

Turkish Advertising Law: Key Do's and Don'ts

15 Jan 2018

Turkey's Advertising Board ("**Board**") ruled on 302 cases during 2017, in the period up to November. Among these decisions, the Board imposed administrative fines totalling 1.2 million Turkish Liras. 63 cases (21%) resulted in detention, while 21 cases (7%) resulted in the Board issuing an administrative fine, combined with a period of detention. The tourism sector received the most fines during the period, followed by the health, food, then cosmetics sectors.

Given the consequences for breaching advertising rules in Turkey, which increase significantly for repeat offences, it is crucial for companies to proactively and pre-emptively review their commercial advertising, to ensure it does not inadvertently expose them to unnecessary legal risks.

Advertising Board's powers and duties

Commercial advertising is defined in Turkey as "marketing communication through written, visual or auditory forms aiming to reach a target market and create a willingness to buy or rent a certain product or service related to commercial activities" (Article 61 of the Law on Consumer Protection number 6502 ("**Law**"), dated 7 November 2017).

The Board was established in 1995, currently comprising 19 members, who represent trade unions, non-governmental organizations and occupational organizations.

The Regulation on the Advertising Board ("**Regulation**"), published in Official Gazette number 29049 on 3 July 2014, outlines the Board's duties (Article 7). Accordingly, the Board has authority to:

- Determine rules for advertising.
- Examine advertisements against its rules.
- Issue penalties involving:
 - Up to three months detention.
 - Precautionary penalties.
 - Administrative monetary fines.

When determining principles for commercial advertising, the Board considers conditions in Turkey, as well as universal advertising definitions and rules.

It can initiate ex officio examinations, or act on complaints about deceptive and unlawful advertising from:

- Consumers.
- Institutions and organizations.

- Competitor companies.

The Board's cases are grouped into 13 categories: health, cosmetics and cleaning, food, communication services, technology, durable consumer goods, tourism, financial services, tobacco and alcohol, education, energy, surreptitious advertising and other sectors.

Requirements and restrictions for commercial advertisements

The Board can impose administrative fines on advertisers, advertising agencies or organizations if a commercial advertisement (Article 61):

- Is not fair, honest or in accordance with public moral, public order, personal rights or the principles set forth by the Board.
- Is deceptive, exploits consumers' lack of knowledge or experience, endangers life or property, encourages violence or crime, damages public health, or exploits elders, children or the disabled.

Marks, logos and other distinguishing marks (including commercial names) which are used for advertising, without explicitly stating they are advertisements are deemed to be covert advertisement. These are forbidden in all mediums (Article 61).

A commercial activity will be deemed unfair if it (Article 62 of the Law):

- Fails to meet requirements regarding occupational diligence; and
- Either has or might significantly disrupt the average consumer's economic behaviour regarding the product or service.

Advertisers bear the burden of proof during claims about commercial advertisements.

Offensive or deceptive advertising is also considered unfair, along with the other unfair activities specifically noted in the By-Law on Commercial Advertising and Unfair Commercial Activities ('**By-Law**') published in Official Gazette number 29232, on 10 May 2015. The noted examples are categorized as either "deceptive" or "offensive" commercial activities. , the burden of proof regarding the commercial activity's fairness will rest with the advertising party.

Fines and penalties

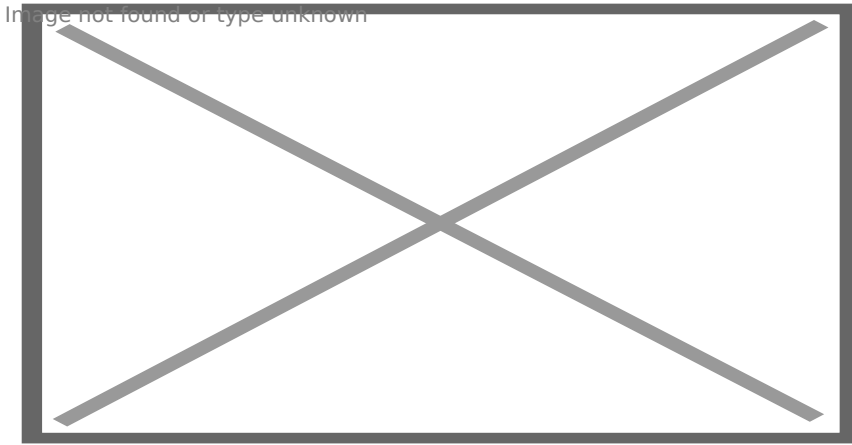
When issuing administrative fines, the Board will assume (Article 7(2) of the By-Law):

- The violation occurred nationwide if it was committed by an institution which holds a:
 - Broadcasting license; or
 - Nationwide broadcasting license.
- The violation occurred locally if it is committed by:
 - An institution which holds a local broadcast license, or
 - Institutions broadcasting via satellites.

- The distribution occurred nationwide if the provinces which a periodical was distributed to 25% of Turkey's population or more.

Depending on the violation's nature, the Board may issue fines and measures separately or collectively.

The 2017 caps for administrative fines relating to breaches of Article 61 are:



~~For violations of Article 62, the Board can:~~

- Detain the offender for up to three months; and/or
- Impose an administrative fine of up to 6,034 Turkish Lira, which increases to 60,353 Turkish Liras for nationwide violations.

If a violation is repeated within a given year, the Board can increase fines by up to 10 times these amounts.

Administrative fines must be paid within 30 days of being notified of the Board's decision.

Disputing fines and penalties imposed by the Board

Administrative remedies can be taken against the fines and measures issued by the Board (Articles 78(2) and 78(3) of the Law, as per Administrative Judgement Procedure Law number 2577). Such a lawsuit must be filed in an administrative court within 30 days of being notified of the Board's decision.

However, disputing the Board's decision via the administrative courts will not stop the Board's decision being executed. Therefore, the offending advertisement could still potentially be suspended, or the violating party would still have to pay the administrative fines.

Even if other legislation outlines different judicial remedies against decisions by administrative courts, decisions in this context should still be appealed to the regional administrative court within 30 days.

Decisions given by administrative and tax courts on tax lawsuits worth 5,000 Turkish Lira or less are final.

The appeal procedure for administrative fines and measures lasts around two to three years, from the judgment request through to receiving a final decision.

Conclusion

Given the volume of fines issued by the Board during 2017 and severely escalating fines for recidivist acts, companies would be wise to understand their obligations and responsibilities for commercial advertising. This is particularly so since the substance of any sanction from the Board will apply even while the offending party disputes this decision via the administrative court system.

Additionally, some measures which should have been regulated in the law are regulated in by-laws and, thus, the executive body can narrow down the scope of advertising contrary to the legislative body's purpose.

These factors mean it is crucial to conduct proactive preventive legal and compliance reviews regarding commercial activities and advertisements, to identify and address any issues and prevent these developing into administrative disputes before the Board.