

GÜN + PARTNERS
AVUKATLIK BÜROSU

MEDIA AND ADVERTISING LAW IN TURKEY

KEY DEVELOPMENTS AND PREDICTIONS

2023



TECHNOLOGY, MEDIA AND TELECOM

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Key Developments and Predictions for Media and Advertising Law in Turkey

2022 has been an important year with significant developments for advertising law practice in Turkey. During this year, new regulations have been enacted and the Advertisement Board rendered prominent guiding decisions regarding commercial advertisements and unfair commercial practices.

According to publicly available statistics, the Advertisement Board reviewed 1101 complaints in the first half of 2022, 949 of which were found contrary to the law and issued cease orders with respect to 721 of them. The Board imposed monetary sanctions against 228 advertisements in the amount of 22.788.684 TRY in total. Similarly, the Advertisement Board reviewed 82 discount sales advertisements and imposed administrative fines in the amount of 4.186.000 TRY in total. Due to the increasing use of digital platforms, the increase in the advertisements made by social media influencers has also drawn attention. Accordingly, the Advertisement Board reviewed 25 complaints regarding advertisements made by social media influencers in the first six months of 2022 and imposed various sanctions with respect to 22 advertisements found to be in violation¹.

In 2022, new legislations have been enacted to make the Advertisement Board's surveillance more effective, and the Advertisement Board has been explicitly authorized to issue guidelines to elaborate on existing rules and principles protecting consumers against certain commercial advertisements and unfair commercial practices.

In this respect, the Regulation on Commercial Advertising and Unfair Commercial Practices ("Advertising Regulation") was amended to include new measures and rules to regulate advertisements containing misleading price information and to protect consumers against unfair commercial practices. Following this, The Advertisement Board published Guideline on Advertisements Containing Price Information and Discount Sales Advertisements.

On the other hand, the Advertisement Board has been authorized to block access to online broadcasts or contents which are found to violate the advertising rules in addition to its existing sanction powers under Consumer Protection Law No. 6502. Finally, at the end of 2022, the Guideline on Advertisements Containing Environmental Claims was published.

This paper outlines the key aspects of media and advertising law in Turkey and the most important or challenging issues in Turkish media and advertising law.

This paper provides an overview on the following topics:

- [Advertisement Board's Expanded Power: Blocking Access](#)
- [Regulations on Consumer Reviews and Complaints](#)
- [Advertisements Containing Price Information and Discount Sales Advertisements](#)
- [Advertisements Containing Environmental Claims](#)
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- [Advertisements Required to Include +18 Marking](#)
- [TV Scenes Contrary to Social Gender Equality](#)
- [Implementation of Guideline on Social Media Influencers](#)

¹ <https://www.aa.com.tr/tr/ekonomi/reklam-kurulu-tuketiciyi-aldatici-tanitimlara-6-ayda-22-8-milyon-lira-ceza-kesti/2635257>

The Advertisement Board's Expanded Power: Blocking Access



The sanctions that the Advertisement Board has traditionally applied are the levying of administrative fines, correction decisions and precautionary or temporary suspension decisions against advertisements which violate the legal rules for advertisements broadcasted in any media including those found on the internet. In addition to these, the Advertisement Board has now been authorized to block access to online broadcasts or contents which are found to violate advertising rules through amendments introduced to Consumer Protection Law in April 2022. If the violating content cannot be blocked due to technical reasons or the violation cannot be remedied by blocking access to the relevant content, the Advertisement Board is also authorized to block access to the entire website on which the content is hosted.

The Advertisement Board strictly scrutinizes online advertisements and exercises this power when applicable. For instance, in December 2022 the Board examined advertisements

published on the social media account of a company promoting legal services offered by the company and directing consumers to the company's website and issued a cease order regarding the advertisements while also blocking access to the entire website.

Another amendment introduced to the Consumer Protection Law concerns the monetary sanctions the Advertisement Board can impose for advertisements broadcasted through satellite radio and TV channels.

