

Sales promotions Q&A: Turkey

by Hande Hançar Çelik and Elif Melis Özsoy, *Gün + Partners*

Country Q&A | Law stated as at 31-Aug-2019 | Turkey

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Elif Melis Özsoy, Associate

Turkey-specific information concerning the key legal issues to be considered when conducting a sales promotion.

This Q&A provides country-specific commentary on *Practice note, Sales promotions: Cross-border overview*, and forms part of *Cross-border commercial transactions*.

Regulatory Framework

1. How does national law regulate sales promotions?

Sales promotions in Turkey are regulated by:

- Law on the Protection of the Consumer No. 6502 (Consumer Law).
- Turkish Commercial Code numbered 6762 (TCC).
- Law on Regulation of Retail Trade No. 6585 (Retail Law).
- Regulation on Commercial Advertisements and Unfair Practices (Advertising Regulation).

- Regulation on Lotteries and Drawings for Non-Cash Rewards (Prize Regulation).

2. What obligations or standards do any national codes of practice for sales promotions impose upon promoters?

The general principles of advertising, which are stipulated by the Consumer Law and the Advertising Regulation, apply to sales promotions in Turkey.

Definition of commercial advertising

Commercial advertisements are defined as announcements published by advertisers:

- In all and any channels.
- Aiming to promote the sale or rent of goods or services, and to inform or convince the target audience, in connection with:
 - trade;
 - business;
 - craftsmanship; or
 - occupation.
- Using means of commercial communication carried out in written, visual, auditory and other similar media.

(Article 4/1(n), Advertising Regulation.)

Therefore, every kind of commercial communication with a promotional intent, including sales promotions, will be regarded as an advertisement.

General standards under Consumer Law

Article 61 of the Consumer Law provides that advertisements must:

- Comply with the applicable laws and principles adopted by the Board of Advertisement regarding general morality, public order and personal rights.
- Be true and correct.

Advertisements must not:

- Deceive or mislead the consumer.
- Abuse a consumer's lack of experience or knowledge.

- Threaten the life of a consumer or the safety of their property.
- Encourage acts of violence or incite committing crime.
- Endanger public health.
- Abuse the elderly, children or disabled people.

An implicit or hidden advertisement, which is defined as including commercial and promotional content in a commercial communication without explicitly indicating that this is for advertising purposes, is also strictly forbidden.

Direct selling and teleshopping

Direct selling and teleshopping advertisements which propose sales transactions to be conducted at the address of the viewer must clearly and accurately define the advertised product or service, together with its price (*Article 27, Advertising Regulation*). Moreover, in such advertisements, a clear return policy must be offered to the target audience, together with the contact information of the advertiser. This is so that the consumer knows that they have a right of withdrawal in relation to the purchased product or service. The sales price of the product or service and the withdrawal right of the consumer must clearly be mentioned in the advertisement.

Prize draws, contest and other promotions

Advertisements, including marketing techniques such as prize draws, contests and other promotions, must adhere to the following rules:

- Goods, services or prizes that are given free of charge along with the advertised goods or services must be as they were promoted and must meet the reasonable level of expectation of consumers.
- If the advertisement states that the consumer will be provided with goods or services as a promotion for buying the advertised goods or services, the amount of such goods or services to be given as gifts or prizes and the validity period of the promotion must be explicitly included in the advertisement.
- If the advertisement announces marketing techniques, it must explicitly contain the start and end date of the promotional period and the conditions for the delivery of the goods or the fulfilment of the service, or the way such terms are announced.

(Article 15, Advertising Regulation.)

Aggressive commercial practices and unfair competition

It is regarded as an "aggressive commercial practice" under the Advertising Regulation, if the consumer is required to pay an amount of money or incur other expenses to claim a gift or similar benefit, creating a false impression that the consumer has earned or will earn that gift or benefit, even though that benefit does not exist.

False or misleading declarations are also considered examples of unfair competition. According to Article 55/1(a) of the TCC, misleading customers with respect to the real value of products using bundling practices and restricting the choice of customers using aggressive sale tactics are sale methods that are contrary to good faith principles.

3. What procedures exist for complaining against a sales promotion? What sanctions can be imposed for infringements of sales promotion laws and codes of practice?

