) 306.

81 İlhan Kara, *Tüketici Hukuku*, (Engin, 2015) 195; Yılmaz Aslan, *Tüketici Hukuku Dersleri* (Ekin 2021) 81; Aydın Zevkliler/Çağlar Özel, *Tüketicinin Korunması Hukuku* (Seçkin 2016) 419; Elif Eşiyok, 'Türkiye'de Reklamların Denetimi: Reklam Kurulu Kararları Üzerinden Bir İnceleme' (2018) 9/2 İnönü Üniversitesi Hukuk Fakültesi Dergisi 593, 594.

82 RG 10.01.2015/29232. The provision in this regulation to protect consumers even exceeds the harmonization aim as the reference EU Directive No. 2005/29 does not contain the wording "environmental effect" in the relevant clause. For further explanation, please see Alper Çağlar Koyuncu, *Tüketici Hukuku Çerçevesinde Haksız Ticari Uygulamalar* (Seçkin Yayıncılık, 2022) 80.

approvals cannot be used in a deceptive manner.⁸³ The exploitation of environmental sensitivity is subject to administrative sanctions such as broadcast suspension, publishing a correction, or administrative fine within the context of the provisions of the Law on Consumer Protection and the Turkish Commercial Code (TCC) on unfair competition.⁸⁴ The aforementioned acts are clear examples of unfair competition and are regulated under Article 55/ Paras.1-a and 2 of the TCC regarding behaviors and commercial practices contrary to the rule of good faith as “making untrue or misleading statements about itself, its commercial enterprise, business signs, goods, work products, activities, [sic] and business relations, or putting a third party ahead of the competition by the same means.” This allows the legal and criminal liability provisions regarding unfair competition to be applied.⁸⁵ In addition, consumers are able to apply to the relevant authorities or courts for elective rights arising from defective goods or services and to claim compensation.⁸⁶ The recent Guidelines for Environmental Claims in Advertising⁸⁷ (the Advertising Guidelines) was prepared based on the Advertising Regulation and the decision rendered in the Advertising Board’s meeting in December 2022. The Advertising Guidelines define environmental claims as statements or images in a commercial advertisement or commercial practice that communicate the components, method of production, supply chain, use, or disposal of the goods or services in question provide environmental benefits or do not cause adverse environmental impacts.

Among other decisions, the Advertising Board decided to cease the commercials for hygienic products from a company based on the facts that the environmental claims used in the commercials (e.g., breaks down in soil, breaks down in nature, protects the atmosphere, and helps reduce carbon dioxide emissions with its biopolymer content) could not be proven through comprehensive evidence in line with the advertising regulations and that such claims mislead consumers and abuse their sensitivity regarding the environment or probable lack of knowledge on the subject matter.⁸⁸

83 For further detailed explanations on environmental advertising, please see Kara, 197; Aslan, 81; Zevkliler & Özel, 433; Esin Gürbüz Güngör, ‘Tüketicilerin Çevre Konusundaki Duyarlılığına Yönelik Reklamların Hukuki Açından İncelenmesi’ (2021) 12(1) Ege Stratejik Araştırmalar Dergisi 21, 26.

84 For administrative sanctions please see Law on Consumer Protection Art. 61, 62, and 77 Para.12.

85 For civil liability please see Turkish Commercial Code Art. 56; for criminal liability please also see Turkish Commercial Code Art. 62. For further detailed explanations on Art. 55 Paras. 1-a and 2, please see Sevilay Uzunallı, *Haksız Rekabet Hukuku*, (Oniki Levha, 2016) 150–151.

86 Please see Law on Consumer Protection Art. 11 and Turkish Code of Obligations Art. 227.

87 Turkish Republic Ministry of Trade, *Çevreye İlişkin Beyanlar İçeren Reklamlar Hakkında Kılavuz* [Guideline for Environmental Claims in Advertising] (tüketici.ticaret.gov.tr, August 2023). <https://tuketici.ticaret.gov.tr/data/63ada5bc13b876a1c8715f73/2023Çevreye%20İlişkin%20Beyanlar%20İçeren%20Reklam.pdf>

88 For the Advertising Board’s Decision No. 2023/107 dated June 13, 2023, the full text can be accessed here: <https://ticaret.gov.tr/tuketici/ticari-reklamlar/reklam-kurulu-kararlari>
For other decisions from the Advertising Boards, please see Gürbüz Güngör (n 75) 43.