Until recently, the Consumer Protection Law in relation to the administrative fine to be imposed against violating advertisements has regulated the fines for advertisements broadcast through national and regional television/radio channels but not/as well as the internet, text messages, and other media like outdoor advertising. The advertisements broadcast through satellite radio and TV channels were not explicitly regulated. However, given the increase in the number of satellite television broadcasts in recent years, the lack of any explicit regulation of these has led to confusion around whether the penalty regime for internet media or national and regional radio/TV broadcasts was the correct one to apply. Amendments have been brought establishing that the administrative fines applicable to regional

radio channels should be applied to satellite radio broadcasts, and that the same applied to advertisements on the internet should be used for advertisements on satellite TV broadcasts.

The Advertisement Board's powers to deal with the advertisement of counterfeit goods have also been expanded. In this respect, the Board had previously evaluated that counterfeit products that were sold and advertised as genuine products on various websites and social media accounts is misleading and against the principle requiring that claims included in advertisements must be accurate and provable and has imposed administrative fines against these types of advertisements.

The Board followed this approach in 2022 as well. In its decision rendered in September 2022, it dealt with a case of footwear products of highly reputed and well-known brands offered for sale on a company's websites that were advertised and promoted as genuine products on these websites. However, the products delivered to the consumers upon order were of low-quality material, appearance, and features, and thus the delivered products were found to be counterfeit products. Accordingly, the Advertisement Board evaluated that the claims regarding the authenticity of the products in these advertisements available on the specified websites did not reflect the truth and exploited consumers' lack of information

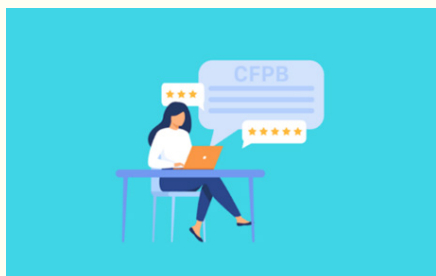
and in response issued a cease order and administrative monetary fine.

The Board rendered a similar decision in November 2022 which found it misleading and contradictory to principles of fair competition that the company in question created the false impression that it was associated with a well-known electronics company by using the trade name, logo, and visuals of that company although the company had no kind of contractual relationship with the well-known electronics company such as a distributorship, authorized service relationship, or dealership agreement. The Board issued cease order with respect to the advertisements.

It is important that the Advertisement Board carries out administrative surveillance of the advertising of counterfeit products and implements administrative sanctions against perpetrators. This approach refers to effective and many-pronged supervision which affirms that trademark right holders can resort to administrative remedies in addition to judicial remedies for trademark infringement.

Authors: Hande Hançar, Baran Güney

Regulations on Consumer Reviews and Complaints



Specific rules for consumer reviews and publishing consumer complaints were introduced into Turkish law by amendments made to the Advertising Regulation effective as of March 2022.

This amendment set the fundamental principles regarding consumer reviews. Some of them are as follows:

- Consumer reviews may be published by only those who have actually purchased the relevant product or service.
- Consumers should be informed of the principles for publishing consumer reviews either directly on the relevant webpage where the reviews are published or through a pop-up link that directs the consumers to a more detailed information page.
- It is obligatory to publish consumer reviews for at least one year without any guidance, regardless of whether they are positive or negative, and based on objective criteria like date, ranking, and seller name.

- Any consumer review which is found to be inappropriate for being published based on pre-determined criteria should immediately be notified to the consumer who did the review.
- Fake comments and entering into such agreements for purchasing such fake comment services are prohibited.
- It is prohibited to publish consumer reviews with health claims contrary to its own specific legislation.

Apart from the above, detailed provisions regarding the procedure for publishing consumer complaints were introduced into Turkish law. Accordingly, at the consumer complaint platforms that publish consumer complaints, vendors or providers about whom the evaluation has been made should be given at least seventy-two (72) hours to exercise their right to make a statement or reply before the publication of the complaint. Reviews will not be published before this period expires or if they are found to be inaccurate.

Before the legal rules about consumer reviews and complaints were introduced into Turkish law, the Advertisement Board scrutinized the consumer reviews shared by the brands in relation to the advertising of their products and services; queried the trueness of these claims, conformity thereof to general advertising rules.

