

## Law Bulletin

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### Unlawful Commercial Advertisements in Turkish Law

In today's free economy, advertisements, marketing and communication have critical importance in triggering commercial, technological and economic developments. Advertisements are the market players' prominent instrument for reaching out to a wide variety of diverse consumer communities and promoting their firms, brands, or products.

Turkish law defines the term "commercial advertisements" as "marketing communications in written, visual, auditory or other forms promoting the sale or lease of goods and services and informing and persuading target consumer groups".

Advertisements' and marketing's substantial role in micro-economy has triggered the need for consumer protection , in order to ensure and sustain a balanced and fair trade environment. The legislator has introduced laws and secondary legislation governing advertisements and has established supervisory authorities to serve for this purpose.

Turkish law governs the consumer protection and fair market aspect of commercial advertisements under the Turkish Commercial Code no. 6102 (the "**TCC**"), the Consumer Protection Law no. 6502 (the "**CPL**") and the Regulation on Commercial Advertisements and Unfair Commercial Practices (the "**Regulation**").

#### Principles under the Turkish Commercial Code

The TCC regards commercial advertisements that are contrary to good-faith as acts of unfair competition<sup>1</sup>. For instance, an advertiser's false and misleading statements regarding its products, disparagement against others' products, or spreading misleading information regarding others'

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<sup>1</sup> Details of actions relating to commercial advertisements that consist unfair competition are provided under Article 55/I/(a) of the TCC.

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products through comparative advertisements are deemed as such acts under Article 55 of the TCC.

The TCC provides certain legal rights for those, whose customer portfolio, creditability, commercial reputation, commercial activities or other financial interests are damaged or under risk due to the unfair competition of others. Such legal rights include requesting (i) determination of unfair competition, (ii) correction or cease of the unlawful content, (iii) indemnification for pecuniary and non-pecuniary damages, and/or (iv) imposition of penal sanctions. The applicable penal sanctions include imprisonment of individuals and executives of entities committing unfair competition, judicial fines against such individuals and executives, and security measures against legal entities.

## **Principles under the Consumer Legislation**

The CPL prohibits advertising and covert advertising in a way that may mislead consumers or abuse their lack of experience and knowledge, endanger their life and property safeties, abuse sick persons, elders, children and disabled persons. The Regulation provides the principles applicable to commercial advertisements in greater detail.

The Regulation states that an advertisement should easily be identified, its content must be prepared by considering the perception level of an average consumer and its potential effect on a consumer. A comparative advertisement may be allowed, provided that it does not indicate the distinctive information of the relevant competitor, such as the name of its competitive product or its trademark, logo or commercial title. According to the Regulation, the burden of proving the accuracy of an assertion taking place in a commercial advertisement lies with the advertiser.

The legislator has established the Advertisement Board and authorized it to determine the principles applicable to commercial advertisements, introduce regulations to protect consumers against unfair commercial practices, to investigate their implementation and impose legal sanctions against persons violating these regulations<sup>2</sup>. The Advertisement Board investigates the compliance of advertisements and commercial practices, either on ex officio basis or upon consumers', competitors', or non-governmental organizations' complaints. If the Advertisement Board determines an unlawful advertisement or an unfair commercial practice, it may impose sanctions, such as (i) ceasing or correcting the relevant advertisement or commercial practice, or (ii) an administrative fine along with suspension of the relevant advertisement or commercial practice for up to three months, against persons committing such acts (i.e. advertisers, advertising agencies and media institutions).

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<sup>2</sup> The Board of Advertisement is often confused with the Advertising Self-Regulatory Board in practice. However, the Advertising Self-Regulatory Board is a non-governmental organization and has no power to impose any sanction. The Advertising Self-Regulatory Board may only convey an advisory opinion stating that the advertisement should not be published or broadcasted in its current state, to the media platform that the advertisement is published or broadcasted through.

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The administrative fines to be imposed pursuant to the CPL due to unlawful commercial advertisements vary based on the media platform where the commercial advertisement is published or broadcasted through. In the event of such unlawful commercial advertisement's repetition, the Advertisement Board may impose an administrative fine by increasing the previous amount up to ten times. A person or an entity that had been subject to administrative fine pursuant to the CPL may file for cancellation of the penalty before the competent administrative court within 30 calendar days. However, filing for cancellation of the administrative fine will not automatically suspend its implementation.

## Final notes

Considering the severe sanctions under the TCC and the CPL, commercial advertisements should be prepared carefully and the commercial practices' compliance with the TCC, the CPL and the Regulation should be ensured before they are launched. Otherwise, both the advertiser and the advertisement agency may face severe legal sanctions, as well as loss of reputation in the market and the society.

In order to prevent or mitigate these risks, paying particular attention to the contract between the advertiser and the agency, especially to the provisions distributing the liability amongst the parties, is as important as preparing the advertisement material in compliance with the law.

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