

GALA GAZETTE

Amendments to the Advertisement Regulation

Turkish Regulation on Commercial Advertisement and Unfair Commercial Practices ("Regulation") which is the main regulation regarding advertising has been amended with an amending regulation published in the Official Gazette dated 4 January 2017 and numbered 29938 ("Amending Regulation").

The Amending Regulation, first of all, postpones the enforcement date for the rule allowing the use of name or trademark of the competitor in the comparative advertisement. This rule has been introduced by the Regulation back in 10.01.2015 but the enforcement was postponed until 10.01.2016. Then by 25.12.2015 it was further postponed until December 30, 2016. Now the Amending Regulation has once again postponed the effective date of the said article until January 1, 2018. The Amending Regulation contains a new article stating that comparative advertisements shall comply with "the rules determined by the Advertisement Board". We evaluate such amendment as a signal that the Advertisement Board is in preparation of a new set of rules regulating the comparative advertisements and expect that the direct comparative advertisement will be released thereupon.

The Amending Regulation introduces a new set of rules concerning direct comparative advertisements. It first of all prohibits the use of testimonials of real persons or institutions in direct comparative advertisements. In addition to the existing prohibition of comparative advertisement for food supplements in Turkey, the Amending Regulation is setting forth that nutrition claims in the advertisements can be subject to comparison if only they are coherent with the relevant legislation of the promoted product. Moreover, even though the Amending Regulation contains a new article prohibiting the use of health claims in the comparative advertisements, the rule brought with this new article is indeed is not novel because the use of health claims in any type of advertisement is already prohibited in Turkey. The clear repetition of such rule for comparative advertisements only shows that the health claim issue is treated very seriously in Turkey.

Furthermore the Amending Regulation also adds new rules for the announcement of sweepstakes and prize games organized in Turkey. It is already required that **(i)** the beginning and end dates of the promotion, **(ii)** the announcement technique of the results and **(iii)** the dates and conditions of the delivery of the goods or services should be clearly mentioned in the announcement. The Amending Regulation add that announcement of **(i)** the beginning and end dates of the promotion and **(ii)** the conditions regarding the delivery of the goods and services **or** the announcement method of such should also be clearly mentioned. It is now a question if the announcement method of the results shall also be written within the announcement but given the general principle of clarity for the sake of the consumers, it would be wise to include the announcement technique of the results if the lack of the same could be considered as misleading advertisement.

The Amending Regulation also brings key changes for the advertisements of internet services providers (ISS). The consecutive Advertisement Board decisions in the recent years was a signal to such amendment and it is now set forth that the ISSs should disclose in their advertisements a warning that the promised internet speed in the advertisement may vary depending on the infrastructure used by the customers. In addition, the ISSs should not create a perception that every consumer can reach the speed levels which were obtained during the laboratory tests. Finally, all the possible customer restrictions such as fair use quota or speed quota shall be explicitly indicated during the advertisements.

Last but not least, the Amending Regulation facilitates the burden of proof for the advertisers. According to the former Regulation, every claim in every advertisement was to be proven with reports obtained from universities, accredited testing institutions or independent research institutions. The Amending Regulation keeps such strict burden of proof mechanism only for comparative advertisements and looses the ties for other advertisements. According to the Amending Regulation, the claims in the advertisements should still be proven with scientific information and data, however reports obtained from universities, accredited testing institutions or independent research institutions will be requested where necessary.

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