

Turkey: Hidden Advertising In Turkey

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We come across with hidden advertisements on various media in our daily lives, including but not limited to TV, cinema or newspapers. The légitima of "hidden advertising" has become one of the highly debated issues in Turkey.

Amongst the overall discussions and raised arguments, a common question comes into minds: What makes the hidden advertising like this popular and actual in the sector? First of all, it might be said that the advertising prohibition for certain products /persons or institutions (such as the prohibition of alcohol, cigarette or drug advertisements or advertising prohibition for lawyers and doctors etc.) in the legal regulations has led the way for hidden advertising in time. Besides, there is a fact that the consumers' confidence in the advertisements has decreased day by day in the society. It should also be born in mind that most of the people do not prefer to watch the full length advertorials and instead make zapping aggressively at the time of advertorial broadcasts since most of the advertisements are found unnecessary, unrealistic or boring. In addition to this, people prefer to watch the news, the entertainment programs, contests and serials rather than the advertisements. Therefore it would be more logical to launch the advertisement within the flow of either of the cited programs as to increase ratings and effectiveness. As a third reason, the firms making hidden advertisements get rid of the payments of tax or the official share of the Supreme Council of Radio and Television as normally required to be paid for launching advertisements. In this sense, hidden advertising provides advantages both for the advertisers and the broadcasting institutions whereby the demand on hidden advertising becomes inevitable in to the extent possible. Therefore, the borders are always forced by the advertisement industry as there is a huge business potential in hidden advertising, despite the existence of regulations prohibiting hidden advertising.

Hidden advertising is confronted with a strict approach by the Turkish Advertisement Board, particularly in the last couple of years. As a very actual and controversial topic, the concept of hidden advertising should be well defined for its correct understanding.

One of the fundamental principles of the advertisement law is that the advertisement – no matter in which media it is broadcasted- should be explicitly launched as an advertisement by its nature in order to be of legal acceptance. The regulations with regard to hidden advertising in Turkey can be laid down as follows:

- Article 16 paragraph 2 of the Consumer Law No. 4077 states that "*Hidden advertising is prohibited*".
- Article 21/5 of the Law on the Foundation and Broadcast of Radios and Televisions No. 5785 states that "*Hidden advertising is not allowed in any broadcast*".
- Article 5, paragraph (d) of the Commercial Advertising Regulation states that "*An advertisement broadcast could be clear and understandable regardless of its broadcasting media*."

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- Article 14 of the Regulation on the Principles and Procedures of Radio and Television Broadcast ("RTÜK Regulation") states that "*Unless clearly indicated as an 'advertisement', the products or services should not be presented in the programmes with the intention of advertising*".

In the Turkish legislation, the definition of the hidden advertising only finds place in Article 4 of the RTÜK Regulation as: "*Hidden advertising connotes the representation in words, in pictures, by logo, corporate name and registered trade mark and reminding hints with a view to advertise the products, services,*

name, trademark or the activities of a producer of goods or a provider of services in programmes by the broadcaster in return for payment or for similar consideration'. As observed from this definition, the fundamental criterion to be regarded as a hidden advertisement is the undercover intention of advertising which makes it illegal as a matter of fact. In addition to this, it might be noted that "misleading nature of the advertisement" is not considered as a necessary element of hidden advertising; whereby we understand that the relevant Turkish legislation is definitely not apt to lead the way for a form of advertising in which it is not clearly stated before the audience or the reader to be defined as the "target groups" that there is an advertisement in the ordinary flow of the program, article or the like regardless of assessing whether it is misleading or not.

Coming to the legal sanctions of making hidden advertisement, in line with Article 16 of the Advertisement Board Regulation, the Advertisement Board is entitled to punish the ones who are in breach of Article 16 of the Consumer Law, whereas to stop the challenged advertisements temporarily as precaution and/or demand of the amendment of the challenged advertisement and/or rule for administrative monetary fines. Besides, in line with RTÜK Regulation, RTÜK, as the governmental controlling authority in respect of radio and television broadcasts all over the country, is entitled to impose sanctions on the ones who do not comply with the broadcasting principles set forth in the relevant regulation such as declaration of apology, stopping of the program broadcast, stopping of the radio or TV channel broadcast, cancellation of the broadcast permission and the administrative monetary fine as well.

The hidden advertisement practices occur in several ways in Turkey. The most frequent forms of the hidden advertising are product placement and advertisements undercover of news.

