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AVUKATLIK BÜROSU

# MEDIA AND ADVERTISING LAW IN TURKEY

KEY DEVELOPMENTS AND PREDICTIONS

# 2022



## 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.

## Key Developments and Predictions for Media and Advertising Law in Turkey

In Turkey, the main piece of legislation on advertising law compliance issues is Turkish Consumer Protection Law numbered 6502 ("Consumer Protection Law"), the Regulation on Commercial Advertisements and Unfair Commercial Practices (the "Advertising Regulation"), prepared in line with the Consumer Protection Law and Broadcasting Law No. 6112.

Broadcast media advertising is ruled 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, and advertisements, in light of the provisions of Broadcasting Law No. 6112. Another regulatory entity, the Advertisement Board, established under the Turkish Ministry of Trade, is the central authority controlling advertisements for all media, including broadcasts on TV, radio, and the internet in Turkey. The Advertising Self-Regulatory Board ("ROK") is Turkey's primary advertising self-regulatory body.

In 2020, 3,383 decisions were rendered, 992 by the Advertisement Board and 2,391 by the RTUK. In this context, 197 decisions were ordered by the Advertisement Board regarding solely the products and services offered in the health sector per needs and priorities of the previous year. The Board may impose cessation, precautionary suspension of an advertisement or administrative fines as sanctions in its decisions. While the total administrative fine imposed by the Advertisement Board in 2019 was 18.3 million Turkish liras in 2020, this amount increased by 65% to 30,144,509 Turkish liras. The highest administrative fines were imposed for unfair commercial practices, amounting to 11,866,681 Turkish liras in total, followed by an administrative fine of 4,140,968 Turkish liras imposed for advertisements related to cosmetics and cleaning products. The advertisements and promotions related to the health sector come in third place with 3,719,898 Turkish Liras. The Unfair Price Assessment Board, established within Law No. 7244 on Reducing the Impacts of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life in 2020, has imposed administrative fines of 15,500,000 Turkish liras on 495 companies in its first year.

In 2021, Advertisement Board conducted strict scrutiny over the advertisements related to sales campaigns, examined 142 cases, and imposed an administrative monetary fine of over 2.000.000 Turkish liras<sup>3</sup>.

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:

- Influencer Marketing and Social Media Influencers
- 18+ Markings for Products with Rainbow Themes
- Coronavirus Related Health Claims
- Sanctions on Food Supplement Ads on Social Media
- The Scope of the Gifts Given Along with Foods
- Sanctions Against Unfair Price Increases
- Unfair Price Assessment Board
- Defamation in Advertisements
- Advertisement Board and Hygienic Products Ads

<sup>1</sup> This document has been prepared based on data available on websites of the Ministry of Trade and the RTUK. Last accessed on 30.04.2021. [ticaret.gov.tr](https://ticaret.gov.tr) , [rtuk.gov.tr](https://rtuk.gov.tr).

<sup>2</sup> Anadolu Ajansı (2021, 15 March), Tüketicileri mağdur edenlere geçen yıl ceza yağdı. <https://www.aa.com.tr/tr/ekonomi/tuketicileri-magdur-edenlere-gecen-yil-ceza-yagdi/2176085> Last accessed on 30.04.2021

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## Influencer Marketing and Social Media Influencers

In Turkey, until recently, there were no special provisions, laws, regulations or self-regulating rules relating to advertising through social media. In this respect, general advertising rules and principles were to apply. The control and supervision of advertisements on social media were also subject to the laws, regulations and provisions which apply to advertisements conducted through other media channels. It was considered that the advertisements published on social media and the influencer marketing method should adhere to the general principles of legal dispositions in the field of advertising in Turkey, such as accuracy, honesty, non-misleading, conformity to public order, and not causing unfair competition.

Advertisement Board enacted "The Guideline on Commercial Advertisement and Unfair Commercial Practices Conducted by Social Media Influencers" ("Guideline"), which was prepared based on Consumer Protection Law to serve as a basis for examinations of commercial advertisements and unfair commercial practices run by Social Media Influencers, and put into force as per its decision No.2021/2 on May 04, 2021.

