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AVUKATLIK BÜROSU



MEDIA AND ADVERTISING LAW IN TÜRKİYE  
KEY DEVELOPMENTS AND PREDICTIONS

2025



# 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.

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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.

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# Introduction

The year 2024 was of significance for the development of advertising law in Türkiye. On the one hand, amendments to the Consumer Protection Law strengthened the regulatory oversight and enforcement capacity of the Advertisement Board; while on the other hand, as a result of effective examinations carried out by the Advertisement Board, numerous prominent and precedent decisions were rendered in terms of commercial advertising and unfair commercial practices.

According to information obtained from publicly available sources, in 2024, the Advertisement Board reviewed 1,917 cases, and of these 1,705 were found to be deceptive advertisements and unfair commercial practice and the Board imposed suspension penalties in addition to administrative fines totalling TRY 227,600,000. It is anticipated that the Advertisement Board's effective oversight will continue in 2025, and with the increase in administrative fines, deterrence will also be strengthened.

With the amendments to the Consumer Protection Law on 30 October 2024, a significant increase was made in the administrative fines imposed by the Advertisement Board. The administrative fines regulated under Article 77 titled "Penalty Provisions" of Law No. 6502 will be applied as of 01 January 2025, with an increase of 43.93%, as announced by the Ministry of Treasury and Finance in accordance with the seventh paragraph of Article 17 titled "Administrative Fine" of the Misdemeanour Law No. 5326. Thus, in 2025, the administrative fines imposed by the Advertisement Board will range from a minimum of TRY 79,161 to a maximum of TRY 31,808,530, depending on the medium where the violation occurred.

The amendments to the Consumer Protection Law have provided the possibility for reconciliation with the Ministry regarding the administrative fines imposed by the Advertisement Board. Additionally, with the amendment made to the Consumer Protection Law on 23 May 2024, the Advertisement Board's power to deny access has been re-established in accordance with the principles of proportionality and necessity as outlined in the decision of the Constitutional Court.

Another significant development concerns social media influencers. In 2024, social media influencers continued to play a significant role in marketing with a high volume of advertisements. Therefore, in order to ensure greater compliance with legal obligations and the regulations stipulated in the legislation, the Ministry of Trade, the Ministry of Treasury and Finance, and the Advertising Self-Regulatory Board have initiated the "Responsible Social Media Influencers Training". The first of these bi-monthly training sessions was held on 25 November 2024, and was open to social media influencers with over 300,000 followers on the Instagram platform. These training sessions are expected to continue in 2025.

The Advertisement Board examined various deceptive commercial practices and misleading website designs used by companies in 2024 to collect data from consumers. Given that the issue is intertwined with the personal data protection law and consumer protection law, a Cooperation

Protocol was signed on 28 August 2024, between the Ministry of Trade's Directorate General of Consumer Protection and Market Surveillance and the Personal Data Protection Authority.

Furthermore, in 2024, the Advertisement Board closely examined keyword advertising, comparative advertisements, and "dark patterns", i.e. commercial designs known for being manipulative, and issued precedent decisions for the future.

This document discusses important developments in advertising and media law in Türkiye and some of the recent decisions of the Advertisement Board that shed light on these issues.

<sup>1</sup> <https://ticaret.gov.tr/haberler/reklam-kurulu-kasim-indirimlerinde-tuketicinin-aldatilmasina-izin-vermedi#:~:text=B%C3%B6ylece%2C%202024%20y%C4%B1%C4%B1nda%20indirimli%20sat%C4%B1C5%9F,idari%20para%20cezas%C4%B1%20uygulanm%C4%B1C5%9F%20oldu.>

<sup>2</sup> <https://smeegitimi.com/>

<sup>3</sup> <https://www.kvkk.gov.tr/Icerik/7990/Kisisel-Verileri-Koruma-Kurumu-ile-Ticaret-Bakanligi-Arasinda-Is-Birligi-Protokolu-Imzalandi>

# The New Era in Administrative Sanctions of the Advertisement Board



In 2024, significant changes and developments occurred regarding the administrative sanctions of the Advertisement Board.

- The Law No. 7529 on Amendments to the Consumer Protection Law and Certain Other Laws, published in the Official Gazette No. 32707 dated 30 October 2024, introduced significant changes as of the date of publication, particularly concerning the administrative fines imposed by the Advertisement Board and the reconciliation against administrative fines.
- The Constitutional Court, in its decision dated 13 September 2023 and numbered 2022/70 E. - 2023/152 K., annulled the power granted to the Advertisement Board under Article 77 of the Consumer Protection Law No. 6502 ("Law") to issue access-blocking orders against unlawful online advertising content. The annulment was based on the grounds that this power violated the principles of proportionality and necessity. However, with the amendment made on 23 May 2024, the legislative authority restructured the Board's power to block access in accordance with the principles of proportionality and necessity outlined in the Constitutional Court's decision.

The following shall address the recent developments regarding the administrative sanctions of the Advertisement Board.

- **Changes made regarding the amounts of administrative fines**

Firstly, with the amendments made to the Consumer Protection Law on 30 October 2024, minimum and maximum limits were set for administrative fines. Depending on the medium in which the violation occurs, the lowest administrative fine was revised as TRY 60,000, and the highest administrative fine as TRY 22,100,000.