Administrative fines and suspensions

Those who request that their goods or services be advertised, advertising agencies and media agencies, are subject to potential sanctions from the Board of Advertisement where they fail to fulfil obligations under Article 61 of the Consumer Law. These are:

- Administrative fines.
- Precautionary suspension decisions for a maximum duration of three months.

(Article 77/12, Consumer Law.)

The Board of Advertisement can impose either or both of the above penalties, depending on the nature of the violation. The following fines will be applied for the violation as follows:

- An administrative fine of TRY17,094 for violations carried out via local broadcasting activities of a Turkish channel.
- An administrative fine of TRY341,921 for violations carried out via nationwide broadcasting activities of a Turkish channel.
- An administrative fine of TRY8,547 and TRY170,960 for violations carried out via periodical broadcasts on a local and nationwide basis, respectively.
- An administrative fine of TRY8,546 for violations carried out via radio broadcasting made on a local level.
- An administrative fine of TRY85,480 for violations carried out via nationwide broadcasting.
- An administrative fine of TRY85,480 for violations carried out via the internet.
- An administrative fine of TRY42,738 for violations via SMS.
- An administrative fine of TRY8,546 for violations carried out by any other means.

If the violation subject to an administrative fine was repeated within the same year, the Board of Advertisement may increase the above administrative fines by up to ten times.

If the violation is an unfair commercial practice such as an "aggressive commercial practice", an administrative fine of TRY8,546 is imposed (*see Question 2, [Aggressive commercial practices and unfair competition](#)*). If the violation is nationwide, then the administrative fine is increased to TRY85,480.

Private consumer actions

Consumers also have a right of action, through specialised "consumer courts" constituted under the Consumer Law, under which consumers can pursue legal remedies in disputes arising from consumer transactions. There are also Arbitral Commissions for Consumers in each district which are authorised to resolve consumer claims with monetary values of less than TRY2,000.

In cases where a consumer is supplied with a defective product or service, or suffers damage because of a product or service because of a misleading advertisement, the consumer can apply before the Arbitral Commission or Consumer Court (depending on the monetary value of the dispute), and claim either:

- A refund of the product or service's price.
- A replacement of the product, re-provision of the service or free of charge repair, if possible.

If the matter goes to the Consumer Court, the consumer is also entitled to claim compensation for damages.

A consumer can also file for separate compensation for damages in respect of a misleading advertisement or promotion before the authorised civil courts, although this is not a very common remedy in practice.

Private competition actions

If the sale promotion is found to be an act of unfair competition under the relevant provisions of the TCC, the natural or legal persons who have been injured by such acts can bring the following civil actions:

- Declaratory action requesting the determination of the unfairness of the act.
- Prevention of unfair competition.
- Restitution action.
- Compensation action for damages resulting from unfair competition.

(Article 56, TCC.)

Criminal actions can be brought against those who commit acts of unfair competition intentionally (*Article 62, TCC*). Unless such acts constitute a crime that is punishable by a heavier sentence, they are punishable by imprisonment for up to two years and an administrative fine. These criminal sanctions apply to the members of the management or the shareholders who have acted in the name of the legal entity (*Article 63, TCC*). This article also stipulates that security measures may be applied to the legal entities since criminal sentences are valid for real persons only. Article 60 of the Turkish Penal Code No. 5237 (Penal Code) stipulates the security measures for legal entities, including the revocation of relevant licences of the legal entities, and the confiscation of property used in the commission of the offence or income.

Lotteries, prize draws and competitions

4. Does national law permit the use of lotteries as a marketing tool?

The National Lottery Administration (NLA) is the sole entity authorised to organise lotteries and draws with a cash reward, and to issue permits for lotteries and draws with a non-cash reward. Lotteries with cash prizes are otherwise not permitted in Turkey. For further information on prize draws, see [Question 6](#).

5. How does national law regulate prize competitions?

Definition of prize competitions

Prize competitions or contests are defined as a competition (which can be a puzzle, riddle, entertainment programme or other) at the end of which an in-kind or cash prize is given, in which the winners are determined among the participants, either:

- Depending on the knowledge and skill qualifications of the participants either by an elimination method on the basis of the degree of success, or by the assessment of a jury on the basis of the degree of success.
- According to the first specified number of participants.