The Guideline aims to guide advertisers, advertisement agencies, media organisations, and all persons, institutions and establishments involved in commercial advertisement and

commercial practices conducted by social media influencers. The Guideline covers all kinds of commercial advertisements and practices run by social media influencers towards consumers.

With the Guideline, the definitions of "social media" and "social media influencer" have been legally made for the first time. Accordingly, social media is defined as a real person or legal entity that allows users to create, view or share contents such as text, images and audio on the internet for social interaction purposes within the scope of Law No. 5651 on Regulation of Internet Broadcasts and Prevention of Crimes Committed through Such Broadcasts. A social media influencer is defined as a person engaging in marketing communication via social media account to provide sales or rental of goods and services offered by themselves or an advertiser to inform or persuade the target group.

The Guideline emphasises the general principles of advertising law applicable to advertisements conducted on social media and by social media influencers. The Guideline also specifies some principles regarding how testimonial advertising and hidden advertising provisions shall apply to advertisements performed by social media influencers.

Under the Guideline, the social media influencer is prohibited from sharing a product or service which has not been experienced yet, for commercial advertising purposes, in a way that will confirm or create the perception in consumers' eyes that good or service has been experienced.

In the Guideline, it is once again explicitly indicated that advertisements through social media influencers must be clearly and comprehensibly expressed and distinguishable within the scope of the hidden advertising ban that dominates the advertising law. It is stipulated in the Guideline that hidden advertising is prohibited in oral, written and visual form on social media and all kinds of communication devices.

Accordingly, it is strictly prohibited for the social media influencer to create the impression that a good or service that is given as a gift by the advertiser as purchased by the influencer; of being solely a consumer while providing financial gain or benefits such as free or discounted goods or services regarding the commercial advertisement of a good or service.

In the posts where financial gains or benefits such as free or discounted goods or services are provided from the advertiser, the social media influencer must indicate this explicitly with various statements regulated in detail in the Guideline, depending on the platform on which the commercial advertising takes place.

To this end, the advertisements featured on social media are categorised into four groups according to the platforms as follows: advertising on video-sharing platforms (such as Youtube and Instagram TV), advertising on photo and message sharing platforms (such as Instagram, Facebook and Twitter), advertising on podcast platform, advertising on platforms on which the content is visible for a short time (such as Snapchat and Instagram)

Stating various expressions specified by the Guideline for each platform, the social media influencer should explain that the relevant post is a promotion to the consumers. Although the expressions in the Guideline are quite diverse for each platform group, they are generally intended to indicate that the said post is an advertisement. Although the statements are variable for each group of platforms, they include hashtags such as #Advertisement, #Sponsor, #Collaboration and statements such as "This video includes [advertiser's] advertisement."

The advertisers, advertisement agencies and social media influencers are separately liable for the Guideline violation. The incompliance with the Guideline constitutes the violation of the dispositions on hidden advertisement as per Consumer Protection Law and the Advertising Regulation, and the sanctions of suspension of the advertisement or administrative monetary fines may be imposed.

## 18+ Markings for Products with Rainbow Themes

Advertisement Board, with its highly controversial decision on November 2020; deemed the promotions and the sales of products such as t-shirts, sweatshirts, coffee mugs, phone cases, 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 against the Constitution and the Advertising Regulation. The advertisements without this warning at the date of referred examination were ordered to be ceased.

The Advertisement Board adopted a new principle of marking the promotions and sales of such products with +18 warnings on websites while not prohibiting the sales of such products.

In the referred decision, in line with the principle for the protection of children’s interests secured by the Turkish Constitution, the international treaties and the legal provisions based on the requirement of preserving children’s emotions and innocence in media activities such as news promotion or advertising for a commercial product, and broadcasting by avoiding any prejudicial effect to them, the Advertisement Board has appreciated that the products pertaining to the sexual orientation containing sexuality

and eroticism have to be offered to the sale with the “+18” markings in the products and the promotions subject to the examination and the sales and the promotions of the referred products without warning are intended to perturb and change children’s and adolescents’ mental, ethical, psychological and social development.