Subsequently, the administrative fines set as mentioned above have been increased by 43.93%, as per the revaluation rate announced by the Ministry of Treasury and Finance for the year 2024, being effective as of 1st of January 2025.

Accordingly, for deceptive and misleading commercial advertisements, administrative fines will range between TRY 158,323 and TRY 1,583,230 if the violation occurs through a local television channel, between TRY 3,180,853 and TRY 31,808,530 if it occurs through a national television channel, between TRY 863,580 and TRY 8,635,800 if it occurs through a national radio channel,

between TRY 863,580 and TRY 8,635,800 if it occurs via satellite television or the internet, between TRY 403,004 and TRY 4,040,040 if it occurs through SMS, and between TRY 86,358 and TRY 863,580 for other mediums.

The Advertisement Board will consider factors such as the unfairness of the violation, the benefit gained or the harm caused by the violation, and the offence and economic status of the violator when applying the minimum and maximum limits for fines. The Advertisement Board's prior authority to impose an administrative fine up to 10 times higher in the event of a repeated violation within one year, has been revoked.

- **The re-established power to block access**

The Advertisement Board's power to issue an access-blocking decision was re-established in cases of unlawful advertising activities occurring on the internet. In such instances, the Board will notify the advertiser via means of electronic communication using information obtained from the relevant webpage, such as contact details, domain name, IP address, and other sources. If the content is not removed within twenty-four hours after notification, the Board has the power to issue an access-blocking decision. This decision will primarily be limited to the content where the violation has occurred; however, if it is technically impossible to deny access to the content in relation to the violation or if blocking access to the content does not prevent the violation,

the Board may also exercise its power to block access to the entire website.

- **Providing the opportunity to apply for reconciliation**

The amendments allow the possibility for reconciliation, subject to application by the concerned party, with the Ministry regarding the administrative monetary fines imposed by the Advertisement Board. If there is insufficient understanding of the law or a misinterpretation of those provisions, or if there is a difference of opinion between judicial decisions and the administration regarding the violation, the Ministry may agree to reach a reconciliation.

#### Evaluation

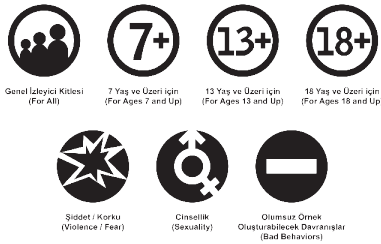
The minimum and maximum limits that have been set for the administrative fines, and the increase in the amounts of these fines, aim to enhance the effectiveness of oversight, prevent consumer deception and exploitation, and serve public interest. Reconciliation provisions are expected to expedite the resolution of violations and to reduce public costs. These changes are intended to increase the power of deterrence and ensure the effectiveness of the Advertisement Board's activities. The Advertisement Board's power to block access is an important deterrent mechanism aimed at combating deceptive advertisements that mislead consumers and exploit their trust. This measure could also contribute to ensure effectiveness of the decisions. In conclusion, the effective use of

the Advertisement Board's power to block access and administrative fines plays critical role in protecting consumers and ensuring fair competition in the market. Amendments and changes to regulations made in 2024 are considered to have enhanced the Board's oversight and enforcement capacity, while strengthening the deterrence against commercial advertisements and unfair commercial practices.



# New Rules for Content Ratings in Television Programs

The Regulation on Broadcasting Services ("Regulation") was amended by the Radio and Television Supreme Council and these amendments were published in the Official Gazette No. 32575 on 13 June 2024. These recent amendments are particularly relevant for news programs and, in some cases, live broadcast programs. The amendments introduced the following new rules, which are also in concern with the content rating for television programs:



- The Content Rating requirement is now extended to all program types, except sports competitions, religious ceremonies, and commercial communications.
- News programs, previously excluded from the scope of the content rating requirement, are now included. All symbols related to content rating must be displayed at the beginning of the news program, after the closing credits, and following each interruption throughout the broadcast. During the

broadcast of pre-recorded footage in news programs, symbols related to the content and age categories (excluding 'General Audience' and '7+') will be fixed in the corner of the screen for the entire duration of the broadcast.

- In live broadcasts that include pre-recorded footage, such content will also be subject to the content rating. On the other hand, no content rating will be applied in live broadcasts which do not include any pre-recorded footage.
- For series', news bulletins, news programs, and other episodic broadcasts, if there are different content ratings for the different episodes or within the program, or if deemed necessary to be included in the ratings code system, pre-recorded footage in each episode will be subject to separate content rating. In other cases, the programs will be coded as a whole and registered in the system.
- For separately coded programs, the appropriate time of broadcasting identified for the highest age rating will determine when the program can be aired. Thus, a program coded "7+" can be broadcast at any time of day, while a program coded "13+" can only be aired after 9:30 PM, and a program coded "18+" can only be aired between 12:00 AM - 5:00 AM.