In this respect, one interesting decision

was rendered by the Advertisement Board in January 2022 right before the new rules about consumer reviews and complaints were enacted. In a consumer complaint platform, a consumer complaint was published under the relevant page for a Turkish bank about an employee of the bank in relation to the employee's private rental contract for his house with his landlord who published the consumer complaint about the bank. Since the private rental contract of the employee had no relation with the services provided by the bank and the consumer complaint was irrelevant, the Advertisement Board found the consumer complaint misleading as to the services of the bank subject to the complaint, evaluated the complaint as detrimental to the reputation of the bank, ordered for the consumer complaint to be ceased and imposed an administrative monetary fine against the complaint platform.

The Board rendered another important decision in November 2022 about a consumer review published on a complaint platform related to a hospital. The review stated that the relevant consumer was generally satisfied with the hospital's services but was complaining due to the impolite behaviours of a cleaning service employee who allegedly did not respect the privacy of the patient. The Board determined that the mentioned review is not related to health services provided by the hospital but is about the personal acts and attitude of the mentioned cleaning service employee and that expressions

used in the review evidently establish that the consumer has an animosity against the mentioned employee. The Board concluded that publishing this review would mislead consumers and would prevent them from gathering accurate information.

Accordingly, the Advertisement Board strictly scrutinizes consumer reviews and the publishing of consumer complaints in accordance with the regulations mentioned above.

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Advertisements Containing Price Information and Discount Sales Advertisements



The Advertising Regulation was amended in a way to include new measures and rules to regulate advertisements containing misleading price information and to protect consumers against unfair commercial practices. The amendments entered into force in March 2022. In addition, the Advertisement Board prepared the Guideline on Advertisements Containing Price Information, Discount Sales Advertisements and Commercial Practices" ("Guideline") that took effect in April 2022. Together, the Regulation and Guideline aim to protect the rights of consumers by preventing the publication of advertisements that are unclear or misleading to consumers,

New rules enacted in the Regulation implemented additional measures to protect consumers against advertisements containing misleading price information and discount sales promotions. Some of the prominent regulations are as follows:

- The lowest price applied within the last thirty days prior to the application of the

discount should be taken as a basis for determining the sales price of any good or service before the discount.

- Terms such as "all", "everything" cannot be used unless a price or discount advertisement applies to all goods or services in the store or in a specific category.
- In advertisements related to discount sales campaigns, the words "up to", "from", "to" must be included in legible sizes.
- Untrue claims that a good or service will be offered for a very limited period of time aimed at influencing the consumer to make a sudden decision and depriving him of the necessary opportunity or time to make an informed choice are disallowed.
- Additional care is required in sales advertisements and commercial practices aimed at sensitive consumer groups such as children, elders, or disabled people.
- The price presented to consumers in advertisements must be the total selling price of the good or service, including all taxes.
- Sales prices should be denominated with "Turkish Lira", "TL" or "₺".
- If there are expenses arising from the delivery of the goods or services and to be paid by the consumer then the consumer should be informed of it and

its price. If the amount is not certain, consumers should be informed of the calculation method.

- In advertisements where instalment amounts are given, the total price of the advertised good or service and the number of instalments should be displayed together with the number of instalments in a readable size or should otherwise be audibly indicated.
- If there is a time or stock limit regarding the validity of the price, this time period and amount of stock should be clearly stated in the advertisements.

The Guideline contains tips for best practice in addition to the fundamental principles mentioned above. In discount sales advertisements the price prior to the discount and the start and end dates of the discounted sale should be stated. If the quantity of the goods or services offered for sale at a discount is limited, then this amount must be clearly and intelligibly announced in the advertisement.

Expressions or images that may mislead consumers by causing confusion about which goods or services are subject to discount, how much of a discount will be applied, or that may create the impression that more discounts are applied than in reality cannot be included in discount advertisements. It is against the law that a product is offered for sale on the same e-commerce platform and by the same seller with different discount rates when accessed

through different channels.

The Advertisement Board closely monitors the advertisements containing price information and discount sales promotions. For instance, in December 2022 the Board issued an administrative monetary fine of TRY 15,566 and a cease order against advertisements in which the price of the products offered for sale was indicated in Euros without including the total purchase price inclusive of tax.

As a result, we are of the opinion that both amendments made in the Regulation and the Guideline, are important developments in Turkish advertisement law.

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Advertisements Containing Environmental Claims



Until recently, there was no regulation specifically applicable for advertisements containing environmental claims. In the absence of specific regulation, the Advertisement Board has previously conducted its evaluations of such advertisements pursuant to the provisions included in the Advertising Regulation stating that advertisements must not abuse consumers' environmental sensitivity or lack of knowledge in this field.