(Article 4/1(m), Prize Regulation.)

Rules governing prize competitions

Prize contests cannot be organised with a pre-condition of payment or purchases, regardless of the winning outcome (*Article 2(c), Prize Regulation*). In addition, if a promotion is deemed to be a contest, then the terms and conditions of the contest must:

- Be in compliance with the Consumer Law.
- Not contain misleading elements for the consumers.
- Contain terms and conditions of the contest, each of which must be clear and understandable by the participants.

Sanctions

The NLA is entitled to inform the competent governorship of unauthorised prize competitions and may:

- Request the cessation of these activities.
- Make public announcements disclosing unauthorised organisers.

- Prohibit violators of the Prize Regulation from conducting prize contests for up to two years after the initial violation.

6. How does national law regulate prize draws?

Regulatory authority and definition of prize draws

The NLA is the sole authority in Turkey that can:

- Organise lotteries and draws with a cash reward.
- Permit lotteries and draws with a non-cash reward.

If the winners of the promised non-cash prizes are determined by a draw depending on a chance factor for which the procedures and principles are approved by the NLA, the promotion is deemed to be a draw under the Prize Regulation.

Rules governing prize draws

Prize draws require the NLA's official permission if the monetary value of the non-cash prize exceeds TRY115.20.

If the prize draw requires the NLA's official permission, the advertising of that prize draw must incorporate information regarding the NLA authorisation, including the authorisation number and the date on which authorisation was granted. Any such advertisement must also comply with the following:

- Any prize awarded must not be different than that promoted and must satisfy the average consumer expectation.
- Any prize awarded must be provided together with the prize's market price and written terms of the promotion in which it was won.
- The terms of the promotion and its result must be published.

(Articles 15 and 16, Prize Regulation.)

As it is forbidden for minors (the legal age of an adult under Turkish Civil Law is 18) to participate in prize draws, the advertisement of prize draws must explicitly note that minors cannot participate and that they will not be awarded a prize on the basis of age, where accidental or unauthorised participation takes place.

Sanctions

The NLA is entitled to impose the same sanctions and measures as for prize competitions (*see Question 5, [Sanctions](#)*).

7. How does national law regulate the use of tie-breakers in a competition?

There are no explicit laws regulating tie-breakers in a competition.

Price promotions and loss-leadership

8. How does national law control price displays and advertisements in connection with sales promotions?

The main principle concerning price advertising and displays is truthfulness. It is mandatory to place labels on goods offered for retail or containers containing goods, in an easily visible and legible manner, that indicate the product's:

- Price, including all taxes.
- Place of production.
- Distinctive characteristics.

(Article 54, Consumer Law.)

If labelling is not possible, lists displaying the same information must be displayed in appropriate places in a visible manner. If there is a difference between the price indicated on the label, price or tariffs list and the price at the cashier, the price that is in favour of the consumer must be implemented.

In the event of a discount, the price prior to discount must also be displayed on labels or price lists and tariffs or both. The seller or supplier has the burden of proof to show that the good or service subject to the sale is offered for a price lower than the price before the discount.

If an advertisement is targeting children, can affect children, or features a child in the advertisement, it cannot include phrases such as "only/just" used in conjunction with the price information in a manner to create a perception that the price of the good or service is low (*Article 24/1(k), Advertising Regulation*).

9. Does national law regulate the holding of sales events? Does national law regulate the amount of permissible price reductions in sales events?

Sales events with discount or promotional sale campaigns are specifically regulated by the Retail Law.

Retailers are not permitted to make discount events without an indefinite start and end date (*Article 9, Retail Law*). If discount or promotional sales campaigns are being announced by means other than price tags, such as banners or online material, the start and end dates must also be displayed on them in a visible and legible manner.

In any event, the duration of a discount or promotional sale must not exceed three months or, in the event of liquidation according to the relevant provisions of TCC, six months.