Given the significant role of news programs and live broadcasts in terms of duration and audience reach, the detailed regulations

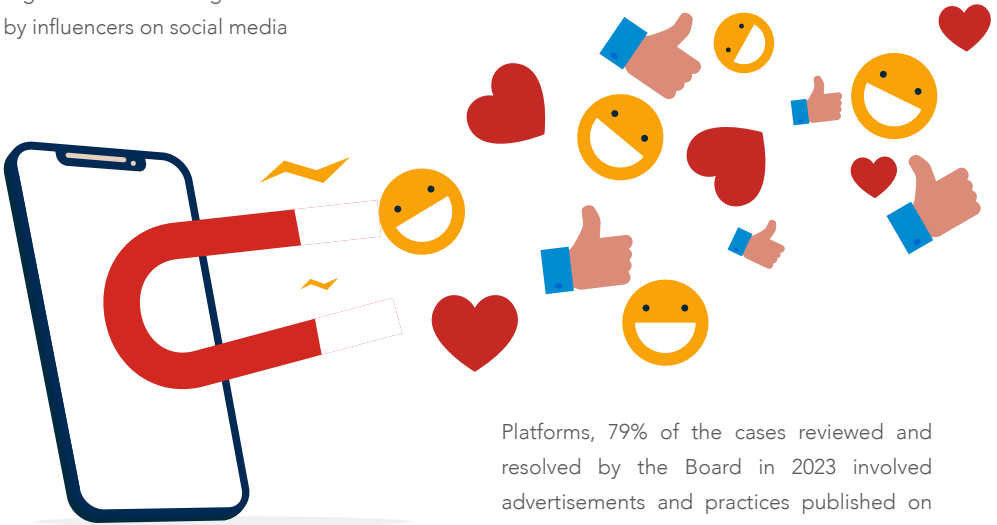
requiring these programs to be subject to separate content rating are viewed as a key development in enhancing and standardizing the content rating. Consequently, the Radio and Television Supreme Council is expected to continue its thorough oversight in terms of content rating for news and live broadcast programs.

# How to Become a Responsible Influencer?

As of January 2024, there are 57.50 million social media users in Türkiye, and digital platforms hold the largest share of advertising investments at approximately 71.2% for the year 2024. Within these digital investments, social media influencers account for 5%, underscoring their significant role in shaping consumer behaviour. Given the influence of social media influencers on consumption patterns, the importance of adhering to legal regulations concerning advertisements made by influencers on social media

governing advertisements by social media influencers.

The Advertisement Board, a body established within the Ministry of Trade, closely monitors advertisements made by social media influencers. According to the Ministry of Trade's Research Report on Advertising and Unfair Commercial Practices on Digital



becomes evident. To this end, various legal frameworks have been established, including the Consumer Protection Law, the Regulation on Commercial Advertisements and Unfair Commercial Practices, and the Guideline on Commercial Advertisements and Unfair Commercial Practices by Social Media Influencers ("Guideline"), which set forth rules

Platforms, 79% of the cases reviewed and resolved by the Board in 2023 involved advertisements and practices published on digital platforms. Data from various sources indicate that, in the first eight months of 2023, the Advertisement Board imposed administrative fines amounting to 89,059,840 TRY for advertisements and similar content shared online. Some of these fines were directly issued to the social media influencers, while in other cases, the penalties were also imposed on advertisers or the platforms

hosting the content, alongside the influencers. These administrative sanctions often arise from issues such as:

- Social media influencers promoting products or services through hidden advertising without explicitly informing consumers that the content is an advertisement.
- Failure to use or properly display mandatory tags such as #ad, #collaboration, or #sponsorship, as outlined in the Guideline.
- Publishing content that violates the general provisions of advertising law.

To enhance compliance by social media influencers with their legal obligations and the regulations stipulated in the legislation, the Ministry of Trade, the Ministry of Treasury Finance and the Advertising Self-Regulatory Board, have collaboratively initiated the Responsible Social Media Influencers Training Program. The first of these bi-monthly training sessions was held on 25 November 2024, and was offered to social media influencers with over 300,000 followers on Instagram. The session was attended by 71 influencers. The training covered essential topics such as consumer rights, legal regulations on social media advertising, taxation of social media activities, legal obligations, and Advertising Board decisions. The second of these bi-monthly training sessions took place on 9 January 2025.

Participation in this training is not mandatory, nor is obtaining a participation certificate a legal requirement to become a social media influencer or operate in this field. Attendance is entirely voluntary. The training aims to promote values of legal, ethical, and responsible marketing communication. This training was met with great enthusiasm by social media influencers, and the first session met a high level of participation. Participants shared positive feedback about the training, stating that they gained knowledge on how to conduct their promotions and make their advertisements clearer and better understandable as an advertisement, as well as how to effectively communicate these to their followers and viewers. They also noted that many of the issues which they had question marks were resolved, and the Guideline made it easier to comprehend the regulations. The positive opinion of the training shared by many high-profile social media influencers who attended the training and obtained certification are expected to encourage other influencers to participate. As the training becomes more widespread, it is anticipated that this will contribute to raising awareness about the importance of being a responsible social media influencer.

In conclusion, understanding and implementing legal regulations, regularly following the decisions of the Advertisement Board, and participating in training programs organised in this field are crucial in preventing social media influencers having an adverse impact on both themselves and consumers alike.. These efforts play a critical role in gradually establishing and solidifying compliance with legal frameworks.