For example, the Board determined in a decision rendered in October 2022 concerning a transportation company's social media advertisements that the company had saved CO₂ emissions equal to 250.000 trees by the date of the post that the advertisement did comply with the burden of proof for environmental claims and that the advertisements abused consumers' environmental sensitivities and lack of knowledge of the field. In conclusion, the Board issued a cease order with respect to the mentioned advertisements.

On the other hand, the Board in another decision rendered in October 2022 evaluated that the following statements "Aiming to Become the Greenest Airline of Our Country and Region, We [sic] reduce our Carbon Emission 20% by 2030!" included in the advertisements published by an air transportation company comply with advertising rules as these are related to the company's future targets and appear to be made pursuant to the company's open and verifiable strategy.

In December 2022, the Guideline on Advertisements Containing Environmental Claims was published. The Guideline consists of both detailed principles regarding advertisements containing environmental claims and practice tips. Some of the prominent provisions are as follows:

- General expressions such as "green", "sustainable", "eco", "environment-friendly", should not be used without further explanation or in a manner that causes ambiguity for consumers.
- Advertisements should contain detailed information pertaining to what the environmental claim is about, for, and how it is used, and whether it wholly or partially pertains to the life cycle of the product.
- Environmental claims pertaining to rules of legal & production procedures and

standards should not be communicated in a manner that would give the impression that the compliant goods or services being advertised are different or superior to their rivals or equivalents.

- Environmental claims related to targeted future environmental impacts of goods or services may be used in advertisements only if such claims are included in a strategy plan that is publicly available and verifiable.
- Comparative environmental claims in advertisements must be explicitly communicated, particularly if the advertiser compares the advertised product with rival products or previous products of its own brand.
- Any communication incompatible with sustainable consumption, which underestimates the seriousness of consumer behavior that causes environmental pollution or waste accumulation, encourages non-recyclable packings, or directs consumers to ignore the environmental impact of their behavior, encourages for or tolerates improper waste disposal, must be avoided.

The increasing prevalence of environmental claims in advertisements has precipitated the enactment of this Guideline. We believe that the Guideline, prepared by taking into account the sensitivity of consumers

to such advertisements and their serious environmental effect, will be useful for clarifying the regulations for advertisers and establishing a consistent and predictable practice.

Authors: Hande Hançar, Elif Melis Özsoy

Conformity of Comparative Advertisements to the Advertising Law

Direct comparative advertising is considered unlawful under the Advertising Regulation as it is prohibited thereunder to mention the product name, trademark, logo, trade name, business name or other distinctive features of competitors in advertisements. Only indirect comparative advertisement not containing the trademark and distinctive features of competitors is allowed.

The Advertisement Board rendered a decision in August 2022, which was particularly relevant to the scope of comparative advertising practice. The decision pertains to an advertisement published in a catalogue offered to consumers monthly by a globally-known cosmetics and fragrance company which compared two of its fragrances with the products of two world-famous fragrance brands. The advertisement published in the catalogue of the advertiser regarding its products contained the expressions "It is highly similar to the scent of a world-famous fragrance!" and "Why would you pay ... TL for a similar fragrance?" alongside blurred images of perfume bottles from the compared world-famous brands.

The Advertisement Board decided with respect to the images contained in the advertisements that inclusion of blurred images of perfume bottles owned by the world-famous fragrance brands constituted a breach of the direct comparative advertising ban as per the Advertising Regulation since

the bottles were recognizable to target consumers due to their distinctive colour and unique shape despite the blurring. The Board separately evaluated the expressions in the advertisement and determined that the advertisement scent of the advertised scents to those of the world-famous luxury fragrances underlining that the luxury brands are high-priced when compared to the brands of the advertiser company. The Board held that this comparison causes unfair competition by disparaging the competitors' products.

We are of the opinion that the decision is in conformity with the rationale of legal provisions regulating comparative advertisement practice under Turkish law. It might constitute unlawful comparative advertising when the distinctive features of a competitor's products are included in the advertisement in an identifiable manner. Allowing such a practice would run contrary to the law prohibiting direct comparative advertising, and it could result in publication of advertisements that could damage fair competition.