The referred decision is additionally based on Article 24 of the Advertising Regulation, which reads as *“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 behaviours.”*

The decision is open to criticism from several aspects. There is no legal disposition under Turkish law regulating the sales of the products containing the referred themes and expressions with “+18” marking. There is no restriction in the Constitution where fundamental rights and freedoms such as equality and freedom of thought are regulated. Article 24 of the Advertising Regulation, on which the decision is based, indicates that the advertisements shall contain no expression or image likely to negatively influence a child’s physical, mental, ethical, psychological, and social development.

The Advertisement Board has adopted a brand new principle regarding the commercial advertisements and promotions by the referred decision. According to the decision, the “+18” marking shall be indicated on the promotions and product listings of the products offered to the sale with rainbow themes or expressions like “LGBT” and “pride” on e-commerce websites. The legitimacy of this novel principle and limitation is quite arguable while this restriction that is not enacted in any piece of legislation and implemented into the legal system by the decisions of the Advertisement Board can be claimed not to have a legal basis.

It is fair to say that the decision is quite contentious in terms of its content and grounds. The restriction of the usage of rainbow themes is one of the controversial approaches taken in the decision to preserve children’s emotions and innocence. As per the Preamble of the Universal Declaration of Human Rights, “Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”, the ground and the justification of the assessment based on several international treaties and the Constitution by the Advertisement Board that the usage of the expressions meaning “pride”, “peace”, “equality” and “freedom” effects negatively children’s and adolescents’ development are not manifestly set forth.

Additionally, the products offered to the sales are ordinary daily used products like phone cases, coffee cups, t-shirts, etc., and not the products about sexual orientation as stated in the decision. The Advertisement Board’s qualification of the expressions and the colours on the products as intended to perturb or alter the cultural and ethical social behaviours contains the seeds of further conflicts within the framework of the freedom of expression.



## Coronavirus Related Health Claims

After the first COVID-19 case encounter in our country, the advertisements of the food supplements and foods with health claims and nutrition claims have increased. The said products have been advertised and promoted to consumers on diverse platforms, including TV, radio and online platforms.

Competent legal authorities launched investigations since some food supplements advertised are not even authorised for sales, and some made misleading health claims in their advertising. The Ministry of Health and the Ministry of Agriculture and Forestry launched investigations against several products whose ads claimed to cover and provide immunity against the Coronavirus.

The Regulation on the Importation, Production, Processing, and Launch into Market of Food Supplements requires authorisation to be granted by the Ministry of Agriculture and Forestry for food supplements to be produced, imported and launched.

Besides, the Turkish Medicines and Medicinal Devices Agency of the Ministry of Health is entitled to authorise the usage of health claims in advertising, packaging, promotion of food and food supplements provided that they fulfil the required conditions according to Law No.5996 on Veterinary Services, Plant Health, Food and Feed as well as Regulation on Health Claims of Products Sold with Health

Claims. Accordingly;

- The Ministry of Agriculture and Forestry is the competent authority to supervise the market and impose sanctions if food supplements launch into the market without proper authorisation or approval.
- In case of the launch of food supplements into the market or its advertisement with misleading health claims without proper legal authorisations, the Ministry of Health is the competent legal authority for supervising these sales, cease, collection, recall and destruction of these products.
- In addition, the Advertisement Board within the body of the Ministry of Trade may impose sanctions (i.e. warning, cease of advertising, administrative monetary fine) in case of inconpliant advertisements for food supplements on any platform, sales and promotions with misleading health claims without proper authorisations and noncompliance with other advertising regulations.
- As per Broadcasting Law No.6112, RTUK is also entitled to supervise the advertisements of food supplements. No sale, marketing or advertisement of a product, including the food supplements and similar supplementary products with health claims against its

relevant legislation, shall be included in the broadcasting services.

- Law No.1262 on Pharmaceuticals and Medical Preparations rules imprisonment term from 1 year up to 5 years for those who sell, advertise or promote any non-pharmaceutical product declaring that the product diagnoses and treats any disease.