# Is It Really Better?



Article 8 of the Regulation on Commercial Advertisement and Unfair Commercial Practices ("Regulation") permits comparative advertisements under specific conditions. Subparagraph (a) of the paragraph 1 of the article requires that such advertisements "should not be misleading or deceptive", while subparagraph (f) mandates that "claims based on objective, measurable, and numerical data must be substantiated by scientific tests, reports, or documents". The Regulation also specifies the advertiser's obligation to substantiate their claims and outlines how this proof should be carried out in comparative advertisements in Article 9 titled "Burden of Proof". According to this provision, "claims made in comparative advertisements and subject to comparison must be substantiated by information and documents obtained from relevant departments of universities or accredited or independent research, testing, and evaluation institutions." Additionally, the regulation stipulates that reports submitted for the substantiation of claims in advertisements

must be valid and provide evidence for the claims at the time the advertisement is broadcast.

In 2024, the Advertisement Board ("Board") rendered landmark decisions providing guidance on the substantiation of comparative advertisements, which included detailed reviews and are considered to constitute the principle.

- The Board identified that in the promotions of a leading e-commerce company in Türkiye, the phrase "Türkiye's most recommended e-commerce brand" was accompanied by a disclaimer stating that it was based on the results of an online survey conducted by an independent research company between the dates January 2023 - December 2023, conducted with 21,600 participants. The advertiser submitted the mentioned research report to the Board as evidence for substantiating the claim. Based on the research report,

the Board concluded that the claim was substantiated in accordance with the principles outlined in Article 9 of the Regulation. However, the Board concluded that the study did not have the breadth and certainty required to substantiate the claim "Recommended by the whole of Türkiye". The decision also addressed the advertiser's social media promotions, which included phrases such as "Türkiye's number one", "No. 1". The Board noted that these promotions did not reference the research and failed to establish a connection between the claim of being "No. 1" and the claim of being "the most recommended." As a result, the Board found the manner of presentation and the proof of the promotions to be misleading for average consumers and decided to impose an administrative fine on the advertiser and suspend the advertisements.

- In another promotion reviewed by the Board, the advertiser submitted a research report in support of their claim "much easier to clean than the other Airfryers on the market". However, the Board found that the report did not specify which competitor products were included in the study and that the research did not reflect the results for all competitor products in the "Airfryer" category. The Board assessed that the burden of proof specific to comparative advertisements had not been met

in relation to the claims made in the advertisements. As a result, the Board decided to suspend the advertisements.

In its decisions, the Board has clearly stated that in order to substantiate claims of superiority, all products and services in the relevant market must be compared, and the research conducted must contain sufficient data to prove the claim. In the decision regarding the e-commerce company, it was noted that the research conducted with 21,600 participants did not encompass all of Türkiye or the wide variety of services offered by the advertiser's e-commerce platform. Given that the claim of being "the most recommended" could pertain to a range of conveniences and advantages offered by e-commerce platforms, it is evident that this claim alone is insufficient to substantiate the "No. 1" claim. Similarly, in order to substantiate the claim "much easier to clean than the other Airfryers on the market", all competitor products in the market should have been included in the research.

In some of its decisions, the Court of Cassation has held that although exaggerated expressions can be used in advertisements, and their use does not necessarily render the advertisements as directly misleading, the expressions in the aforementioned promotions are not merely exaggerated but are based on unsubstantiated data, which could be considered misleading to consumers. In its established case law, the Court of Cassation does not generally find it unlawful for

businesses to highlight the superior aspects of the products or services they offer; however, when specific and concrete superiority claims are made in advertisements, these claims must be substantiated as a requirement of the principle of good faith. In fact, in the decisions mentioned above, the Board thoroughly examined the scope of the products and services involved in the advertisement, the presentation of the advertisements, and the content of the research presented to fulfil the burden of proof, and, in our opinion, came to an appropriate conclusion. We believe the Board's interpretation in these decisions aligns with the purpose and framework of legal regulations concerning the substantiation, or proof, of claims in comparative advertisements.

Indeed, terms like “best”, “first”, “only” and “number one” are frequently used in advertisements. These terms implicitly compare the advertiser or their products and services with competitors in the market and containing a claim of superiority. However, under the Regulation, for such advertisements to be lawful, they must be substantiated. In its recent decisions, the Board makes an assessment from the perspective of consumers when evaluating claims of superiority and comparison and the Board may expect that the research presented to substantiate such claims includes all competing companies or their products and services.



# Advertisement Board's Approach to Environmental Claims

The Advertisement Board ("Board") reviewed numerous advertisements containing claims related to the environment in accordance with the Regulation on Commercial Advertising and Unfair Commercial Practices ("Regulation"), as well as the Guideline on Advertisements Containing Environmental Claims. The Board's evaluation provided practical guidance for interpretation of environmental claims' compliance to law.

