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AVUKATLIK BÜROSU

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MEDIA AND ADVERTISING LAW IN TÜRKİYE
KEY DEVELOPMENTS AND PREDICTIONS

2024

Technology, Media and Telecom

We provide regulatory, transactional and dispute management services in TMT business sectors involving all aspects of Turkish telecommunication and internet law, private broadcasting legislation, electronic communication services and infrastructure, wireless equipment rules and regulations and the structuring of telecommunication projects.

We represent clients before regulatory bodies including the Information Technologies and Communication Authority, Radio and Television Broadcasting Authority, the Advertisement Board, Advertisements Self Auditing Committee, and the National Lottery Administration.

We assist clients on regulations relating to advertisements, promotional campaigns, product labelling and packaging, including advertisement clearances, sweepstakes, competition, and prize related promotional campaigns, product liability and warranty.

We also provide data protection advice, including compliance with data protection legislation, inter-company data transfers and consolidation agreements, transfer of data to third parties or abroad, website privacy policies and terms of use under Turkish law.

We have particular expertise in corporate deals and transactions in the TMT sector and represent multinational investors in Turkey including advising on direct establishment, M&A and corporate advisory services.

Our dispute management services in the TMT sector includes representing clients before the civil and administrative courts and authorities. Our clients benefit from our experience in all types of intellectual property and commercial litigation.

We also represent leading technology companies in relation to their trademark prosecution work and represent them in trademark opposition proceedings before the Turkish Patent and Trademark Office.

Introduction

The year 2023 was witness to important and significant developments for the practice of advertising law in Türkiye. While, some Guidelines were published by the Advertisement Board based on existing regulations, on the other hand, new legal regulations entered into force through amendments to the existing regulations. In addition, as a result of the effective examinations carried out by the Advertisement Board, prominent and exemplary decisions were rendered in terms of commercial advertising and unfair commercial practices.

According to information obtained from publicly available sources, in 2023, the Advertisement Board imposed administrative fines amounting TRY 114,139,768 in total in addition to suspension penalties on 762 files identified as deceptive advertisements and unfair commercial practices out of the 2,007 files it reviewed. In 2024, administrative fines for deceptive and misleading commercial advertisements and unfair commercial practices were updated: there is a TRY 109,988 fine if the violating advertisement is broadcast through a local television channel and TRY 2,200,258 TL if the violating advertisement is broadcast through a national level television channel. It is foreseen that effective examination by the Advertisement Board will continue in 2024 and the increase in administrative fines shall act as a deterrent.

The administrative fines regulated under Article 77 titled "Penalty provisions" of the Consumer Law No. 6502 will be applied as of January 1st 2024 with an increased rate of 58.46%, as announced by the Ministry of Treasury and Finance following the revaluation of 2023 rates in accordance with Article 17(7) titled "Administrative fine" of the Misdemeanors Law No. 5326. Accordingly, administrative fines for deceptive and misleading commercial advertisements and unfair commercial practices will be applied as TRY 109,988 if the violation is realized through a television channel broadcasting at local level and TRY 2,200,258 if the violation is realized through a television channel broadcasting nationwide. An administrative fine of TRY 1,100,129 will be imposed if the violation was committed through national level periodical publications, TRY 550,059 if the violation was committed through radio and internet broadcasting nationwide, and TRY 54,987 if the violation was committed through radio and text messages or other media at the local level.

In 2023, important new amendments were made to the existing legislative rules. In this context, important regulations were enacted by the Ministry of Health regarding the use of health claims in food and food supplements. The Regulation on the Health Claims, which is a new regulation on health claims in food and food supplements, entered into force; and the Guideline on the Health Claims in Food and Food Supplements was published by the Turkish Medicines and Medical Devices Agency in parallel with the amendments made. The Advertisement Board published Guidelines on Consumer Reviews.

New style advertisements, which emerged as a result of the changes in commercial advertisements, were on the agenda of the Advertisement Board in 2023. Upon the emergence of unfair commercial practices known as “dark patterns”, which significantly disrupt the economic behavior of consumers, such advertisements and practices entered the agenda of the Advertisement Board.

In addition, advertisements created by artificial intelligence were examined by the Advertisement Board for the first time in 2023. The Advertisement Board decided to suspend various advertisements created by ChatGPT, which contain expressions that include the perception of superiority over competing products or companies and are not based on objective research results.

Finally, the Constitutional Court annulled the power of the Advertisement Board to block access to infringing content published on the internet, finding it contrary to the principle of proportionality.

This document discusses important developments in advertising and media law in Turkey and some of the recent decisions of the Advertisement Board that provide guidance on these issues.

Green or Simply Greenwashing?

Advertisers frequently integrate environmental claims into their advertisements and promotions to portray their products and services as eco-friendly or green, and to shape consumers' perception as to their positive environmental impact. This is particularly influenced by the growing environmental consciousness among consumers and advertisers. However, to prevent advertisements that may be false and misleading to consumers, or which exploit their environmental sensitivity, and potentially lead to unfair competition among competitors, detailed legal regulations regarding the use of environmental claims need to be established. This way, the protection of consumers and the prevention of unfair competition among advertisers can be ensured.