As a result of these multiple controlling mechanisms, food supplements are one of the food groups subject to very strict supervision. Since the consumers might consider the food supplements as pharmaceuticals and are particularly related to public health, the Ministry of Health and other regulatory public authorities attribute high importance to food supplements and apply strict supervising activities.

It is deemed possible to impose the abovementioned administrative and penal sanctions on advertisers and advertising platforms, including social media influencers, because several products without being authorised as food supplements have been advertised particularly by the celebrities through their social media accounts with the health claims of preventing from Coronavirus and curing Coronavirus and that the promotions with the misleading health claims such as protection against the virus and of recovery of the infected persons following the usage of the products.

The Ministry of Health is revising the "Regulation on Health Claims of Products Sold with Health Claims". The draft regulation was published on the official website of the Ministry of Health on September 14, 2020. The draft separately regulates "food supplements" and "foods" and suggests that health claims can be made on food supplements only with the permission of the Agency. The draft regulation defines its purposes as "setting the rules and principles for health claims on food products, examining the health claims for food supplements, and authorising such health claims on food supplements". The draft further states that products sold without authorised health claims or misleading health claims may be seized or recalled.

It is understood from the announcement of the Ministry that the main objective of this draft is to prevent especially increasing online sales of products with misleading health effects. So, we may expect stricter rules in the future.

## Sanctions on Food Supplement Ads on Social Media

In its meeting dated 14.07.2020 and numbered 299, the Advertisement Board imposed sanctions against the advertisement of a food supplement with the false health claim by various celebrities and ordered to cease the broadcast of food supplement's advertisement and imposed administrative monetary fine corresponding to 104.781 Turkish Liras against each celebrity who advertised the product on his / her social media page as well as the advertiser.

The Advertisement Board examined the advertisement of the food supplement subject to the decision. It held that the celebrities advertised by making statements that the advertised food supplement strengthens the immune system using components of the product in question, thus creating the impression that the product has a protective feature against all kinds of viral infections, particularly against COVID-19, and even claiming that "even if infected, it is beneficial for the recovery of the disease". Accordingly, Advertisement Board held that the promotions and declarations constitute health claims, the product in question, which is a food supplement, is promoted as if it is a medicinal product for human use, such promotion of supplementary foods is strictly prohibited. It is necessary to obtain authorisation from the Ministry of Health to make these health claims and that those permissions were not obtained. In addition,

the Advertisement Board evaluated that by being broadcasted during the COVID-19 era, the advertisements aimed to obtain a commercial advantage by abusing the lack of knowledge and experience, fears and worries of people.

In its decision No. 2019/655 on 14.01.2020, the Advertisement Board again analysed the post about a food supplement as a multivitamin, where a famous model shared her photo holding the product, and the product name on her Instagram account, stating, "To those who say: How are you so energetic in the morning... also the most effective one for the fight against colds." The Advertisement Board evaluated that the referred product is implicitly advertised with the said post, that the product is promoted as a "medicinal product" that affects human physiology and metabolism. If the products can prove the claims in the advertisements in question, then they are not within the scope of "food supplement" but required to be licensed as "medicinal product" or "pharmaceutical", and ruled to cease the advertisements above because legislation prohibits advertising them.

In its decision No.2020/2104 on March 09, 2021, the Advertisement Board held that the posts shared by a famous actress on her Instagram account about a food supplement recommending the product are both hidden advertisements since they are not explicitly

stated that it is an advertisement. The Board also stated that the several statements made in the post are within the scope of the health claims which are not permitted for the food supplements and imposed an administrative fine of 104,781 Turkish liras on the social media influencer who made the promotion, together with the cease of the referred promotions.

The decisions above demonstrate that the Advertisement Board monitors the advertisements promoting the food supplements with misleading health claims as if those are pharmaceuticals at the market, particularly for taking advantage of the worries created by the COVID-19 pandemic over the consumers, and imposes sanctions against these advertisements. It is also important that the Advertisement Board impose high administrative monetary fines on the advertiser and social media influencers who conducted hidden advertisements.