- The Board examined the environmental claims in a cosmetic company's advertisement, claiming that "they achieved a 78% reduction in CO2 emissions from 2005 to 2020, increased production volume by 37%, and made 35 facilities, including 14 factories, carbon-neutral by the end of 2019". The Board determined that these claims were substantiated by accredited or academically recognised scientific studies, fulfilling the burden of proof under the Regulation. Therefore, the advertisements were not in violation of the applicable law.
- The Board determined that the claims in the advertisements of a personal care company's daily hygienic pad product—such as being "biodegradable", "environmentally friendly", "protects the air", and "helps reduce carbon dioxide emissions"—were not properly substantiated and concluded that these general claims were misleading and exploitative. The Board examined the claims in the baby diaper products of the same company, such as "The absorbent

area is biodegradable, and the seeds inside can sprout, each baby, using thousands of diapers, will contribute to producing millions of cubic meters of oxygen as the seeds transform into plants". The Board found that the report provided with the purpose of substantiating their claims, showing the biodegradation rate of the material used in the absorbent layer, was insufficient to support the broader claim that the entire product "decomposes in nature". Additionally, the advertisements created the impression that every seed inside the diaper would turn into a plant, suggesting that each diaper contributes positively to the environment. The Board determined this to be misleading and exploitative of consumers' environmental sensitivity. Considering consumer habits and behaviours, the Board was of the opinion that conveying such a message without providing any warning about environmentally-friendly ways in which

- to dispose of diapers, misled consumers.
- The Board examined the claims “do not throw this box away for a sustainable world” and “pot-vase-storage container” along with flower visuals on the packaging of a food product. The Board concluded that these claims were misleading, as there were no actions taken by the advertiser to reduce or eliminate the environmental impact of the product, production, supply chain, or packaging. The Board concluded that assigning the responsibility of ensuring sustainability to consumers exploited their lack of knowledge and played on their environmental sensitivities, thereby violating the principles of truthfulness and honesty.
- The Board examined advertisements claiming “as environmentally conscious as you”, and ruled that these statements were misleading, as no information was provided about what they referred to, for what purpose, how they were used, or whether they pertained to the entire or a part of the product’s lifecycle.
- The Board found that the claims “using 30% fewer chemicals with environmentally friendly production techniques” and “achieving 40% water preservation” for a textile company, were not properly substantiated.
- In its examination of another clothing company’s advertisement claiming “sustainable materials are used in the products in the collection”, the Board found that no information was provided about the content of the
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- materials used in the production of the collection. As a result, the Board concluded that a perception could arise among consumers that all the products in the collection were made from these materials, which could exploit consumers' environmental sensitivity or potential lack of information.
- The Board found the advertisements of a retail company claiming "We promise to make all our packaging 100% sustainable by 2024" to be in violation of the law, as the specific brand or product group was not indicated, nor there was any direction to a website or other platform where consumers could obtain further information in regards to this ambitious claim.
- The Board examined the claims made about a paper towel product, as asserting that "it produces and transforms its own energy" and "it is produced with lower water consumption compared to standard paper production methods", and concluded that these claims were not properly substantiated.
- In the advertisements of a washing machine, the terms "climate-friendly action" and "climate-friendly product," were used without explanation on the environmental impact of the product's production processes. The Board concluded that such use could lead to consumer uncertainty and exploit a lack of information, therefore found these advertisements to be misleading.

As can be understood, the Board conducted rigorous and effective supervision in 2024 to ensure compliance with the principles in the Regulation and the Guide for Advertisements Containing Environmental Claims. The Board has been particularly diligent in reviewing the fulfilment of the burden of proof. The Board is expected to continue its strict oversight of advertisements containing environmental claims.

# Decisions of the Advertisement Board on the Use of Google Ads

During its meeting in March 2024, the Advertisement Board examined sponsored advertisements placed by certain companies via Google Adwords/Google Ads, in which registered trademarks of competitor firms were used as keywords. Accordingly, the Board imposed a suspension penalty on advertisements where a company's trade name and trademark used to identify its services were selected as keywords by other companies, on the grounds that such advertisements were misleading to consumers.



Although there is no explicit legal provision regarding keyword preference in advertising law, the Board evaluated the relevant advertisements in accordance with Article 7 of the Advertising Regulation, which sets out the principles of truthfulness and honesty, the fundamental principles of advertising law requiring that advertisements should not mislead consumers, Article 9 concerning the advertiser's obligation for burden of proof, and Article 11 regarding unfair advantage gained from the reputation of others.

Accordingly, the Board determined that in promotions conducted via the Google Ads system, the selection of keywords is the responsibility of the advertiser. It ruled that advertisements created by selecting another company's trademark or trade name as a keyword were misleading to consumers and unfairly benefited from the trademark owner's reputation.

Within the scope of the Board's decisions, it was found that paid sponsored advertisements related to companies engaged in e-commerce/online retailing and on-demand broadcasting services were included in search results for the term "netflix" on Google's search engine. Furthermore, it was determined that consumers who clicked on these advertisements were re-directed to the advertiser's website, resulting in the opinion that these promotions were misleading and resulted in unfair competition. In one particular decision, the advertising company argued that the expressions appearing in the promotions may have resulted from the sale of "Netflix" branded products on its website. However, upon considering the association of another video streaming platform with Netflix in the advertisement visual, the provision of the same video streaming service by the advertiser, and the obligations of the advertiser in regards to keyword selection and titles entered into the system, the Board concluded that these advertisements were also misleading consumers.