The primary goal of the legal rules regulating advertisements featuring environmental claims in Türkiye revolves around this core principle. Article 17 of the Regulation on Commercial Advertisements and Unfair

Commercial Practices ("Regulation") specifically regulates environmental claims in advertising. Accordingly, (i) advertisements must not abuse consumers' environmental sensitivity or their potential lack of knowledge; (ii) environmental signs in advertisements cannot be used in a deceptive manner; and (iii) environmental claims must be substantiated by scientific proof and technical demonstrations based on scientific studies, namely scientific evidence from the relevant departments of universities.

To guide implementation of the Regulation, the Advertisement Board enacted the Guideline for Environmental Claims in Advertising ("Guideline") in December 2022. Aligned with the provisions of the Regulation, the Guideline provides a road map on how to most appropriately make environmental claims in scope of advertisements and commercial activities by use of images and statements.



The Advertising Board is also particularly sensitive and attentive to advertisements that contain statements regarding targeted environmental impact in the future and wishes to prevent the exploitation of consumers' sensitivities by using statements in a misleading manner. Even before the enactment of the Guideline, the Advertisement Board rendered decisions examining aspirational claims related to targeted future environmental impact. In some cases, it was determined that the burden of proof was not fulfilled, while in other cases, it was determined that the relevant claims were supported by a clear and verifiable strategy plan of the advertiser.

For example, the Advertisement Board, in its decision dated October 2022, evaluated that an air transportation company's advertisements claiming "We Are Reducing Our Flight-Related Carbon Emission Intensity by 20% by 2030!" was related to the company's future targets and the Advertisement Board ruled that the said target was based on a clear and verifiable strategy plan of the company, and therefore, the claims were not illusory and were not in violation of the advertising rules.

In another decision issued in November 2022, the Advertisement Board scrutinized aspirational claims such as "With our bottles made of 25% recycled plastic, we aim to prevent the production of an average of 70 tons of pure plastic", "We aim to achieve net zero emissions by 2039, before 2050 as set by the Paris Agreement" and "Most of the

components of our products are composed of highly biodegradable ingredients and our goal is to make this 100%" for a cleaning product. Based on the information, documents and test results submitted by the advertiser in connection with these claims, the Advertisement Board held that these claims were substantiated and were compliant.

The Advertisement Board clarified in the Guideline that aspirational environmental benefit claims can be used only if such claims are included in a strategy plan that is publicly available and verifiable. In other words, aspirational claims must not be misleading, advertisers must be able to demonstrate that such goals are scientifically provable.

After enactment of the Guideline, the Advertisement Board clearly referred to such principle in its recent decision dated June 2023. The Advertisement Board examined the "Zero Carbon Target" claim of an advertiser. The advertisements claiming "We have set a new target for ourselves; Zero Carbon Target! Within the framework of the Zero Carbon Target, new updates in our production areas, supply chain and products", "We redesigned our globally unique products with the Zero Carbon Target. We prefer 100% recyclable films in product packaging and used plant-based dyes in its minimalist design" were found to be misleading. The Advertisement Board reasoned that environmental aspirational claims can be used only if such claims are included in a strategy plan that

is publicly available and verifiable. The Advertisement Board held that the claims published in the company's website could not be substantiated by sufficient evidence to be gathered from the universities or accredited research, testing and assessment institutions. The Advertisement Board issued permanent cease order for these advertisements.

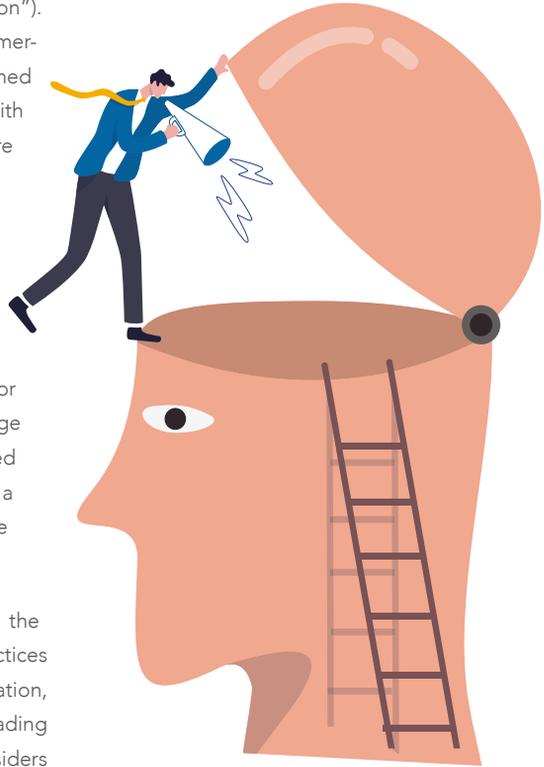
Based on the decisions, it is evident that the Advertisement Board conducts a thorough assessment regarding the basis of aspirational environmental claims and examines whether the burden of proof is properly fulfilled or not as per the legislation in force. The Advertisement Board established a uniform practice in its decisions regarding the supervision of aspirational environmental claims.