Authors: Hande Hançar, Göksu Ayçıl Altınok

Social Responsibility Awareness and Social Values in Advertisements



The Advertisement Board rendered a guiding decision in September 2022 with respect to the advertisements published by an international fashion company operating in Turkey in which some food products like bread and doughnuts covered with colourful toppings were placed together with some attractive shoes and sandals also offered for sale. The Board evaluated that the advertisements violated the principle requiring that advertisements must follow the principles of fair competition which have gained acceptance in both business life and in public opinion within the framework of the sense of economic and social responsibility.

The decision does not contain any reasoning on why and how the scrutinized advertisement constitutes a breach of a sense of economic and social responsibility. However, it could be inferred from analysis of the Board's decision that the fact that bread has a special meaning under the moral values of Turkish society and is deemed "sacred" has been factored in to the decision. In addition, it could be argued that the Board did not only consider Turkish society's values but also considered the fact that bread and food are indeed related to sacred values or other moral emotions in

other parts of the world as well. Therefore, it could be interpreted that the Advertisement Board associates the term social responsibility awareness with values corresponding to the public conscience.

Although it is stipulated in the Advertising Regulation that advertisements should be made with an awareness of economic and social responsibility, since these concepts are not clearly defined, we believe that the Board's decision is important and helpful for interpreting the meaning of these concepts.

Authors: Hande Hançar, Baran Güney

Advertisements Required to Include +18 Markings



The Advertisement Board rendered a highly controversial decision in July 2022 concluding that the promotions published by a fashion company on the main page of its website under the title of "My Chosen Family" including the following statements "My Chosen Family: A chosen family consists of members who chose to support and love each other. It celebrates who you are no matter whom you love. Meet the LGBTQIA+ family who chose each other" are against the Constitution and Advertising Regulation. The Board issued a cease order regarding these advertisements.

In this decision the Advertisement Board remarked that products pertaining to sexual orientation and/or containing sexual or erotic content must be offered to sale with "+18" markings. They also stated that the sales and adverts in question, absent any warning, were intended to perturb and change children's and adolescents' mental, ethical, psychological, and social development. This decision is in line with the principle for the protection of children's interests, emotions and innocence from the promotion or advertising media

prejudicial to them, as secured by the Turkish Constitution, international treaties, and other legal provision.

The referred decision is based on Article 24 of the Advertising Regulation, which reads:

"The advertisement that is children-oriented or is likely to affect the children or in which the child actors feature, shall contain no expression or image that is likely to influence a child's physical, mental, ethical, psychological and social development negatively and no factor intending to perturb, alter or defame the cultural, ethical or positive social behaviour."

The decision is controversial in many aspects. Firstly, the statements that the Advertisement Board concluded were contrary to the advertising legislation, were not in any way related to goods offered by the advertiser. They only related to the advertising company's general supportive attitude to LGBTQIA+ individuals and awareness-raising efforts. Therefore, it is questionable whether the mentioned statements could be accepted as an advertising activity falling under the Board's remit.

The decision is still open to criticism, even if subject media is taken as an advertisement. There is no provision under Turkish law regulating the sales of the products containing the aforementioned themes and expressions

with a “+18” marking. There is no restriction in the Constitution where fundamental rights and equality, personal autonomy, right to respect for privacy and family are regulated, indeed, all these values are protected by the Constitution. The Advertisement Board has adopted a brand-new principle regarding commercial advertisements and promotions through this decision. The legitimacy of this novel principle and limitation is open to dispute. It may also be argued that this decision, which has no basis in the law as it stands.

Although the Advertisement Board made some general citations of international treaties to justify its decision, the Board did not clearly establish in which aspect the statements referring to the love and confidence basis of a family would negatively influence children’s or adolescents’ development.

It is seen that the Advertisement Board maintains its heavily-criticized approach from its previous decision of November 2020 where it deemed the promotions and the sales of products such as t-shirts, sweatshirts, coffee mugs, phone cases, and beach towels offered for sale on various e-commerce sites with expressions “normal”, “LGBT”, “LGBT Power”, “Equality, Bisexual, Freedom, Lesbian, Gay, Love is Love, Homosexual”, “LGBT Relationship”, “Love is Love”, “Pride”,

“Peace”, “Love is Love”, and rainbow themes without +18 markings as being against the Constitution and the Advertising Regulation.

