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Advertisement Board Issued New Principles for Preventing Misleading Loyalty Programs

The Advertisement Board ("Board") amended the "Guideline on Advertisements Containing Price Information, Discount Sale Advertisements and Commercial Practices" ("Guideline") in its meeting dated 09.01.2024 and numbered 341, introduced new principles for loyalty programs. Loyalty programs are generally defined as practices that allow consumers to collect points towards future purchases. The Board has observed that loyalty programs have recently turned into a discount sales practice covering most of the goods or services offered for sale by the entities. Because it is possible to participate in the loyalty program in a simple way such as sending a text message, giving approval via the 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 overcome by using loyalty programs and an unreal discount perception can be created for consumers. Pursuant to the Guideline, as a rule, if a seller or supplier sells at different prices through different sales channels and/or sales points, the lowest price applied in the last 30 days in the relevant sales channel/point should be taken as the basis for determining the sales price before the discount. It has been assessed that this rule has started to be violated through loyalty programs and that consumers may be misled about discounts by setting unrealistic list prices.

For this reason, new paragraph 14 was added to existing Article 7 titled "Discount Sale Advertisements" of the Guideline 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.

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Besides the recent principles introduced by the Guideline, there is no other specific legal rules regulating loyalty programs. Without prejudice to the new provisions of the Guideline, in general, loyalty programs must comply with the general rules of consumer law and advertising law. Accordingly;

- There should be terms and conditions in written for participation to the loyalty program. These terms and conditions should be presented to the consumers for approval. All terms and conditions of participation for loyalty programs must be clear, understandable and they should in Turkish if directing Turkish consumers in Turkey. The consumers' explicit approval must be obtained for participation.
- It is important that the terms and conditions of participation must be clearly visible
 at any time during the duration of loyalty program on the relevant website of the
 organizer of the loyalty program, on the mobile application, if any, where
 participation is provided, and in the physical store.
- If terms and conditions are to be amended while the loyalty program is live, the amended terms and conditions must be presented through the same channels where the original terms and conditions were available and the changed conditions must not be to the detriment of participants. If possible, participants can separately be notified of the changed conditions.
- The beginning date and ending date, validity period of the loyalty program must be ruled, and it must be clear in the terms and conditions, the consumers must sufficiently be informed about the validity period before entering the loyalty program.
- Loyalty programs generally do not have a "validity period", they are mostly
 organized for an indefinite period. If the loyalty program, which is organized for
 an indefinite period, is decided to be terminated, the ending period must be



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notified to the participants granting them sufficient time to benefit from their earnings before the ending date.

Due to the new rules stipulated for loyalty programs within the Guideline, it is expected that the Board will start to render decisions specific to loyalty programs that are misleading to consumers.