The approach has been the same in the USA and the UK. Forty cases have appeared before the National Advertising Division (i.e., the ad industry's self-regulatory body in the US), the Federal Trade Commission (FTC; the US consumer protection agency), or Advertising Standards Authority (ASA) in the UK, and an additional 23 cases appeared in the first half of 2023.⁸⁹

Türkiye's Advertising Board has a strict approach to environmental claims and aims to protect consumers in the most comprehensive manner. In order to count a greenwashing act as successful, it has to mislead consumers by creating the fake image of being eco-friendly while having no substantial grounds in reality.⁹⁰ Nevertheless, the decisions on advertisements are rendered individually and do not affect the status of trademarks.

C. An Alternative Solution to the Current Status of Green Marks

The number of green marks both before the TPTO and foreign trademark offices show the urgency for regulating trademark law to cover this gap. Even though the drafted Green Claims Directive aims to regulate the market for ecolabels, it shows the EU's approach to self-declared claims, and the EU seems to be sitting on the fence in the battle of self-declared trademarks and misleading consumers. Surveys show that more than half of products released to the market with green claims are either vague, misleading, or contain unfounded information.⁹¹

Banning self-declared labelling is a hugely important step that has even been marked under the Green Claims Directive by noting the expected direct and indirect administrative costs for managing and operating labels.⁹² Even though these references on the Green Claims Directive only relate to ecolabels and self-declared labels, national or international authorities cannot consider the aim of this proposal to be beyond the problems in trademark registries. The Green Claims Directive proposes the establishment of verifiers for ecolabels, and these verifiers must be an officially accredited independent body with no conflicts of interest so as to ensure the independent and professional examination and judgment of cases.⁹³ The burden to monitor enforcement of the Green Claims Directive is also explicitly placed on the member states.⁹⁴

89 'Companies Accused of Greenwashing-When companies green it, they better mean it' (truthinadvertising.org, 13 June 2023). <https://truthinadvertising.org/articles/companies-accused-greenwashing>

90 Ende, Reinhard, & Göritz (n 3) 156.

91 Green Claims Directive (n 21) 3.

92 Green Claims Directive (n 21). 15.

93 Green Claims Directive (n 21). 23.

94 Green Claims Directive (n 21) Art. 20.

Having Türkiye follow the process of this Green Claims Directive and its possible effect and adapt it to the country's legal system are important, as Türkiye is in the process of harmonization with EU regulations and trademark regulations for this subject matter specifically. Harmonizing the law may result in banning self-declared labelling, in introducing a set structured process for providing ecolabels, and in cleaning the TPTO's registry records by purging deceptive green trademarks, and these should also be taken into consideration. In order to prevent the "registration of misleading marks in terms of the nature and quality of the goods or services" under Article 5 Para. 1-f of the IPC, this study is of the opinion that applicants who apply for green marks should be able to provide a document that states the mark is not misleading. In this context, Article 11 Para. 1-d of the IPC regarding the documents to be submitted in the trademark application should be amended, and the obligation to use an accredited certification mark (ecolabel) should be introduced with regard to green marks. The obligation should be stipulated for submitting a document stating that the goods or services for which the green mark is used have been produced in accordance with the technical specifications of the certification mark or that they have the capacity to be produced in this way for goods or services that have not yet been placed on the market. Again, Article 15 regarding the Authority's power of examination should be amended and the effects a lack of documentation has on the application should be regulated and clarified. As is the case in the current legislation regarding deceptiveness, the trademark application should enjoy its original application date provided that it can prove relevant documents in due time. Detailed explanations should be provided in the Trademark Application Guide in order to prevent confusion among applicants. With an amendment to the legislation, a transitional provision should be introduced, and a timetable should be set for filing documents with the TPTO for potentially misleading green marks; trademarks for which documents are not filed should be cancelled upon the request of the relevant persons pursuant to Article 26 Para. 1-c of the IPC.