Following their examinations, the Board decided to impose a suspension penalty against advertisers on the grounds that their advertisements were misleading consumers and caused unfair competition, in accordance with the Consumer Law and the Regulation. It has long been accepted in trademark law that the acts subject to the Board's decisions constitute trademark infringement and unfair competition. In this context, Article 7/2(d) of the Industrial Property Code expressly states that "the use of the same or similar sign on the internet in the form of a domain name, routing code, keyword, or similar forms to create a commercial effect" constitutes trademark infringement.

Indeed, the Court of Cassation and the Regional Court of Appeal have also ruled that the use of another company's trademark as a keyword constitutes trademark infringement and unfair competition. Additionally, in its decision dated 12.12.2016, numbered E. 2015/12152, K. 2016/9489, the 11th Civil Chamber of the Court of Cassation ruled that the defendant's use of the plaintiff's trademarks as adwords/keywords in Google search engines was contrary to the principle that comparative advertising should be conducted within the framework of principles of fair competition.

These acts not only constitute trademark infringement but may also lead to unfair competition under the Turkish Commercial Code, as they manipulate consumer searches

on the internet, exploiting the trust and reputation associated with the relevant firm and lead consumers to purchase goods or services from different companies or websites. Additionally, in Google Ads advertisements, whoever pays the highest price for a keyword, even if it pertains to another company's trademark, can appear at the top of the ad rankings. This situation can result in competitors gaining higher visibility in search results and brand owners having to pay high fees for their trademarks to rank higher, leading to adverse consequences. As recognised in the aforementioned Court of Cassation rulings, this form of advertising not only constitutes trademark infringement but also violates the principle that comparative advertising should be conducted within the framework of fair competition.

Although the Board did not evaluate these advertisements as comparative advertising, it made an accurate assessment under the relevant articles of the Regulation by determining that advertisers using Google Ads and similar services are responsible for keyword selection and that unauthorised use of a third party's trademark to promote their own goods and services constitutes unfair competition. We believe that these decisions of the Board align with judicial decisions and legal doctrine and are appropriate in terms of trademark and advertising law principles.

# Advertising Alcohol on Social Media

In Türkiye, the advertising, promotion, and similar activities related to alcoholic beverages are prohibited across all communication channels, including television, radio, cinema, print media, and digital platforms. Therefore, it is not permitted to promote or advertise alcoholic beverage brands in any way. This restriction also includes advertisements made through social media influencers. The Advertisement Board has scrutinised hidden advertisements of alcoholic beverage brands conducted through social media influencers. As a result, it has imposed administrative sanctions such as cessation of such promotional and advertising activities and issued administrative monetary fines to both advertisers and the social media influencers involved.

The Advertisement Board reviewed the posts of a social media influencer in 2024, which featured advertisements for various alcoholic beverage products on their social media page. Upon examination, the Board found that in these posts, images of a variety of alcoholic beverage products were displayed openly showing their brand names and distinctive elements, with the products facing the camera in a way that made them clearly visible. Further investigation of the social media account revealed that no other branded products from different sectors available to consumers were featured, and the only commercial products shown in the posts were the mentioned alcoholic beverages. This indicated that the posts utilised imagery and implications designed to generate consumer demand, effectively constituting advertisements for alcoholic beverages despite such promotions being prohibited by law. Additionally, the content was shared in a format that presented personal preferences and experiences, without explicitly stating that it was an advertisement or including any clarifying labels such as "sponsored" or "collaboration". As a result, the Board concluded that these posts constituted hidden advertising and decided to impose a penalty of cessation of the advertisements.

The Advertisement Board also examined various posts shared by another influencer on their social media account, including photos and pinned posts in a fixed folder on their homepage. The investigation revealed that



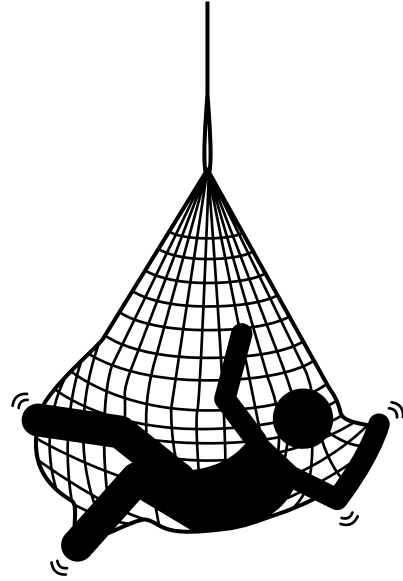
multiple images featuring a specific alcoholic beverage brand—along with its distinctive branding elements—were used, with bottles and glasses positioned to face the camera in a clearly visible manner. Additionally, the brand’s social media account was tagged, along with hashtags such as collaboration, and the influencer shared content expressing enjoyment of an event hosted by the brand, explicitly mentioning the brand name. Given this, the Advertisement Board determined that the influencer’s social media account served as a “platform” facilitating an event that encouraged the consumption and sale of alcoholic beverages belonging to the advertising company. This effectively constituted an advertisement for alcoholic beverages using demand-generating imagery and implications, despite such marketing being legally prohibited. Furthermore, some pinned stories in the folder contained hidden advertising for the brand, reinforcing the violation. As a result, the Advertisement Board concluded that these activities were in clear breach of regulations and imposed an administrative fine on the social media influencer, along with a penalty of cease-and-desist regarding the advertisements.