Dark Patterns on the Advertisement Board's Agenda

Unfair commercial practices, also known as the "dark patterns", have entered the agenda of the Advertisement Board. Dark patterns may in fact be considered as unfair commercial practices regulated under the Regulation on Commercial Advertising and Unfair Commercial Practices ("Regulation"). Pursuant to the Regulation, a consumer-oriented commercial practice is deemed to be unfair if it does not comply with the requirements of professional care and if it significantly impairs or is likely to significantly impair the economic behavior of the average consumer or the average member of the group to which it targets. Consumer-oriented commercial practices are considered to significantly distort the economic behavior of consumers if they reduce the average consumer's ability to make an informed decision and lead them to execute a contract which they would not otherwise be a party.

Accordingly, within the scope of the Examples of Unfair Commercial Practices presented in the annex of the Regulation, the 22nd subparagraph under the heading "Deceptive Commercial Practices" considers "Using methods that adversely affect the will of consumers to make a decision or choice by means of tools such as guiding interface designs, options or expressions regarding a good or service on the internet, or aiming to cause changes in favor of the seller or provider in the decision to be made under normal conditions" as an example of unfair

commercial practice. Therefore, using tools and methods such as manipulative interface designs, options or expressions that adversely affect consumers' will to make a decision or choice in digital environments, especially on the internet, or that aim to cause changes in



favor of the seller or provider in the decision constitutes violation of the principles of good faith, and these acts can be considered as dark patterns.

The Advertisement Board recently decided to impose administrative sanctions on companies that engage in dark practices such as presenting pre-selected options

to consumers, making alternative options difficult in order to direct consumers to certain preferences in order to adversely affect consumers' will to make decisions or choices in digital environments. Accordingly;

- The Advertisement Board evaluated the fact that offering an easier way for annual subscriptions by directing consumers to a page where the purchase can be made quickly, while offering a more difficult way for monthly subscriptions by directing consumers to a page where consumers can obtain more information, as forcing consumers to execute a contract to which they would not be a party under normal circumstances and negatively affecting consumers' will to make a decision or choice.
- The Advertisement Board evaluated the notifications informing that a large number of consumers were attempting to purchase tickets when consumers entered a website to purchase a ticket as having a negative impact on consumers' economic decision-making and choice-making will.
- The Advertisement Board evaluated the pre-selection of the subscription model with the longest term and the most advantageous for the provider when offering various subscription options to consumers as forcing consumers to execute a contract to which they would not be a party under normal circumstances and negatively affecting the consumers' will to decide or choice.
- The Advertisement Board evaluated that, designing the tools for purchasing an updated version of the product offered by the provider in a more attention-grabbing manner while designing the tools to keep the older version of the product in a less distinguishable manner, so as to force consumers to execute a contract which they would not be a party under normal circumstances and negatively affecting consumers' will to make a decision or choice.

Being aware of the fact that technological developments have diversified the ways in which commercial advertisements are created and presented to consumers, the Advertisement Board ("Board") scrutinized the advertising content created by artificial intelligence for the first time during its meeting dated September 12, 2023 and numbered 337.

In Türkiye, there is no regulation that directly addresses advertisements created by using artificial intelligence. The Board evaluated the advertisements in question in accordance with Article 7 regulating the principles of truth and good faith, Article 8 regulating the principles regarding comparative advertisements, and Article 9 regarding the advertiser's burden of proof under the Regulation on Commercial Advertisements and Unfair Commercial Practices.

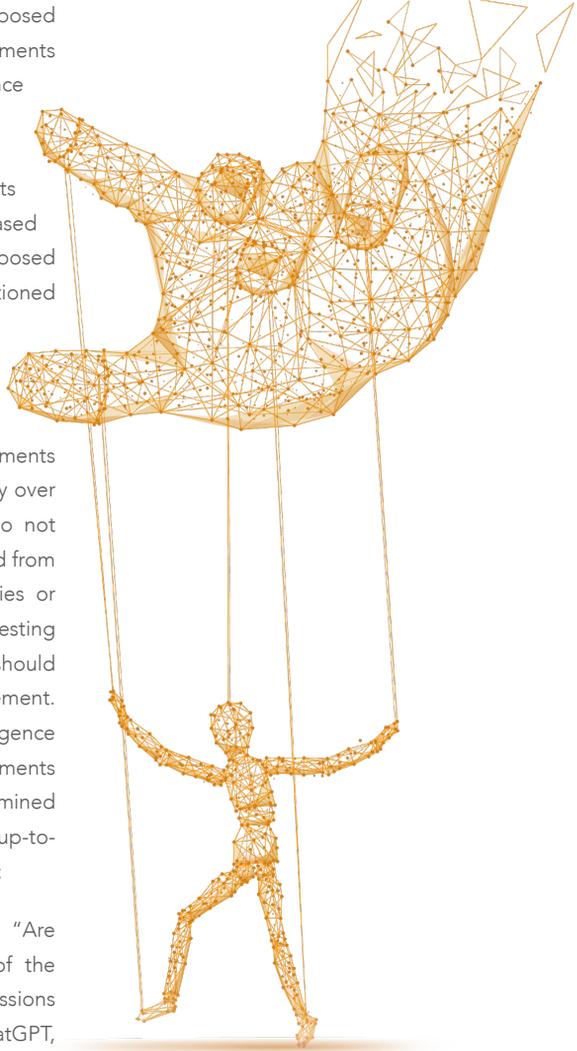
¹ <https://ticaret.gov.tr/haberler/reklam-kurulu-tarafindan-karanlik-ticari-tasarimlar-incelemeye-alindi>

Does Artificial Intelligence Tell the Truth?