The approval of the Ministry of Agriculture and Forestry is required to produce, import and launch the supplementary food. In addition, the Agency of Turkish Medicines and Medicinal Devices of the Ministry of Health is entitled to authorise the usage of health claims in labelling, promotion or advertisement of food and food supplements, provided that they fulfil the required conditions according to Law No.5996 on Veterinary Services, Plant Health, Food and Feed as well as Regulation on Health Claims of Products Sold with Health

Claims. In any case, the promotion of food supplements as medicinal products for human use, and their advertisements and promotions that claim to diagnose and cure diseases, although not pharmaceutical, are prohibited. The referred decisions are crucial, particularly because the advertisements subject to the decision were featured on the celebrities' social media accounts as hidden advertisements without clearly citing their advertorial nature. The Advertisement Board exercised effective supervision over these hidden advertisements broadcasted on social media. In addition, the Advertisement Board has demonstrated that it makes the best implementation of its competence within the scope of the legislation in the most appropriate way by imposing the relevant administrative sanction to both the advertiser and those who advertise through their social media accounts.

## The Scope of the Gifts Given Along with Foods

In its decision dated 11.02.2020 and numbered 2019/9931, the Advertisement Board examined a campaign regarding free ice tea coupons accompanying potato chips and the advertisement of the referred products. The Advertisement Board held that the said campaign and the referred advertisements are compliant with the Consumer Protection Law numbered 6502 and the Advertising Regulation and imposed no sanction against these promotions.

Shortly after the decision mentioned above, in its decision dated 12.05.2020 and numbered 2019/12332, the Advertisement Board examined the promotional practice of a confectionery company by which the said company's confectionery was given as a gift alongside a pencil case for children. The Board concluded that the pencil case product is especially for the attention of school-age children, that the promotional practice in question is a marketing practice of the company's main confectionery – chocolate products. Therefore, referred practice encourages children to consume the confectionery and chocolate products included in the "Foods Not Recommended for Over-Consumption", the red category of Nutrition Profile Guide Food and Beverage List prepared by the Science Committee of the Ministry of Health. So the said practice is incompliant with the principle of "getting children and youth adopt a healthy and balanced eating habit", which is crucial in

improving public health, and decided to cease these promotions and advertisements. The Advertisement Board examined the promotional practices of presenting various toys with the children menus of several fast-food restaurants in its decision No. 2020/182 on May 12 2020. It ruled that the practice of giving various toys with the children menus offered by fast-food restaurants is not contrary to Consumer Protection Law Article 61 and the 3rd paragraph of Article 24/A of Advertising Regulation, provided that any food or beverage under the red category of Nutrition Profile Guide Food and Beverage List, which is prepared by the Science Committee of the Ministry of Health, was not included in the children menus.

These decisions are very important and exemplary in determining the scope of the restriction on the gifts given with the food products. As set forth by Article 24/A (3) of the Advertising Regulation, *"In the context of the practices aiming for increasing the sale of foods whose excessive consumption is not recommended, the products oriented to the interests and tastes of children other than the main product shall not be given as a gift with the product."*

Article 24/A (3) of Advertising Regulation is a relatively recent rule under Turkish law. It was highly criticised due to the definition lack in the technical terms in the disposition and the ambiguity of the disposition itself because no

information or definition is provided regarding the terms "gift" and "marketing techniques" in the disposition.

The recent decision of the Advertisement Board confirms that not all free items and food products are banned, but only the free items that directly appeal to the interest and taste of children should not be given as a gift. Although it is not explicitly interpreted in the decision what should be the free gifts or marketing techniques, it is acknowledged by the conclusion of the abovementioned decisions that free ice tea coupons are not considered within the scope of gifts and marketing techniques which directly appeal to the interest and taste of children. However, it is observed that pencil cases and confectionary gifted along with the pencil cases are considered gifts and marketing techniques that directly appeal to children's interests and tastes. It is seen that the target of the free ice tea coupons are not considered children as they appeal to the interest and taste of everyone but not only children. In its examination of the promotion where confectionery products are gifted along with the pencil cases, the Advertisement Board focuses on the fact that the promoter is a confectionery company aiming to promote its products to the children using the promotion. While there is no hesitation that the gifted toys, collection products oriented to the children and the stickers along with the food products whose excessive consumption is

not recommended are prohibited within the scope of the disposition; the Advertisement Board's decision above provides insight on which similar products are within the scope of the prohibition.