The definition of "*Product Placement*" does not exist in the Turkish legislation; however, in practice, the product placement is definitely regarded as a form of hidden advertising. Product placement could be defined as the placement of a certain product into the broadcasted piece in order to show it in a natural way during the flow of the broadcast. In the current practice, the product placement is highly encountered in almost all the popular TV series in Turkey. Most of the popular TV series in Turkey have been confronted with hidden advertisement prohibitions due to the images belonging to a specific trademark or a product shown in the scenes for a period of just 3-4 minutes.

As a very common method, the product placement should be of direct advertising intention or should be disproportional to the content or presentation of the program in order to be regarded as hidden advertisement. For example, in case there is an interview held with a famous artist in a certain place, it would be very normal to show images of this place during the program by its nature or sometimes it would be the element of the sense of humour to show the images of certain products or trademarks in comedy programs. In such cases, it should be considered that the challenged images derive from the natural flow of the program without the intention of advertising. However, the Advertisement Board's approach is not in this way and very strict. In one of its decisions, the "GORA decision", several sequences in the comedy film containing product placements was regarded as hidden advertising and the production company was fined by the Advertisement Board. Indeed, the case was not that simple. GORA was a comedy film and the challenged images derived from the nature of the scene which would make people laugh within the proportional line. Further to this decision, there occurred many critics and the decision was constructed as the "interruption of the art".

An other decision of the Advertisement Board came up following a complaint before the board basing on a claim that the *Tefal* (kitchen tools manufacturer) products were being used and constantly emphasized throughout a cooking programme with a view to encourage the consumers to buy the products. The Advertising Board has resolved upon discontinuation of the said program. The broadcaster, therefore, initiated a lawsuit against this resolution of the Advertising Board at the 10th Administrative Court of Ankara. The court denied the case on the finding that *Tefal's* products were used and specified by name throughout the program and that the complaint made against the programme was consistent with the provisions of law.

Another important decision of the Advertisement Board was held for the infringement of Article 16 of the Consumer Law with regard to a famous competition show in Turkey, namely *Wheel of Fortune*. During the famous "*Wheel of Fortune*" competition program, the sponsoring company's trademark was placed on the competition wheel and, in the meanwhile, the announcer of the competition sang a song containing the name of the sponsoring company within the program. Furthermore, aside identification of the sponsoring company at the beginning and at the end of the program; the trademark of the sponsoring company was mentioned during the program and during the advertising breaks. The Advertising Board evaluated all these events as 'hidden advertising'.

Coming to the advertisements undercover of news, there are some criteria which should be taken into consideration for the determination of hidden advertisement. One of them is the disproportionality between the information or images given with the advertising intention and the nature of the broadcasted program. As an objective criterion, the disproportionality specified herein should be very explicit and more than reasonable that a certain product, tradename or a trademark is put forward which does not lie in compliance with the nature of the broadcasted program. Albeit there is no legal criteria for the determination of a hidden advertisement, the common practice of the Advertisement Board reveals that emphasizing a certain trademark, tradename or a product disproportionately to the nature of the program, the excessive length of show-time for the challenged image when compared to the total broadcasting time of the program and also close shots of a certain trademark, tradename or a product in the program directing the consumer to the advertised item might be regarded as the common criteria required by the Advertisement Board for the designation of hidden advertisement. As far as we are concerned, such criteria should always be constructed together with the principle of proportion and principle of compliance with the natural flow of the broadcasted program. It should not be denied that there exists a very sensitive balance herein. Such that on the one hand any possibility of unfair competition due to hidden advertisement practices should be prevented and on the other hand any negative impacts on the sectoral practices and on the programs in the nature of "news" should be precluded. The balance between the conflicting interests might be realized by a subjective criterion:

The second criterion is existence of an advertising intention. Without any doubt, we may say that the presentation style and the timing of the challenged images are the elements that connote the advertising intention. Nevertheless, since there is not a certain rule or criterion for the determination of advertising intention, the construction should be made as a whole and the assessment should be realized by taking into consideration of an average audience's knowledge, understanding or perception. Should an average audience might explicitly beware that there is an advertising intention rather than the purpose of information, then it would be appropriate to regard such a practice as a hidden advertising practice. In this respect, it should be clarified what is exactly meant by the purpose of information and what would be inside the scope of the right of providing and receiving news.