Continuous discounts (that is, those which exceed the above time periods) for retail "outlets" are permitted, so long as 70% of the products these continuous discounted sellers carry comprise of the following:

- Goods with low inventory levels due to cessation of production or limited production.
- Goods that are being sold off-season or close to off-season.
- Goods that had been produced to be exported but could not be exported for various reasons.
- Goods having material, economic or legal defects with respect to their shape, colour, size, and so on.
- Goods that had been used for display.
- Returned goods.
- Goods that are sold at their ex-factory cost.

(Article 10, Regulation on Rules and Procedures of Retail Trade.)

Retailers that have satisfied the above requirements can conduct discount sales all throughout the year, if there are easily visible and readable signs displaying such information at the entrance or in front of the place of sale, or at the entrance of the floors or sections which are reserved for continuous discounted sales.

Violation of the Retail Law is punishable by administrative fines from the Ministry of Trade. Non-compliance with the discounted sales rules is punishable by an administrative fine of TRY5,000 (*Article 18/1(c), Retail Law*). Where the breach has been committed by a department store, chain store, affiliated dealer enterprise or special authorized enterprise, the administrative fine will be multiplied by five (TRY25,000). Where it has been committed by a mall/shopping centre, it will be multiplied by ten (TRY50,000). Where the breach was repeated within the same year, the administrative fine is imposed at double the fine for each repeated offence (TRY10,000, or TRY50,000 or TRY100,000).

10. Can promotion prices be compared with genuine manufacturer's recommended prices?

There are no rules that prohibit comparison of promotion prices with manufacturer's recommended prices if they are honest and accurate.

11. How does national law regulate the operation of "introductory offers"?

There are no specific rules against introductory offers if they are honest and accurate.

12. How does national law regulate the use of "free offers", vouchers towards free products and money-off coupons? Does national law permit the practice of cross-couponsing?

Free products

Free products are usually regarded as campaigns under Turkish law. Therefore, advertisements of free products must comply with the general advertising rules (*see Question 2*). In particular, under the provisions of the Advertising Regulation and decisions issued by the Advertisement Board:

- The commitments offered in advertisements to consumers must be real and true.
- There must not be any discrepancy between the free product advertised and the free product received.
- The conditions or details of those commitments must be included in the advertisement in a way that the consumers can become fully aware of them.

Promotions by periodical publishing organisations

The conditions for promotions arranged by periodical publishing organisations, such as physical or online newspapers and magazines, through tickets, coupons, contests and prize draws, are set out in Article 53 of the Consumer Law.

It has been traditionally common for newspapers to arrange promotional activities through the distribution of coupons. Only "cultural" goods and services can be provided to consumers in such a manner (*Article 53, Consumer Law*). The related Regulation on Promotions Arranged by Periodical Publishing Organisations limits cultural goods or services to books, magazines, encyclopaedias, maps, flags, posters, calendars, chess sets, cinema tickets, theatre tickets, museum passes, concert tickets, opera tickets, ballet tickets, exhibition passes, festival and sporting activities, cultural or educational tours and CD or DVD or Blu-Ray related to books, magazines, encyclopaedias, documentaries, films, theatre, music, concerts, opera and ballet.

Periodicals are prohibited from requiring the purchase of this good or service for more than:

- 75 days if they are daily periodicals.
- 18 weeks for weekly periodicals.
- 12 months for periodicals sold with longer intervals.

(*Article 53/2, Consumer Law.*)

The consumer cannot be requested to pay for some or all of the cost for the good or service that is being promoted. Promotions not organised by periodical publishing organisations, but which are directly or indirectly associated with the periodical, are also subject to these provisions.

There are no rules against cross-couponsing.

13. How does national law regulate the use of currency note likenesses?

The Central Bank of the Republic of Turkey (Central Bank) determines and announces the requirements for the reproduction and publication of banknotes' photos or images, including those regarding size, colour, material, resolution and expressions that must be included on the images of banknotes currently in circulation, or withdrawn from circulation, or to be put into circulation (*Article 4, Law No. 5083 on the Currency Unit of the Republic of Turkey*).

In accordance with this, the Central Bank's Announcement on the Reproduction and Publication of Illustrations and Images of Banknotes was published in the *Official Gazette* numbered 25383 and dated 24 February 2004. Under this announcement, reproduction is defined as any tangible or intangible image that:

- Uses all or part of a banknote.
- Causes the image to resemble or give the general impression of a banknote.