## Sanctions Against Unfair Price Increases

Due to the rapid expansion of the COVID-19 pandemic in Turkey and worldwide, demand for protective masks, sanitisers, cleaning products and foodstuff significantly increased. Some companies exorbitantly and inequitably increased prices of such goods, substances and materials, which the consumers intensively demanded during this outbreak.

The Advertisement Board, in March 2020, ordered a decision for suspension of the referred actions and imposition of 10.090.060 Turkish liras administrative monetary fine, since these acts constitute unfair commercial practice as per Turkish Consumer Protection Law and the Advertising Regulation, for 198 businesses that have exorbitantly increased the prices of masks, disinfectants, colognes, wet wipes and foodstuff more than a moderate increase in their costs, without any acceptable ground against the professional care standards contrary to the normal functioning of the market and in a way which is negatively affecting the usual purchasing behaviour of the consumers.

As per Article 62 of Turkish Consumer Protection Law, if a commercial practice does not comply with the requirements of professional care and significantly damages or is highly likely to damage the economic course of conduct of the ordinary consumer or target group it aims for, it shall be deemed as unfair. The annexe of the Advertising Regulation titled Practices Deemed as Unfair

Commercial Practices lists non-exhaustive examples of unfair commercial practices. Accordingly, increasing the sales prices of the goods and services presented to consumers without reasonable grounds by indicating that the increase results from changes such as input cost and the exchange rate, even though the sale price is unaffected by these changes, constitutes an unfair commercial practice.

Indeed, in response to the intense demand of consumers for masks, colognes, disinfectants and foodstuffs with the concern of individual struggle with the pandemic, the fact that the sellers choose to increase the prices unfairly beyond the costs may cause the product prices to rise and the supply of these products, which have become a basic need, to become more difficult or extremely expensive in the future. As a result, this situation may disrupt the normal functioning of the market and the sellers implementing unfair price increases may adversely affect both the security of the supply chain and the prices of those products. Such market-distorting practices are generally considered unfair commercial practices within the scope of the Advertising Regulation, and the administrative sanctions imposed by the Advertisement Boards against these actions during the pandemic are crucial measures in terms of consumer protection.

## Unfair Price Assessment Board

During the COVID-19 outbreak, some entities exorbitantly increased the prices of masks, disinfectants, colognes, wet wipes and foodstuff against the standards of professional care in contrast with the normal functioning of the market and in a way that is negatively affecting the usual purchasing behaviour of the consumers.

By taking the exorbitant price increases into account, an additional article titled *"Exorbitant price increase, stockpiling and Unfair Price Assessment Board"* has been incorporated into Law No.6585 on Regulation of Retail Trade by Article 14 of the Law No.7244 on Reducing the Impacts of the Novel Coronavirus (COVID-19) Pandemic on Economic and Social Life and Amendments to Certain Laws. By this Article, it was ruled that manufacturers, suppliers and retail businesses shall not conduct activities that result in tightness in the market or disruption of the market balance and free competition and activities which might prevent consumers from easily accessing the goods in the market. With this purpose in mind, the Unfair Price Assessment Board ("Board") was established and empowered to make regulations to prevent exorbitant price increases and stockpiling practices of manufacturers, suppliers and retail businesses. The Board is entitled to monitor the market by inspecting the businesses, imposing administrative fines and taking measures where necessary. The

Regulation on the Unfair Price Assessment Board, which stipulates the procedures and principles regarding the establishment of the Board, its duties and powers, monitoring of exorbitant price increases of supplier and retailers business and stockpiling practices and imposing administrative fines, was published in the Official Gazette dated May 28, 2020, and immediately entered into force.