TPTO does not employ technical personnel to evaluate whether submitted documents regarding the non-deceptive nature of the green mark reflect the truth or not. Therefore, collaboration needs to be established between TPTO and the Ministry of Environment,⁹⁵ which conducts the ecolabel evaluations in Türkiye. In fact, the obligation in Article 13 of the Green Claims Directive imposed on member states to make a relevant regulation is an indication of this. In this context, the IPC needs to be amended, as well as the relevant legislation, to ensure interinstitutional cooperation. If necessary, new units may also need to be established within institutions. In line with Article 16 Para. 1 of the Green Claims Directive, establishing a substantiated complaint mechanism before the competent authorities based on objective circumstances to be filed by persons with legitimate interests is also necessary for

⁹⁵ Please see section 2.2.1

investigating an applicant's failure to comply with regulations.

After amending the legislation, however, the green marks registered as non-deceptive pursuant to Article 5 Para. 1-f of the IPC should be considered for redocumentation at regular intervals regarding their continued use in accordance with the technical regulation on the ecolabel qualifying the product or service. In this regard, Article 14 Paras. 8–9 of the Environmental Labeling Regulation may be taken as an example in our opinion. According to this provision, the use of the Turkish Environmental Label is granted for a period of 4 years; if requested 180 days before the expiration of the term, the Ministry may extend the term once it has evaluated the technical review commission. Because the user of the environmental label can use it as long as it complies with the criteria of the product or service group permitted for use, when renewing the criteria, the user of the environmental label is given a transition period of 6 months to comply with the new criteria and is expected to prove that production has been made in compliance with the new criteria within this period. In this context, one may suggest to include a provision stipulating that the owner of the green marks who uses the environmental label must also submit the relevant documents to the Authority and that the trademark may be canceled in case of failure to submit the document.

Considering the natural fit of ecolabels as certification marks, TPTO's database should be cleaned regarding green marks unless they can prove their claims with concrete evidence. This will surely create administrative costs and a workload considering the high number of applications that have been filed.⁹⁶ Still, this seems to be the best possible option for protecting consumers in the current volley of green claims to which they are exposed.

III. Conclusion

As a result of the development of environmental consciousness, consumers' as well as companies' appetites toward eco-friendly goods and services have grown. While satisfying this appetite has been positive both for the Earth and consumers, having this be done without trickery is vital. Trademark law is one of the most important barriers to preventing this approach of trickery and ensuring that consumers in fact purchase something that is actually a green product when they encounter a trademark or label making that claim. Companies investing huge amounts of money to make their manufacturing process and released goods and/or services green should also be in a favorable position among other companies. This can only be provided if companies that greenwash are exposed and the market is regulated equally for all companies that claim to be eco-friendly. This will surely take some time, as it requires

⁹⁶ Such a risk is also recognized in the Green Claim Directive and even points to the need for a Union-wide regulation to reduce these costs for SMEs. For further explanations, please see Green Claims Directive (n 21) 13, 14, 15.

certain legislative and administrative works, and this requirement is undoubtedly in line with the EU's Green Claims Directive; however, the results will be worthwhile, as this will protect consumers, set a fair competitive environment for producers, and last but not least, will eventually help nature by reducing the harm associated with uncontrolled consumption.

Peer-review: Externally peer-reviewed.

Author Contributions: Conception/Design of study: Ç.Y.Ö., B.D.Ö.; Data Acquisition: Ç.Y.Ö., B.D.Ö.; Data Analysis/Interpretation: Ç.Y.Ö., B.D.Ö.; Drafting Manuscript: Ç.Y.Ö., B.D.Ö.; Critical Revision Of Manuscript: Ç.Y.Ö., B.D.Ö.; Final Approval And Accountability: Ç.Y.Ö., B.D.Ö.

Conflict of Interest: The authors has no conflict of interest to declare.

Financial Disclosure: The authors declared that this study has received no financial support.

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