This is irrespective of the size of the image, the materials or additional elements or illustrations used, and design alterations made to letters or symbols on the banknote.

The announcement deems reproductions complying with the following criteria as lawful:

- One-sided reproductions of a Turkish banknote, provided that the size of the reproduction is at least 125% of both the length and width or at most 75% of both the length and width of the respective banknote.
- Two-sided reproductions of a Turkish banknote, provided that the size of the reproduction is at least 200% of both the length and width or at most 50% of both the length and width of the respective banknote.
- Reproductions that are original banknote size, or in different sizes, but the printing is made on a material other than paper (for example on a metal surface).
- Electronic reproductions, as long as the resolution of the electronic reproduction in its original size must not exceed 72 dots per inch.
- On electronic reproductions, the expression "ÖRNEKTİR GEÇMEZ" (Turkish for "Specimen Not Valid") or "SPECIMEN" must be printed diagonally across the reproduction in Arial font or a font similar to Arial font. In addition:
 - the length of the expression must be at least 75% of the length of reproduction;
 - the height of the expression must be at least 15% of the width of the reproduction;
 - the characters of the expression must be written in a non-transparent (opaque) colour contrasting with the dominant colour of the respective banknote;
 - in two-sided reproductions, the expression must be printed on both sides.

If the images using the likeness of the Turkish Lira do not adhere to these rules, it is considered that the image would not be understood by the average person to be a reproduction of a banknote, and would therefore be subject to the provisions of the Penal Code on "counterfeiting money". Anyone who produces counterfeit money of legal tender in Turkey or foreign countries, or imports into Turkey, transports, stores, or issues counterfeit money, is:

- Sentenced to imprisonment of two to 12 years.
- Subject to a judicial penalty of up to 10,000 days.

(Article 197, Penal Code.)

14. How does national law regulate the giving of promotional gifts and product samples?

In addition to the general principles (*see Question 2*), there are specific rules with respect to promotional gifts and samples given together with certain products.

Commercial advertisement of food and beverages containing nutrients and substances that are not recommended for excessive consumption in general diets is not allowed together with, or within, children's programmes (*Article 24/A, Advertising Regulation* (which entered into force on 30 June 2019)). Promotional gifts in conjunction with products that are not recommended for excessive consumption are prohibited if such gifts target children or their interests (*Article 24/A/3, Advertising Regulation*). The list prepared by the Ministry of Health specifying foods and

beverages not recommended for excessive consumption (Red Category) includes the following: chocolate and sugar, waffles, energy bars, sweet sauce, desserts, cakes, sweet biscuits, fruit pies, chocolate coated biscuits, cake blends, chips, crisp snacks, fruit juices, energy drinks, all non-alcoholic drinks with sugar or sweetener and edible ice.

Products whose promotion is forbidden in Turkey, such as prescription drugs, alcohol and tobacco products may not be subject to promotional gifts. Free product samples of medicinal product for human use may only be given to doctors, dentists or pharmacists under certain conditions stipulated by the Regulation on Promotion of Human Medicinal Products.

15. How does national law regulate the use of value promotions?

Discounted sales must comply with the general principles concerning advertisements (*see Question 2*). In particular, discounted sales advertisements must not contain any statements or images which would:

- Mislead consumers by creating confusion about:
 - which goods or services are subject to the discounted sales; or
 - the discount amount to be applied.
- Create the impression that a higher rate of discount has been applied than is the case.

16. How does national law regulate the operation of cashback schemes?

There are no specific rules regarding cashback schemes, which are not common in Turkey.

17. How does national law regulate the practice of loss-leading?

The practice of loss-leading is considered as an example of an advertisement and sale method that violates good faith principles and constitutes unfair competition (*Article 55/1(a), TCC*). Article 55/1(a) covers the practice of multiple selling of products several times, emphasising this in their relevant advertisement, and thereby misleading

the customers about its own, or its competitors', abilities. If the sale price is below the supply price applied for the purchase of a similar volume of products or services of similar volume, the existence of deception is presumed.

Natural or legal persons who have been injured by acts of unfair competition can bring civil actions (*Article 56, TCC*) and criminal actions against those who commit acts of unfair competition intentionally (*Article 62, TCC*) (see *Question 3, Private consumer actions*).