According to the Regulation on the Unfair Price Assessment Board, the Board is empowered to take the necessary measures to protect the market balance and consumers against unfair price increases and stockpiling practices of retail businesses regardless of whether they are in a dominant position in the market or not. The Board is authorised to determine the principles and rules on unfair pricing and stockpiling practices. The Board consists of thirteen members, including general managers and sector organisations representatives from the Ministry of Trade, the Ministry of Justice, the Ministry of Treasury and Finance, the Ministry of Industry and Technology, the Ministry of Agriculture and Forestry. The Board requires a simple majority in a meeting with at least 7 members to adopt a decision. These decisions may be announced by the Ministry of Trade in order "to inform and enlighten the public and to protect the economic interests of the parties involved in the goods and services market". The complaints can be made with a petition



to the Ministry of Trade or its Provincial Directorates through the complaint system or other electronic application methods. Real persons or legal entities can make the applications. The sanction envisaged against exorbitant price increase is the administrative monetary fine ranging from 10,000 Turkish Liras to 100,000 Turkish Liras and the sanction envisaged against acts causing a scarcity in the market, distorting the market balance and free competition or preventing consumers from easily accessing goods is the administrative monetary fine between 50,000 Turkish Liras and 500,000 Turkish Liras.

In the meantime, the applications made to the Ministry before April 17, 2020, regarding exorbitant price increases are subject to the authority of the Advertisement Board in terms of unfair commercial practices as per Consumer Protection Law. The Advertisement Board examined these complaints, and the administrative fines were imposed on the companies implementing exorbitant price increases as per the disposition of the Regulation Amending the Regulation on Commercial Advertisement and Unfair Commercial Practices. Under the title *"Deceptive Commercial Practices"* of the Annex called *"Exemplary Practices Deemed as Unfair Commercial Practices"*, this Regulation rules that *"Increasing the sales prices of the goods and services presented to consumers without reasonable grounds by indicating that*

*the sales price increase is a result of changes such as input cost and the exchange rate, even though the sale price is unaffected by these changes is unfair commercial practice"*.

## Defamation in Advertisements

The Advertisement Board, rendered in its decision in the last month of 2020, proving its sensitivity towards Turkish cuisine and food culture, ruled that advertisements for a canned seafood product to be permanently suspended.

In the advertisement broadcasted on television channels and social media accounts of the advertiser, the couple who would like to dine out is on the street with various restaurants selling food from Turkish cuisine. However, the non-hygienic attitude of the waiters, the cooks' dirty clothes and the ingredients of low quality used led the couple to prefer to eat the advertised product, which is canned seafood, at home. Moreover, the scenes presenting disregarded hygiene rules and the perception created by the advertisement is supported by the posters with slogans on the restaurant walls, the horror-thriller movie soundtrack playing during the scene and the smoky atmosphere in these scenes.

The Advertisement Board concluded that the advertisement slanders the activities of the actors in the food and beverage industry and creates the impression as if they are unhealthy and should not be preferred. The most striking conclusion drawn regarding the advertisement is that it degrades entire Turkish cuisine and the food and beverage industry. According to the decision, it is disreputable that featuring well-known Turkish cuisine dishes in an undesired way is defamatory. Based on this evaluation, the Advertisement Board concluded that the advertisement

is defamatory and constitutes an unfair comparison against other business entities providing food and drink services in the market. The advertisement abuses consumer trust and unfairly benefits from the consumers' lack of experience and information.

The decision set a precedent in which the Advertisement Board evaluated the level of its tolerance to defamation and comparative advertisements. The Advertisement Board adopted quite a sensitive and strict approach. Considering this recent decision, advertisers should be very careful about comparative advertisements, even if the comparison is implicit.

## Advertisement Board and Hygienic Products Ads

Last year, the advertisements and promotions about hygiene and health care products increased in parallel with the necessities arising due to the COVID-19 pandemic. The advertisement types subject to special regulations of relevant legislation, including testimonial and comparative advertising practices, have been exercised. The diversity in the advertisements and promotions has been reflected in the Advertisement Board decisions, and the fundamental notions of the Advertisement Law were once again addressed.