# Hidden Traps in Subscription Agreements: Dark Patterns

The Advertisement Board ("Board") closely monitored dark patterns on online user interfaces that facilitate consumers to enter into subscription agreements, and which might deceive, coerce, manipulate consumers into making choices that may not be in their best interests. Dark patterns are broadly considered deceptive commercial practices under the Commercial Advertising and Unfair Commercial Practices Regulation which defines "The use of guiding interface designs, options, or expressions in an online environment that negatively affect consumers' decision-making or choice-making will be considered methods aimed at altering their decisions in favour of the seller or provider, rather than the normal choice they would make." as an example of unfair commercial practice.

The Board evaluated that commercial practices, such as pre-selecting subscription packages and highlighting the accept option over the rejection option in updated subscription agreements and the interface designs that make it harder for consumers to complete their purchase without upgrading their preferred subscription plan, are dark patterns.

- The Board examined the website of a financial services company offering monthly and annual subscription packages, where the "annual subscription" option was pre-selected and the more expensive "pro" option was highlighted in blue with a "most



- preferred" label in green and capital letters. After reviewing the documents provided by the company, the Board concluded that the "most preferred" label was accurate, since "pro" was indeed the most preferred option, but was of the opinion that the pre-selection of the "annual subscription" box and the blue highlighting of the "pro" option was misleading and influenced consumer choices, as it significantly attempted to impact on their economic behaviour or led them to engage in a transaction they would not have preferred under normal circumstances. Ultimately, the Board decided that such practice constitutes



unfair commercial practice and issued a cease order.

- The Board, in another review regarding the pre-selection of a subscription plan, stated that no subscription plan should be pre-selected for consumers, regardless of whether it is deemed beneficial or not, so they can make decisions based solely on their own will without any external (but perhaps deceptive) influence, and imposed a cease order. Regarding the “most popular” label next to the pre-selected package, the Board emphasised that consumers should clearly be informed about what this meant by this label, and the label could be presented to consumers only if substantiated with data such as statistics related to purchase, click, or add-to-cart variables.
- The Board reviewed the commercial practices of a streaming company, where the monthly subscription package was pre-selected, and entering payment details was mandatory to access the 7-day free trial. The Board concluded that pre-selecting options for consumers and forcing them to enter bank card information to access the free trial negatively influenced their decision-making, leading them to engage in a transaction they would not normally have entered, causing consumer harm, and violating fair competition principles.
- The Board examined the commercial

practices of an online video-sharing and social media platform where one subscription plan was pre-selected, and the “1-month free trial” option was presented in a manner that made it harder for consumers to opt out because the “X”, reject icon was placed separately in the top-right corner for consumers who do not want to take this offer, which made it harder for users to avoid the offer. The Board concluded that the pre-selection steered the choices of consumers and the practice of not presenting the two options equally made it more difficult for average consumer to opt out and ruled that the practice examined constituted dark pattern.

As demonstrated in these decisions, the Board has taken a strict stance on the conditions under which subscription agreements could be presented to online consumers. Adopting a consumer-protective approach, the Board has classified subscription interfaces that are pre-selected as dark commercial designs, even when the outcome may ultimately benefit the consumer. In terms of protecting consumers’ freedom of choice and decision-making, preventing dark patterns is crucial. However, the approach adopted by the Board may lead to the interpretation that “every pre-selected presentation constitutes a dark commercial design”. In fact, according to the fundamental principles of Turkish consumer law and the Board’s decisions, “dark pattern” is defined as a user interface design intentionally

created to mislead or direct consumers to actions they would not normally take. The danger of these designs lies in the risks they pose in negatively influencing consumers. In this regard, a distinction based on concrete data and evidence should be made between manipulative and misleading practices for consumers and the fair commercial practices such as “pre-selections” which is widely used both in Türkiye and worldwide. From this perspective, the Board’s conclusion that “pre-selection is a direct and sole ground for illegality” may conflict with the principles of legal certainty and predictability.

# Data Protection in Advertisements



The Advertisement Board ("Board"), during their meeting dated 12 March 2024 and numbered 343, examined websites that require membership as a pre-condition for making purchase on the website. As part of this examination, the Board assessed whether any additional personal data, beyond the mandatory and necessary information for the purchase process, was requested from consumers, whether the conditions for unsubscribing were more difficult compared to the methods specified for subscribing, whether the consumer's consent for cookies and commercial communication was left to their preference along with the membership agreement, and whether personal data was shared with third parties for targeted advertising or marketing purposes.