18. How does national competition or anti-trust legislation regulate pricing practices?

Anti-competitive agreements and concerted practices

Agreements and concerted practices between undertakings, and decisions or practices of associations of undertakings, which have as their object or effect the prevention, distortion or restriction of competition, are prohibited (*Article 4, Law no. 4054 on the Protection of Competition (Competition Law)*). Prohibited agreements and concerted practices can include fixing:

- The purchase or sale price of goods or services.
- Factors such as cost and profit which form the price.
- Any condition or purchase of sale.

If the existence of an agreement cannot be proved, some similarities may constitute a presumption that undertakings are engaged in concerted practice. These are similarities concerning:

- Price changes in the market.
- The balance of demand and supply.
- Operational regions of undertakings showing similarities in those markets where competition is prevented, distorted or restricted.

Abuse of a dominant market position

The abuse of a dominant market position is prohibited (*Article 6, Competition Law*). A dominant market position is defined as the power of one or more undertakings in a particular market to determine economic parameters such as price, supply, the amount of production and distribution, by acting independently of their competitors and customers (*Article 3, Competition Law*). Bundling practices or imposing limitations regarding the terms of purchase and sale in case of resale, such as not selling a purchased good below a particular price, constitute abuse of dominant position.

Restitution and compensation for breaches of competition law

Any agreements that are contrary to Article 4 of the Competition Law are invalid (*Article 56, Competition Law*) (see above, *Anti-competitive agreements and concerted practices*). A successful claim in respect of the invalidity of agreements pursuant to Article 4 must be remedied by restitution (*Articles 63 and 64, Code of Obligations*).

Anyone who prevents, distorts or restricts competition via practices, decisions, contracts or agreements contrary to the Competition Act, or abuses his dominant position in a particular market for goods or services, is obliged to compensate for any damages of the injured (*Article 57, Competition Act*).

Trading schemes and sales incentives

19. How does national law regulate pyramid-selling schemes?

Pyramid sales will have all of the following components:

- A gain expectation system which is unrealistic or difficult to be realised.
- It gives an opportunity to gain money or assets to its participants in return for a certain amount of money or assets, provided that the participants find other participants under the same conditions.
- It makes the gain of assets completely or partially dependent on other participants also complying with the conditions.

Establishing, distributing or suggesting a pyramid selling scheme is prohibited (*Article 80/2, Consumer Law*). The Penal Code is applicable to violations of Article 80 (*Article 77/17, Consumer Law*). In particular, such acts would constitute fraud, which is punishable by imprisonment from one year to five years and a punitive fine of up to 5,000 days (*Article 157, Penal Code*).

The Ministry of Trade is authorised to make the necessary inspections related to pyramid selling schemes and to take the necessary measures to prevent such actions.

20. How does national law regulate trade promotions which make incentive payments to retailers based on their sales of a particular product?

There are no specific rules against trade promotions making incentive payments for retailers based on their sales of a particular product, which would be permissible due to the doctrine of freedom of contract.

21. How does national law regulate trade promotions addressed to customers' employees?

There are no specific rules against trade promotions addressed to customers' employees, as long as they comply with the general principles (*see Question 2*).

Contractual issues

22. Can a sales promotion create a contract between the promoter and the participant in a promotion?

Sales promotions, especially prize draws and prize contests, create a contract between the promoter and the participant, where both parties would have to comply with the terms and conditions.

Tax issues

23. Are there any tax issues arising specifically in connection with sales promotions that a promoter should be aware of?

Tax implications in connection with promotions arise for consumers. For prize draws and contests that are organised in Turkey, the winners are expected to pay a "succession and inheritance tax" to the government if the monetary value of the prize is above TRY5,760. This tax obligation of the winner cannot be imposed on the promoter.

Contributor details

Hande Hançar Çelik, Partner

Gün + Partners

E Hande.hancer@gun.av.tr

Areas of Practice: Intellectual Property, Advertising & Marketing Law.

Elif Melis Özsoy, Associate

Gün + Partners

E Melis.ozsoy@gun.av.tr

Areas of Practice: Intellectual Property, Advertising & Marketing Law.

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