Primarily, by a decision of November, the Advertisement Board held that the statement and images claiming that antibacterial wet wipe safeguards from Coronavirus, although its effect against the Coronavirus has been proven, are misleading and perturbing public health; since the risk of virus transmission from patients through droplets is still possible. The advertiser was ordered to cease the referred advertisements to prevent any conclusion that the virus shall not be transmitted when the product is used.

As the advertisements of biocidal products showed a significant increase, the Advertisement Board has strictly reviewed the advertisements of these products. Where advertisement of the products without proper biocidal products license was determined, the Advertisement Board ruled to cease the said advertisements, imposed severe administrative monetary fines to the advertisers.

The Advertisement Board also investigated the testimonials for advertisements of hygienic products. In the pandemic era where doctors, dentists and pharmacists were featured on numerous product advertisements by restrictively interpreting Article 16/3 of the Advertisement Regulation, which reads as *"Advertisements shall contain no image, statement or reference that indicates or creates the impression that doctors, dentists, veterinarians, pharmacists and health institutions have made a health claim regarding a good or a service"*, considering the anxiety caused by the pandemic in the eyes of consumers and for the protection of them, the Advertisement Board ruled that the advertisements in which a well-known doctor recommended an antibacterial product are contrary to the abovementioned provision so said advertisement is ceased. An administrative monetary fine is imposed as well.

Thus, the product and service diversity, which is shaped according to the consumers' needs in the pandemic era, has been reflected in the marketing and advertising industry, and the decisions of the Advertisement Board have concretised this tendency. The detailed examination conducted by the Advertisement Board regarding the referred products is a positive and reasonable attitude in terms of preservation of public health and protection of consumers.

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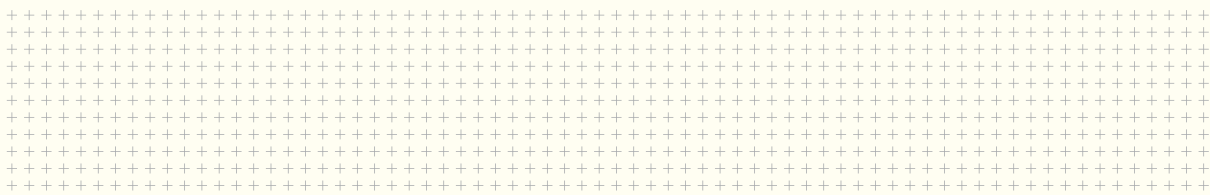
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FIRM OVERVIEW

We are one of the oldest and largest business law firms in Turkey and are ranked among the top tier legal service providers. We are widely regarded as one of the world's leading IP law firms.

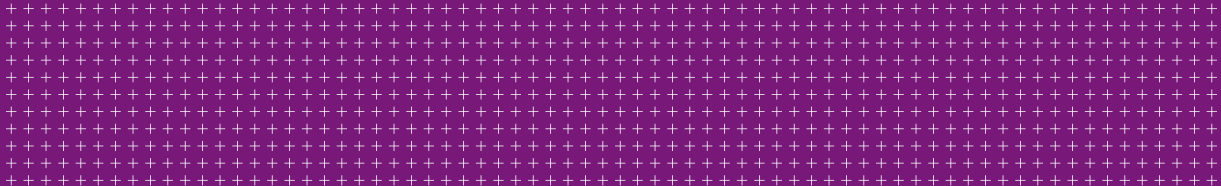
Based in Istanbul, we also have working and correspondent office in Ankara, Izmir and all other major commercial centers in Turkey.

We advise a large portfolio of clients across diverse fields including life sciences, energy, construction & real estate, logistics, technology media and telecom, automotive, FMCG, chemicals and the defence industries

We provide legal services mainly in Turkish and English and also work in German and French.

We invest to accumulate industry specific knowledge, closely monitor business sector developments and share our insight with our clients and the community We actively participate in various professional and business organisations.

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