Accordingly, the Board imposed administrative sanctions for advertisements created by the artificial intelligence application "ChatGPT", which included statements containing the perception of superiority over competing products or companies and which were not based on objective research results, and imposed suspension penalty on the aforementioned advertisements.

The Board came to the opinion that the advertisements created by "ChatGPT", which include statements containing the perception of superiority over competing products or companies, do not include official research results obtained from the relevant departments of universities or accredited or independent research, testing and evaluation institutions, which should confirm the statements in the advertisement. The Board also used the artificial intelligence itself for verification of the advertisements subject to the examination, and determined that the answers provided were not up-to-date and were not precise. Accordingly;

- "When asked the question "Are you sure?" for the verification of the advertisement containing expressions such as "According to ChatGPT, Türkiye's largest fashion retail brand" the response was, "I apologize, but my latest data only goes up to the year 2021, so I cannot accurately assess the



current situation. In 2021, it was one of the largest fashion retailers in Türkiye. However, it is important to remember that the fashion industry is an area where

competition changes rapidly. Therefore, I recommend verifying the most up-to-date information from current sources.” From this response, it can be understood that the answers provided by the application are not up-to-date and are not accurate. Consequently, the Board evaluated that the statements in the mentioned advertisement consisting of expressions implying superiority over competing products or companies can be misleading for consumers.

- “In the verification of the advertisement containing expressions like “We asked ChatGPT, and we got the only correct answer! Get to know us now for fast, secure, and cost-effective logistics processes to every corner of the world.” when asked the question “What is the name of the company that provides fast, reliable, and cost-effective logistics services to every corner of the world?” artificial intelligence stated that there are many companies providing such services globally, and it is difficult to specify the name of just one company. After mentioning the names of several globally recognized companies, it emphasized that the advertiser’s name was not included in those and suggested conducting research on websites to find the most up-to-date and appropriate company name due to constant changes in the market. Therefore, the

Board concluded that the mentioned advertisement lacks accuracy and currency.

- In the verification of the advertisement with the phrase “Türkiye’s most iconic private television channel”, the artificial intelligence gave an imprecise answer to the question “Which is the most iconic private television channel in Türkiye?” by stating that there may be many different opinions regarding the most iconic private television channel among Turkish television channels. As a result, the Board considered that the statements in the advertisement in question were misleading for consumers due to the lack of certainty.

Pursuant to the aforementioned decisions, it is observed that the Board, in verification using artificial intelligence, not only asks the artificial intelligence about the statements in the advertisement, but also asks additional questions such as “Are you sure?” in order to determine the accuracy and timeliness of the data in question. The Board’s approach shows that it has taken into account the criticisms of advertisements created using artificial intelligence receiving data from unreliable sources, outdated data and bias in artificial intelligence algorithms, and has approached this issue with sensitivity.

In addition to the fact that advertisements created by using artificial intelligence may

obtain data from unreliable sources, data may be outdated, there may be bias in artificial intelligence algorithms, and there may also be violations of personal data, intellectual property rights and the rights of third parties, as well as misleading and deceptive advertisements.

Brand communication of alcoholic products to consumers is strictly prohibited in Türkiye and there is full prohibition of advertisement of alcohol, any manner in all forms of media. This ban includes broadcasts on TV and radio, advertisements in cinema, product placement, printed media, as well as advertisements on social media and digital platforms.

Alcoholic Beverage Advertisements through Alibi Branding

Alibi branding is an alternative mechanism for promotion of alcohol brands and in fact, this is a grey area. Although there is total ban of alcohol advertising we observe that alcoholic beverage companies launch their online media campaigns with alibi branding that can be signs without any specific brand, logo, trademark and even company names in which color combinations and patterns of the company are used. In Turkish legislation, there is no clear rule about the use of alibi proxy brands. The Advertisement Board's assessment of the use of alibi brands has also changed over time.

In 2020, The Advertisement Board reviewed the promotional activities of a leading, well-known and reputable Turkish alcoholic beverage company in various event, such as concerts, and cafes, restaurants, bars, pubs, etc., without displaying the trademark or image of the products but with an expression " " (meaning "together, beautiful" in Turkish). The color combination of this expression matches with the relevant well-known brand of the related alcoholic beverage company. In its decision, the Advertisement Board did not find these activities to be contrary to the Turkish law or to the prohibition of alcohol advertising.