The Board considered it an unfair commercial practice to compel consumers to consent to targeted advertising and commercial communication, to request personal data that is not necessary for the purchase process, to present the option to continue without

creating a membership in smaller font and different colour, and to make it more difficult to unsubscribe. Some of the key decisions of the Board are as follows:

- During the examination of a leading e-commerce and online retail platform in Türkiye and worldwide, it was found that consumers were not provided with the option to proceed for purchase without creating an account. In the account creating process, consumers were forced to accept targeted advertising, and no opt-out option was provided. The website design and membership process were found to adversely affect consumers' decision-making and freedom of choice. The option to leave no trace after making a purchase was not offered, and consumers were directed to modify their account settings to avoid targeted advertising, a process which was more complicated than simply accepting the membership, which did not eliminate the violation.

- In the examination of the website of a well-known footwear company, it was found that consumers were not provided with the option to continue without creating an account. While creating accounts, consumers were required to provide gender information – information which is not necessary for the shipment of products. Consumers were forced to consent to the use of their personal data for marketing purposes, and their explicit consent regarding whether their personal data would be used for marketing was not obtained. The design of the website and commercial practices were found to negatively affect consumers' decision-making and freedom of choice. Consumers were not provided with the option to leave no trace after purchasing a product, and while the option to easily register was offered, no information was provided regarding how to unsubscribe, thereby preventing consumers from severing their relationship with the website and the company.
- In the examination of the website of a travel agency, it was found that when consumers proceeded to make the payment for ticketing, the payment page displayed a pre-selected checkbox for a loyalty program membership, labelled "I want to become a member", without presenting it for consumer consent. This practice was found to create a certain

duress on consumers into joining the membership by taking advantage of their lack of knowledge, experience or attention, without their consent. The "Terms of Use" checkbox, which consumers were required to check during the ticket purchase, did not provide a link to the Terms of Use. It was also found that unsubscribing was not as easy as subscribing; consumers were forced to accept targeted advertising when agreeing to the membership, and no option was provided to decline targeted advertising. The design of the website and its commercial practices were found to negatively affect consumers' decision-making and freedom of choice. Consumers were not offered the option to leave no trace after purchasing the product.

The Board's decisions are based on the prohibition of deceptive commercial practices which are defined as "using methods such as directing interface designs, options, or statements related to a product or service in online environments that adversely affect consumers' decision-making or will to choose, or aim to lead to changes in their decision in favour of the seller or provider under normal circumstances" by the Regulation on Commercial Advertisement and Unfair Commercial Practices.

The violation of privacy of personal data through advertising practices, which impacts consumers' purchasing behaviour, has naturally aligned personal data protection law with the consumer protection law. In order to raise awareness in the public regarding targeted advertising and deceptive commercial practices, a Cooperation Protocol was signed on 28 August 2024 between the Advertisement Board and the Personal Data Protection Authority with the aims of monitoring international regulations and practices related to digital advertisements and the use of personal data, and develop joint policies against existing and potential violations. This protocol aims to increase consumers' awareness of digital advertisements and commercial practices and strengthen their control over personal data.

In digital environments, the implementation of targeted advertising practices often requires the use of extensive and varied user data. As a result, companies may resort to deceptive commercial practices and misleading website designs in order to collect such data from consumers. As seen in the aforementioned decisions, the commercial practices in question lie at the intersection of personal data protection law and consumer protection law. With this collaboration, it is anticipated that the Advertisement Board and the Personal Data Protection Authority will continue their close monitoring of the use of personal data in the context of targeted advertising and deceptive commercial

practices. It is anticipated that administrative sanctions may increase in this area, and new policies may also be developed.

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# Firm Overview

We are one of the oldest and largest law firms in Turkey and are considered internationally to be among the top-tier of legal services providers.

We are a full-service law firm leading the intellectual property field among others, providing dispute management, advisory, transactional, prosecution, investigation, and regulatory markets law services to domestic and multinational corporations.

We are based in Istanbul, with working and correspondent offices in Ankara, Izmir and the major commercial centres in Turkey.

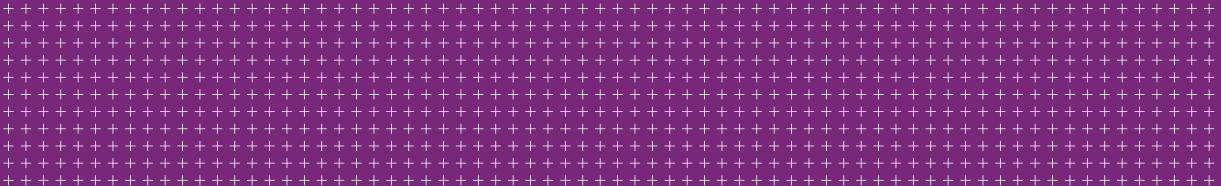
We operate mainly in Turkish and English and also work fluently in German and French.

We advise a large portfolio of clients in numerous fields of activity including life sciences, insurance and reinsurance, energy, construction & real estate, logistics, technology, media and telecoms, automotive, FMCG, chemicals and the defense industries.

Our vision is to be the leader in the services we provide, sensitive to wider society, the environment, and our employees as an innovative and sustainable institution.

Our clients' success is at the heart of our own success. We closely monitor developments in the business sectors in which our clients operate and invest in accumulating industry specific knowledge to understand their changing needs. We actively participate in professional, trade and business organisations in Turkey and internationally.

We are committed to adapt to our clients' changing business needs by delivering innovative, high quality and commercially prudent legal solutions.



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