

The Implementation of the Regulation regarding the Using of Competitors' Information on the Comparative Advertisements Has Been Postponed

The last regulation which regulates the advertisement practices in Turkey based on the Law on the Protection of the Consumer titled "Commercial Advertisements and Unfair Commercial Practices" ("Regulation") was published in the Official Gazette in 10 January 2015. Many provisions of this new Regulation came into force as of the publish date, but somehow a significant one did not.

Article 8 of the Regulation allows for comparative advertisements provided that the specific conditions are fulfilled. The above-mentioned provision which does not come into force yet, is a part of this Article 8.

First, according to this article 8 titled "*Comparative Advertisements*";

(1) Comparative advertisements may only be made in case;

- a) They do not deceive or mislead,
- b) They do not lead to unfair competition,
- c) The goods and services being compared meet the same needs or demands,
- d) A feature which provide benefits for the consumer is compared,
- e) One or more material, major, verifiable and typical quality or qualities, which include the price, of the compared goods or services are objectively compared,
- f) Objective, quantifiable allegations based on numeric data are proven through scientific tests, reports or documents,
- g) They do not denigrate or discredit the intellectual or industrial property, commercial name, trade name, or other distinct marks, goods, services, activities or other aspects of the competitors,
- h) Goods and services are from the same geographical location in the comparison regarding the goods and services whose origins are specified,

i) They do not lead to confusion regarding the trademark, trade name, commercial name, any other distinct mark, or goods and services of the advertiser and the competitor.

j) They are not against the rules specified by the Advertisement Board.

(2) The name, trademark, logo or other distinctive figures or expressions of the competitors, as well as trade or business names may be included in comparative advertisements, provided that they comply with the conditions specified in the first paragraph of this provision.

(3) Food supplements cannot be subject to comparative advertising.”

As it is seen, the Regulation specifically includes a provision regarding the usage of the competitors' information on the comparative advertisements as much the same in various countries. This new arrangement resounded in the market when it is introduced, however, the implementation of this rule specified under Article 8/2 of the Regulation constantly postponed several times.

Article 34 of the Regulation (titled “Enforcement”) was amended regarding the implementation of the Article 8/2 of the Regulation through the Official Gazette dated 31 December 2017 with the no. 30287.

Accordingly, now the comparative advertisements may be made once they satisfy the conditions; however, the implementation of the said provision which would enter into force as of 1 January 2018, *“The name, trademark, logo or other distinctive figures or expressions of the competitors, as well as trade or business names may be included in comparative advertisements, provided that they comply with the conditions specified in the first paragraph of this provision. The attestation of any person or the authority cannot be included on the direct comparative advertisements in this regard.”* has been postponed to **1 January 2019**.