- The Advertisement Board, in its decision in 2023, addressed the broadcast of the YouTube channel named "Bozuk Mikrofon" and the program titled "Alo Evrim Ağacı Hattı // Bozuk Mikrofon #15", where the "Efes Malt Bira" branded alcoholic beverage was displayed on the set and shown with its front facing the camera for the entire thirty-four-minute interview-talk show format program, without being consumed. Additionally, in the video titled "Sürekli Masaj İstiyorum // Bozuk Mikrofon #13," published by the same YouTube channel on 20.01.2023, the registered trademark " " no. 2021/082546 of the alcoholic beverage company, Efes Pazarlama ve Dağıtım Ticaret A.Ş., was consistently displayed at the top right corner of the program. The video's description section indicated that concealed advertising was used for the "+1" brand, stating "Whether you are against tropical fruits entering the refrigerator or not, increase your enjoyment by +1 while watching the episode!". Given that advertising and promotion of alcoholic beverages on any platform are prohibited by legislation in force and that the sharing in the mentioned program violated the relevant regulations, the Advertisement Board imposed administrative fines of TRY 347,128 against both the advertiser Anadolu Efes Biracılık ve Malt San. A.Ş., and the media company and decided to suspend these advertisements.

- In another decision in 2023, the Advertisement Board addressed a commercial film posted on Instagram and YouTube where an actor made statements to the audience in a closed environment resembling a restaurant/bar. During the video, it was clearly seen in the background of the bar that only alcoholic beverages branded as "Jack Daniels Whiskey", specifically the varieties "Jack Daniels Old No.7" and "Gentleman Jack," were displayed. At the end of the video, the expression "Jack lives here" appeared on the screen. The "Jack" expression on the screen and seen at various moments in the video located in a bar was identical in font and color to the company's registered trademark. In this context, it was determined that the "Jack" label and the "Jack Daniels" branded liquor bottles clearly visible in the background were perceived by the average consumer as the "Jack Daniels Whiskey" brand in the video narrative and various moments of the video. It was concluded that this composition deliberately created demand using images and implications for alcoholic beverage advertisement that are prohibited by regulations. Therefore, it was decided to impose an administrative fine of TRY 347,128 against the advertiser and to suspend the mentioned advertisements due to the violation of the relevant regulations.

Alcoholic beverage companies carry out marketing and promotional activities by using alibi proxy brands in various platforms. It is observed that the Advertisement Board changed its earlier assessment for these promotional activities, and concluded that advertisements with alibi brands violate the legislation.

Discount Sale Ads and Loyalty Programs Under the Microscope

The Advertisement Board ("Board") closely monitors the discount sales campaigns, which have become a tradition in e-commerce, held in November and known as "Legendary November Discounts", "Fabulous Friday Discounts", where discounts at various rates are announced for a large number of products. The Board imposes administrative sanctions on discount sales advertisements and practices that deceive and mislead consumers and create the perception that there is a higher price discount than there actually is. Accordingly, in 2023, the Board examined and reached opinion on a total of 134 discounted sales cases, whereby it was decided to impose a total of TRY 4,041,59 in administrative fines in addition to the suspension penalty on 119 files that were found to be in violation of the legislation.



Discount sale advertisements and advertisements containing price information are generally regulated under Article 14 of the Regulation on Commercial Advertisements and Unfair Commercial Practices ("Regulation"). In addition, the Board adopted and published the Guidelines on Advertisements Containing Price Information and Discounted Sale Advertisements and

Commercial Practices ("Guideline") as a principle decision in April 2022 in order to provide guidance to advertisers, advertising agencies, media organizations, sellers, providers, intermediary service providers and all persons, institutions and organizations related to advertising.

The Guideline rules in detail the principles for advertisements containing price information and discounted sale advertisements. Under the principles section, the Guideline sets out main principles and presents concrete examples for how to use price related

expressions in advertisements. In ruling these principles, the protection of the rights of the general consumers were considered and sensitivities towards groups such as the elderly, persons with disabilities and children, which are expressed as vulnerable consumer groups were considered.

However, loyalty programs are not considered within the scope of discount sales. As a matter of fact, loyalty programs are generally defined

as practices that allow consumers to collect points for future purchases. The Board has observed that loyalty programs have turned into a discount sales practice covering most of the goods or services offered for sale by an entity. Since it is possible to participate in a loyalty program easily, such as sending a text message, giving consent via a website or mobile application, or filling out a form, it has been observed that the legal rules for consumer protection regarding discount sales can be averted by using loyalty programs and a false perception of discount can be created in consumers.

Therefore, in its meeting dated 09.01.2024 and numbered 341, the Board amended the Guideline and introduced new rules for loyalty programs. A new paragraph 14 was added to existing Article 7 titled "Discount Sale Advertisements" to the Guidelines and it was ruled that advertisements for goods or services offered for sale through a loyalty program may not directly or indirectly create the impression of a discount by using phrases such as "discount", "savings", "special discount/opportunity for XY card/members", "pre-discount price" or visuals such as a downward trend graph.