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TV Scenes Contrary to Social Gender Equality



Broadcast media is regulated and supervised by the Radio and Television Supreme Council ("RTUK"), an autonomous and impartial public legal entity. The RTUK regulates and supervises the radio, television and on-demand media services, and examines broadcasts, as well as advertisements, in light of the provisions of Broadcasting Law No. 6112. The RTUK recently rendered an important decision against the abuse of women and gender inequality. The RTUK 's decision concerned TV series broadcasted on a national channel in Turkey and imposed a monetary sanction on the broadcasting institution because scenes of physical and psychological violence against women for their contradiction of gender equality and encouragement of pressuring women to rely on stereotypes of virginity.

The scenes and dialogues including showing a mother forcing her daughter to wear a chastity device throughout her entire life from her childhood onwards and beating her in front of her friends for removing the device were

found to be violating broadcasting principles. The RTUK decided that the scenes displaying a mother putting excessive pressure on her daughter since her childhood, encouraging extreme conservatism and the preservation of her virginity as part of their honor, and telling her to not commit any sin which would otherwise harm herself and her mother constituted psychological violence towards women.

Significantly, the RTUK stated that forcing women to submit to a virginity test is a most crucial example of gender-based violence. Besides, it is noted that the Turkish Medical Association describes it as a humiliation to an individual's mental and sentimental integrity. The RTUK concluded that even though TV series are fictive works, broadcasting shows that encourage pressure on women and exploitation of women do not comply with public responsibility understanding.

Due to the above-mentioned reasons, the RTUK took into consideration the seriousness of the violation and medium and imposed a monetary sanction on the broadcasting organization for violating the rule prohibiting shows that contradict gender equality and encourage the oppression of women and exploit women as per Article 8/1(s) of the Broadcasting Law No. 6112.

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Implementation of the Guideline on Social Media Influencers



In Turkey social media advertising is mainly regulated under Consumer Protection Law and the Advertising Regulation. In 2021, the Advertisement Board drafted the Guideline on Commercial Advertisement and Unfair Commercial Practices Conducted by Social Media Influencers" ("Guideline"). It was prepared based on the Consumer Protection Law to serve as a basis for examinations of commercial advertisements and unfair commercial practices run by Social Media Influencers.

The Board continued Its strict surveillance of social media advertisements in 2022. As per the Guideline, social media influencers have started to include hashtags such as #Advertisement, #Sponsor, and #Collaboration in their posts intending to indicate that the relevant post is an advertisement. The Board strictly monitored the market and thoroughly implemented the rules set under the Guideline. For instance, in its decision of November 2022, the Board detected that an influencer directed its followers to social media accounts of various brands by tagging their accounts in its own post without any proper disclosure. The Board

deemed the posts were hidden advertising and ordered that the influencer cease the referred posts.

The Board rendered many decisions in 2022 regarding the posts shared in the account of a social media influencer detecting that although required statements like "partnership", and "collaboration" were included in promotional posts, those were not positioned in a legible way and were not presented in a manner to enable consumers to notice them at first sight taking into account interfaces and technique features of the medium where the post is shared. The Board concluded that these posts constitute hidden advertisements, ordering the cessation of the mentioned advertisement and implemented monetary sanctions.

We anticipate that the Board will continue scrutinizing social media advertisements strictly in 2023 considering the high number and frequency of advertisements made by social media influencers.

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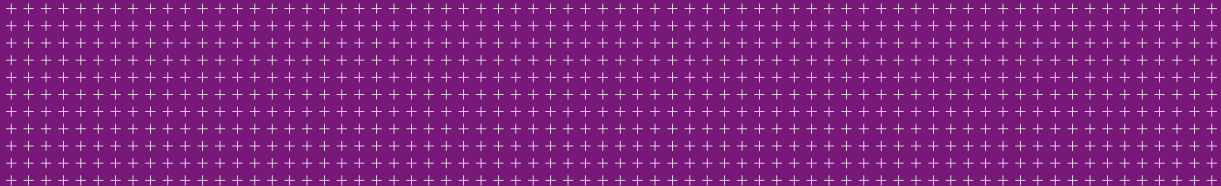
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