

CLIENT ALERT

CORPORATE LAW | TURKEY

MARCH 2022

AMENDMENTS TO THE REGULATION ON COMMERCIAL ADVERTISING AND UNFAIR COMMERCIAL PRACTICES

The Regulation on Commercial Advertising and Unfair Commercial Practices no. 29232 dated 10 January 2015 (the "**Regulation**") has been amended by the Amendment Regulation published in the Official Gazette no. 31737 dated 1 February 2022 (the "**Amendment Regulation**"), and new amendments have come into force as of 1 March 2022.

The purposes of the Regulation as well as the Amendment Regulation are to set out main principles and procedures that must be followed by the advertisers, advertising agencies, media organizations, natural persons and legal entities engaged in commercial practices related to advertising and to protect consumers against unfair commercial practices.

You may find below a summary of the main changes introduced by the Amendment Regulation:

PERSONALIZED PRICING

Amendment Regulation has introduced a "personalized pricing" concept and determined its application principles under Article 13 of the Regulation.

Personalized pricing is defined as "*the price offered by analyzing purchasing behavior and other personal data of the consumer in relation to a good or a service*". While implementing personalized pricing (i) information regarding such implementation, (ii) current sales price of the good or service determined by the seller or service provider, (iii) personalized price shall be provided in the same field.

As a result of the relevant amendment, the personalized pricing shall be offered personally to the consumer and meet the above conditions.

DISCOUNT SALES

As per the Amendment Regulation, in the advertisements announcing a discount on a product or service, "price applicable before the discount" shall also be indicated along with the start and end dates of the discount sales and the amount of goods/services limited to such discount (if applicable).

Whilst determining the sales price applied before the discount as the non-discounted price, the lowest price applied within 30 days before the discount date shall be taken as basis. This being said, with regards to perishable products such as fruit and vegetables, the previous price before the discounted price shall be taken into account.

Advertisers shall bear the burden of proof for the above requirements. With these amendments, the Ministry of Commerce aims to ensure that consumers benefit from actual and true discount rates.

FINANCIAL SERVICES RELATED ADVERTISEMENTS

In advertisements related to financial services, the following paragraph has been included as a new provision under Article 25 of the Regulation:

"(4) In advertisement indicating that a good or a service is offered for sale with linked loan, the credit period, interest rate, monthly and annual percentage value of the total cost and repayment conditions shall be provided in the area where the advertisement is published or on a pop-up screen to be easily seen where consumers can be directed through a link or a warning sign and where consumers can obtain detailed information."

RANKING PRACTICES

With Article 28/A introduced by the Amendment Regulation, a new provision has been included regarding ranking practices. Accordingly;

"(1) In the event that a ranking is made by comparing price, qualification and similar aspects of a good or a service offered for sale on the internet, "the information with regards to ranking criteria" shall be provided in the same field or on a pop-up screen to be easily seen where consumers can be directed through a link or a warning sign and where consumers can obtain detailed information.

(2) In the ranking results shown by relying on an advertisement or sponsorship or similar agreements, it is mandatory to state the term "advertisement"."

CONSUMER EVALUATIONS

As a new provision, Article 28/B states "where a seller or provider or intermediary service provider provide the opportunity for the consumers to evaluate a good or service, a seller or provider, such evaluation opportunity shall only be granted to the purchaser(s) of the relevant goods or services".

Furthermore, principles and rules regarding the publication of these evaluations shall be provided in the area where the evaluations are published or on a pop-up screen where consumers are directed by a link or a warning sign.

The consumer evaluations shall be published according to objective criteria such as date, evaluation grade etc. for at least 1 year after the necessary examinations are made, without making any positive or negative distinction. In the event that the evaluation is not published due to non-compliance with the evaluation principles and rules, the evaluation shall be disregarded and the consumer shall be notified immediately in this respect.

The consumer evaluations consisting of health declarations or statements in violation of the relevant legislation shall not be published.

The new provision does not allow the sellers and service providers to conclude any kind of agreement with third parties for the purpose of increasing the sale of a good or service by making inaccurate evaluations or by usage of confirmative indications for a related good or service.

PUBLICATION OF CONSUMER COMPLAINTS

If a complaints platform's main field of activity is to provide a publishing opportunity on the Internet for complaints of consumers partaking in evaluations regarding a good or service, or a seller or provider of that good or service, a new

provision of Article 28/C provides that said complaint platform shall comply with the obligations relating to consumer evaluations explained above, as well as the following obligations:

72 hours period: A minimum of seventy-two hours shall be granted to the sellers or providers who are evaluated, in order to use their right to explanation or respond before the publication of the evaluation.

Publication condition: Evaluations shall not be published before the expiry of this period or if it is understood that they do not reflect the truth.

Effective communication: An effective communication method shall be provided to the sellers or providers who will exercise their right to explanation or response regarding the evaluation, notwithstanding the platform membership, fee or other practices.

By virtue of aforementioned amendments, the Advertisement Board is committed to preparing and publishing specific guidelines for the purpose of protecting consumers against commercial advertisements and unfair commercial practices.

SANCTIONS

As to the sanctions to be applied in case of non-compliance with the above requirements, sanctions foreseen under the Consumer Protection Law no.6502 would apply. In this respect, an administrative fine amounting from TRY 15,566 to TRY 622,853 depending on the type of broadcast (e.g. television, radio, internet, sms etc.), suspension or correction of the advertisement, precautionary suspension for three months would be imposed either separately or cumulatively.



In compliance with Turkish bar regulations, opinions relating to Turkish law matters that are included in this client alert have been issued by Özdirekcan Dündar Şenocak Ak Avukatlık Ortaklığı, a Turkish law firm acting as correspondent firm of Gide Loyrette Nouel in Turkey.

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