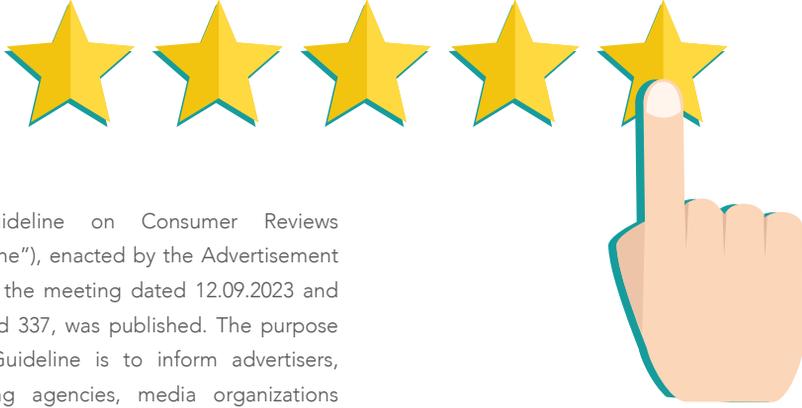
In the administrative sanction decisions issued by the Board regarding discount sale advertisements, it is seen that the issues found to be in violation of the legislation in force are generally the misrepresentation of the price before the discount in discount

sale advertisements and giving false and misleading information to consumers that a discount has been made, where, in fact, no discount is the case, not informing consumers adequately and clearly about the number of stocks and limited number of products subject to the discount, and selling to consumers at non-discounted prices although it is stated that a discount has been made. As evident from the aforementioned decisions, the Board approaches the issue of discount sale advertisements with sensitivity and conducts strict examinations in this regard. The Board clearly announces that it will continue its examinations on discount sales advertisements in the upcoming period. Due to the new rules stipulated for loyalty programs within the Guideline, it is expected that the Board will begin to render decisions specific to loyalty programs that are misleading to consumers.

¹ <https://ticaret.gov.tr/haberler/reklam-kurulu-terafindan-karanlik-ticari-tasarimlar-incelemeye-alindi>

² <https://ticaret.gov.tr/haberler/reklam-kurulu-tuketiciyi-aldatanlara-yilin-ilk-11-ayinda-92-5-milyon-turk-lirasi-ceza-uyguladi>

The Guideline on Consumer Reviews



The Guideline on Consumer Reviews ("Guideline"), enacted by the Advertisement Board at the meeting dated 12.09.2023 and numbered 337, was published. The purpose of the Guideline is to inform advertisers, advertising agencies, media organizations and persons, institutions and organizations engaged in advertising activities on fundamental principles regarding consumer reviews, obligation of informing consumers and procedure for checking reviews before publication, along with commercial practices that are deemed misleading, and applicable responsibility and liability regime.

According to this;

- "Consumer reviews" are defined as statements, endorsements and rating practices expressed by consumers on the internet, communicating any kind of consumer experience pertaining to a purchased product or service, or a seller or provider or intermediary service provider.
- Consumer reviews may pertain to the products or services purchased by consumers, and also to other aspects of the experience related to seller, provider, or intermediary service provider offering the relevant goods or services, as well as supplementary agreements such as delivery, credit, and insurance services in relation to the offered goods or services.
- Only consumers that purchase the product or service shall be allowed to leave reviews in case of online reviews published on the internet.
- Any kind of service agreement or collaboration with third parties agreeing on sharing untrue reviews or using expressions or signs of endorsement in an aim to increase demand for or to cause an adverse impact on a product or service or a seller, provider or intermediary service provider are prohibited.
- Terms and conditions for publishing

For example, consumer evaluation of goods or services purchased from a seller operating on a service provider's platform may be directly related to the quality of the purchased products and the seller's diligence in providing the goods, or may be related to the speed of delivery of the product or the convenience of the cancellation process provided on the service provider's platform in case of cancellation of the product.

consumer reviews may not be set in a manner that prevents consumers from posting reviews or that only allows reviews related to certain topics. Procedure for checking reviews before publication must be reasonable and proportionate. Consumers must be informed of the terms and conditions for publishing consumer reviews and the checking procedure in a clear and understandable manner.

- These reviews should be published for at least one year after the necessary examinations have been carried out, without making any positive or negative distinction, according to an objective criterion such as date, evaluation grade, ranking by seller or provider, without any manipulation. In the event that the consumer or the seller or provider is notified that the consumer victimization related to the goods or services reviewed is eliminated, this situation is published without delay in the same place as the first review after the necessary verification is made.
- The following acts are considered misleading and are not allowed to be published:
 - o Signs and expressions indicating appreciation or endorsement for posts shared on social media account of a seller or provider uttered only in return of benefits provided to those uttering the review,
 - o Reviews for products or service other than the ones purchased,
 - o Reviews for different sellers or providers other than those who sold the products.
- Publication of negative reviews must not be suppressed by way of interfering with the procedure of collecting and processing consumer reviews and creating links with other websites. Sellers, providers, or intermediary service providers are prohibited from engaging in practices aimed at manipulating consumer reviews.
- Consumer reviews containing health claims contrary to the relevant law must not be published. In this scope, use of health claims on a product or service offered for sale should not be permitted.

Regulation on Commercial Advertisements and Unfair Commercial Practices was amended on February 1, 2022 and specific rules for consumer reviews and publication of consumer complaints were then introduced to Turkish Advertising Law. The Advertisement Board effectively monitors consumer reviews. The Guideline, reflecting on the Advertisement Board's perspective on comments, complaints and ratings and their sorting, which play a crucial role in consumers' buying preferences and affect their purchasing decisions, guide advertisers in complying with the legislation and help establishing a uniform practice by the Advertisement Board.