The last criterion is existence of the right of providing and receiving news. A news should be of public interest, should be broadcasted within a reasonable period of time as of its happening date and its broadcast should also be of public benefit in order to be regarded as a complete natured news. Besides, the scope of the right of providing and receiving news should not be overlapped. In other words, should the advertising intention within the broadcasted program is very clear to the audience whereby the principle of proportionality is violated as well, then it might be concluded that there is a hidden advertisement inside.

As it could be observed from the related decisions of the Advertisement Board, the Board makes a narrow interpretation and adopts that there is a hidden advertisement in any kind of program in which a certain product, trademark or a trade name is mentioned regardless of its nature. For instance, in one of the decisions of the Advertisement Board, it held that there was a hidden advertisement in one of the newsletters of a well-known magazine published in Turkey namely *NOKTA*, on the ground that the name of a certain product was mentioned. However, the newsletter was about prevention of drug usage and the product which tests the drug usage of an individual was presented in the newsletter by the way of mentioning its name. This should have been assessed within the scope of "news for public" and since there is no advertising intention in the case, the referred advertisement should not have been deemed so.

Another decision related to the violation of Article 21/5 of the RTÜK Law and Article 16 of the Consumer Law regarding "hidden advertising" was with regard to a well known competition program again whereby the TV channel which broadcasted such competition program was subject to monetary fine by the Advertisement Board on grounds of violation of the above cited provisions. The Advertisement Board came to the conclusion that the frequent representation of the logos of some newspapers in the program renders the purchase of these newspapers mandatory for the viewers in order to take part in the said competition, and therefore the advertising of those newspapers within the program constitutes hidden advertisement.

The decision regarding the TV Serial, '*Young and Restless*' was rendered upon a complaint with the claim that as well as organizing a competition programme at the end of the aforementioned serial through which the competitors were given the 'Ariston' products (a well-known household durables firm) as a gift, the representation of the said firm was also being made at the beginning of the programme by showing its trademark and giving place to the expressions such as "*the Young and Restless, presented by 'Ariston', will continue after the advertisements*", or "*Ariston adds value to your home with its excellent technology, aesthetics and its products*", "*you have watched the Young and Restless presented by Ariston*". The Advertising Board has decided that all these representations are hidden advertisements.

Another form of hidden advertising might turn out to be as the showing of images at the beginning and at the end of the programs due to sponsorship relations. In the RTÜK Regulation, the sponsorship is defined as the program support. As known, sponsorship is a way for the firms to make a link to their consumers while the broadcasters become able to provide financial support for high-cost programs. In sponsorship cases, product placement is commonly applied as a form of hidden advertising. For instance, in a TV serial, all the leading role characters might be using the same brand mobile phone which is the sponsor of the referred TV serial. The Advertisement Board evaluates such cases as the breach of the proportionality principle and construes that there is a hidden advertisement therein.

As another form, virtual advertising is also used in Turkey but is not measured as a separate format of hidden advertising. The virtual advertising is the visual placement of a certain product or a trademark on the broadcasted image by using electronic image techniques. The virtual advertising is permitted in line with Article 16 of the RTÜK Regulation under certain conditions. The most important condition is that the broadcaster should inform all the audience of the virtual advertising practice used in the program either at the beginning or at the end of the program orally or in written. The virtual advertising practices are mainly placed during the football games. It is obvious that this technique would be evaluated as a form of hidden advertising if this specific regulation permitting the virtual advertisements did not exist. In fact, the virtual advertising seems not so different from hidden advertising and that it is not logical to permit virtual advertising while prohibiting the hidden advertising both by legal regulations.

As emphasized above, there is no legal regulation laying down the principle criteria for the determination of hidden advertisement which thereby leads to complicated practices. In this sense, since the hidden advertising practices increase inevitably pro rata to new marketing strategy needs in the sector, it would be of best interest to lay down specific regulations defining the hidden advertising in exact form and the reasonable conditions required to make a hidden advertisement legally acceptable. As a matter of fact, we might say that the Advertisement Board has not determined certain criteria in order to regard an advertisement as a hidden one but it expresses different points of view in its different decisions rendered on the matter. This inconvenience derives from the referred legal gap in the relevant legislation. Therefore, we sustain that in order to settle a uniform practice in respect of hidden advertising and to maintain the binding nature of the decisions of administrative control authorities, legal regulations setting forth the alternative solutions for hidden advertising would be the most appropriate way to proceed in this respect.