

Turkey Amends its Advertisement Regulation

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Turkey's main regulation regarding advertisements, the Regulation on Commercial Advertisement and Unfair Commercial Practices ("Regulation") was amended with another regulation published on the Official Gazette of 4 January 2017, effective immediately. Those who advertise their products and services, advertisement agencies and the media that publishes such advertisement should abide by the Regulation.

The main amendments realized on the Regulation are with regard to (i) comparative advertising and (ii) proof conditions with regard to the assertions in the advertisements. Aside from these, what should be disclosed when announcements regarding marketing techniques that give the right to join a lottery or to a competition through collecting a certain number of coupons, labels etc., or through the purchase of the advertised product has been amended. Previously, the obligation was to declare (i) the beginning and end dates of the promotion, (ii) the announcement technique of the lottery result and (iii) the dates and conditions of the delivery of the service products. The amendment is vague as to whether "the announcement technique of the lottery result" should be disclosed—the requirement itself has been deleted, but have been replaced with "disclosure of conditions regarding the delivery of the service or the goods or the disclosure of the announcement method of such."

Another novelty brought about by the amendment is with regard to the regulation of advertisements regarding electronic communication services. Generally, the amendments impose obligation to disclose to the consumer that the speed promised with the advertisement can be subject to change due to infrastructure related issues and that the perception regarding all consumers may enjoy the speed levels tested in laboratories should not be created.

- Amendments on Comparative Advertising

Compliance with the principles (with regard to comparative advertising) set out by the Advertisement Board has been added as one of the conditions under which comparative advertisements can be made. Such amendment brings about the expectation that the Advertisement Board will draft principles under which comparative advertisement can be made.

Although the trademark or commercial titled of the competitor product can be used in the comparative advertisement, with the amendment, real person or institutional witnesses cannot be used in comparative advertisements. Previously, this paragraph was to enter into force as of 31 December 2016. With the amendment, the entry into force of this requirement has been postponed to 1 January 2018.

Further, the new amendments emphasize the principle that food supplements cannot be subjects of comparative advertisements. The newly added principles provide that health declarations

within food commercials cannot be compared and nutrition declarations can only be compared in compliance with the relevant legislations. Comparative advertisement cannot be made with regard to sectors whose price regulations and significant market power obligations are determined by the administrative authorities.

- Amendments on Burden of Proof

The new proof system proposed by the amendments will be deemed easier by companies subjected to it. Previously, any assertions in advertisements were to be proven with reports obtained from universities, accredited testing institutions or independent research institutions. With the amendments, this requirement is introduced for comparative advertisements. For the rest of the advertisements the rule is changed. Such a high standard of proof can, now, be required where deemed necessary. However, the rule is to prove all assertions through information and documents which have scientific validity.

- Conclusion

The amendments regarding the burden of proof will especially be beneficial for the incumbents of the Regulation. As for comparative advertisements, the future may bring further principles, as the Regulation has been amended to provide that those willing to engage in comparative advertisements should also comply with the principles set out by the Advertisement Board.

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