New Regulations on Nutrition and Health Claims

The Regulation on Health Claims for Food and Food Supplements ("Regulation") entered into force through publication in the Official Gazette dated April 20, 2023 and numbered 32169. Regarding nutrition claims, the Turkish Food Codex Regulation on Nutrition Claims was published in the same Official Gazette and entered into force. The Turkish Food Codex Regulation on Nutrition and Health Claims, which regulated nutrition declarations and health declarations for food and food supplements, was repealed.

In line with these amendments, the Guideline on Health Claims for Food and Food

Regulation on Monitoring Health Claims regulating the procedure and principles with respect to surveillance of health claims used on products offered to end consumers.

The amendments regarding nutrition do not substantially change the respective legal regime, instead, essentially serve to consolidate the regulations on nutrition claims under a standalone regulation separate from those regulating health claims. The Turkish Food Codex Regulation on Nutrition Claims will continue to be enforced by the Ministry of Agriculture and Forestry.

The new regulations on health claims introduced fundamental changes. In particular, enforcing power of the Regulation, which was vested in the Ministry of Agriculture and Forestry prior to the amendments, was transferred to the Authority, and the permission requirement, which had to be followed before the Authority required for the use of health claims, was abolished. Therefore, under the new system, the health claims listed in the Guideline may be used for food and food supplements without the need to have any official permission from the Authority and without the need of making any official declaration thereto, provided that they comply with the provisions of the Regulation and the Guideline. The Authority is also vested with monitoring and supervising powers.

Abolition of the permission requirement that



Supplements ("Guideline") was drafted by the Turkish Pharmaceuticals and Medical Devices Authority ("Authority") and was published on the official website of the Authority on 26 April 2023. The Regulation on Health Claims Used for Products to be Offered for Sale with Health Claims was repealed on 13 June 2023 with the publication of the

had be followed before the Authority in order to use health claims in promoting of food supplements, enabled the use of health claims set forth in the annexes of the Guideline for food and food supplements covered under the Regulation and produced or imported by companies that are registered before or approved by the Ministry of Agriculture and Forestry without the need for any application for authorization or making any declaration to any administrative institution, provided that health claims are in compliance with the provisions of the Regulation and the Guideline. However, the Authority, when deemed necessary for the protection of public health, may limit the use of health claims and may request necessary information and documents from business enterprises in the food sector. The health claims listed in the annexes of the Guideline may be revisited by the Authority when deemed necessary for public health and may be amended, suspended or cancelled as a result of Authority's reassessment.

In case of the use of health claims contrary to the provisions of the Regulation, the Authority is authorized to suspend the supply of the product, and to seize, recall and destruct products. Similarly, the Authority may collaborate with other administrative authorities and entities to suspend the promoting activities involving unlawful use of health claims and to remove such promotional content and block access to websites where such use occurs. Additionally, administrative

finances and/or judicial fines could be imposed pursuant to the Pharmaceuticals and Medical Preparations Law no. 1262.

Under the current scheme, a versatile monitoring mechanism is deployed to control the use of health claims in promoting food and food supplements. In addition to the Authority's supervision and monitoring powers:

- The Advertisement Board may impose sanctions including warning, suspension, imposing administrative monetary fines.
- Radio and Television Supreme Council ("RTÜK") is also entitled to supervise the advertisements concerning food supplements.
- Besides, administrative fines and judicial fines are among potential sanctions that could be imposed pursuant to the Pharmaceuticals and Medical Preparations Law no. 1262.

As inferred from the existing versatile controlling mechanism, food supplements are subject to highly strict supervision. In this regard, more than one administrative authority is equipped with powers to monitor various aspects of promoting of products accompanied with health claims.

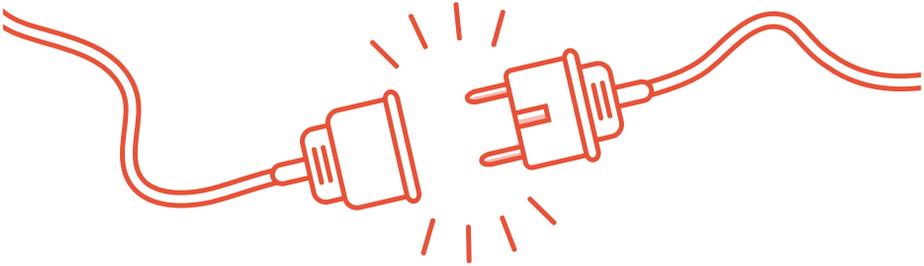
Although it is highly appreciated that ministerial administrative powers regarding the use of health claims are essentially vested in the Authority by eliminating the previous dual structure, effective monitoring and

supervision mechanisms must be developed and implemented to prevent advertisements and promotions that may mislead consumers or distort fair competition, especially considering that the official permission procedure has been abolished by the new Regulation.

Advertisement Board's Power to Block Access was Annulled

The Turkish Constitutional Court ("Court") annulled paragraph 12 of Article 77 of the Consumer Protection Law, which granted the Advertisement Board the power to partially or entirely block access to websites containing unlawful advertising content. The relevant rule was considered to be unconstitutional pursuant to the Court's decision dated 13 September 2023 and numbered 2022/70 E. - 2023/152 K.

violation occurred. However, in cases where it is technically impossible to block access to the violating content or where the violation cannot be prevented by blocking access to the relevant content, the Advertisement Board may decide to block access to the entire website where the violating content is placed." was annulled pursuant to their being considered unconstitutional. Since the legal gap, that might arise due to the annulment of the subject rules, is deemed to damage public



In its decision, the Court ruled that the scrutinized legal rules do not meet the necessity principle, which is the sub-principle of the proportionality principle that is one of the elements required to be satisfied under the Constitution for a limitation of right to be constitutionally compliant. Hence, the Court found that the subject rules are contrary to Articles 13, 26 and 48 of the Constitution.

Pursuant to the decision, the provision stipulating that "In addition to these penalties, if the violation is committed on the Internet, the Advertisement Board may decide to block access to the publication, section, part (in the form of URL, etc.) of where the

interest, it has been decided that the Court's decision will enter into force on 27 July 2024.

The annulled provision was entered into force on 1 October 2022. In the parliamentary working reports prepared with respect to the amending law proposal, the legislative motive for introducing the amended administrative sanction mechanism by inclusion of blocking access power was indicated as the need to provide consumers with stronger protection tools and the need to restructure administrative sanctions taking into account the seriousness of the violating act, fault degree and economic status of the

wrongdoer and following the proportionality and deterrence principles.

In principle, the annulled provision prescribed a staggered administrative sanction mechanism. According to the annulled provision, the power of the Advertisement Board to block access to an entire website would not arise unless it was technically impossible to partially block access to the relevant content or partial access blocking would not suffice to prevent the violation. In other words, the Advertisement Board's power to block access to the entire website was subject to the specific conditions set forth under the law. In practice, it was observed the Advertisement Board thoroughly dealt with enforcing the annulled provision and did not tend to entirely block access to websites containing violating content. Instead, in such cases, the Advertisement Board first reached out to advertisers of the complaint content with request for explanatory information and other proof, and primarily imposed the lighter sanction of blocking access to part or section of the relevant publication where the violating content was placed, rather than automatically blocking access to the entire website.

Nevertheless, it is assumed that the fact that sub-conditions triggering the Advertisement Board's power to block access to the entire website, namely, "technical impossibility to partially block access to the relevant content" and "insufficiency of blocking access to the relevant content for prevention of the

violation" were not precisely substantiated under the law, and the risk of unpredictability arising from the fact that limits of the Advertisement Board's power were not clearly and comprehensively established thereunder had an impact on the Court's rationale to annul the subject rules. It is worth mentioning that the Court did not rule that the mere fact that the Advertisement Board was equipped with the power to block access to websites was unconstitutional per se, however, the Court concluded that the structure of the subject administrative sanction was not in compliance with proportionality and necessity principles. If the legislative authority intends to enact a similar administrative sanction mechanism with the inclusion of blocking access power, it could be sensible to establish a more substantiated balance between the principle of protecting consumers and other constitutional freedoms and to restructure the administrative sanction mechanism taking into account proportionality and necessity principles as addressed in the Court's decision, by simultaneously maintaining the effective appealing mechanisms against Advertisement Board's decisions as previously conferred under the annulled rules.

KEY CONTACTS



HANDE HANÇAR
PARTNER

hande.hancer@gun.av.tr



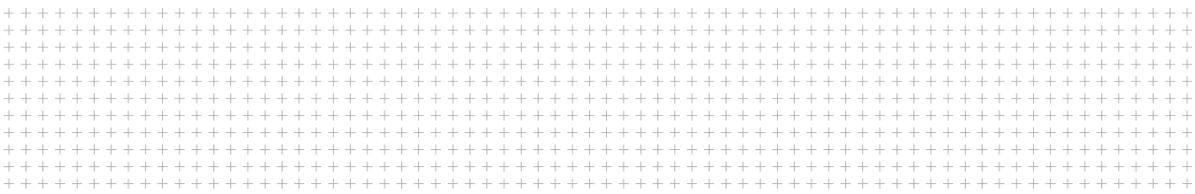
UĞUR AKTEKİN
PARTNER

ugur.aktekin@gun.av.tr



BARAN GÜNEY
MANAGING ASSOCIATE

baran.guney@gun.av.tr



Firm Overview

We are one of the oldest and largest law firms in Turkey and are considered internationally to be among the top-tier of legal services providers.

We are a full-service law firm leading the intellectual property field among others, providing dispute management, advisory, transactional, prosecution, investigation, and regulatory markets law services to domestic and multinational corporations.

We are based in Istanbul, with working and correspondent offices in Ankara, Izmir and the major commercial centres in Turkey.

We operate mainly in Turkish and English and also work fluently in German and French.

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GÜN + PARTNERS
AVUKATLIK BÜROSU

Kore Şehitleri Cad. 17
Zincirlikuyu 34394
İstanbul, Turkey

T: + 90 (212) 354 00 00
F: + 90 (212) 274 20 95
E: gun@gun.av.tr

www.gun.av.tr