



**Comparative study concerning the impact of the control measures  
on televisual advertising markets in the EU Member States and  
certain other countries**

**TURKEY**

**LEGAL REPORT**

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## **Introduction**

In Turkey, a triple control mechanism is established regarding advertising. As set forth below in detail, there is more than one set of laws and more than one regulation applicable related to each such set of laws that regulate the advertising rules and principles.

1. The first pillar of such triple control mechanism is the Radio and Television Supreme Council (*Radyo ve Televizyon Üst Kurulu*) (hereinafter shortly referred to as “**RTÜK**”), as a statutory authority, an autonomous and neutral public institution which has been established in 1994 with a view to regulate the radio and television broadcasts in accordance with the principles brought by the Law no. 3984 on the Establishment of Radio and Television Enterprises and their Broadcasts (*3984 Sayılı Radyo ve Televizyonların Kuruluş ve Yayınları Hakkında Kanun*) (hereinafter shortly referred to as the “**RTÜK Law**”) published in the Official Gazette no.21911 on 20.04.1994 (*Annex-1*). RTÜK has the responsibility and duty of supervising the compliance of the broadcasts of radios and televisions with the rules and legislation including those related to television advertisings and it consists of nine (9) members with civil service and academic background in the field of press, broadcast, communication technology, culture, religion, education, law, etc.

RTÜK examines advertisements in light of the provisions of RTÜK Law, the European Convention on Transfrontier Television, and the Regulation on the Principles and Procedures of Radio and Television Broadcasts (*Radyo ve Televizyon Yayınlarının Esas ve Usulleri Hakkında Yönetmelik*) (hereinafter shortly referred to as the “**RTÜK Regulation**”) published in the Official Gazette no.25082 on 17.04.2003 (*Annex-2*). RTÜK imposes punitive sanctions to the broadcaster radio and television enterprises which fail to fulfil their obligations and which violate the broadcasting rules available in the Turkish legislation. The punitive sanctions applied range from warning and apology to suspension of the transmission of broadcast, or the application of administrative fines in case of repetition of the violation. The said fines applied for the enterprises which broadcast nation-wide range from TL 125 billion (approximately € 74.677.-) up to TL 250 billion (approximately € 149.354,-) depending on the severity of the violation. Last but not least, in accordance with Article 33 of the RTÜK Law and Articles 32 through 36 of the RTÜK Regulation, the revocation of the broadcasting licence may also come into question together with the above mentioned fines in case violation of laws through a certain television channel becomes customary practice. However, the punitive sanction generally applied by RTÜK in practice is the ‘warning’ and it by far prevails over the the application of administrative fines. Furthermore, pursuant to Article 7 of the Law no. 2577 on Administrative Proceedings (*İdari Yargılama Usulü Kanunu*)(*Annex-3*), the broadcasters may appeal the RTÜK’s decisions before the Administrative Courts in Ankara within 60 days as of the notification date. In practice, however, the said courts tend to approve the RTÜK’s decisions rather than resolving in favour of the Broadcasters.

2. On the second pillar of the control mechanism is another statutory authority, the Advertising Committee (*Reklam Kurulu*), which has been established on 8 September 1995 in accordance with Article 17 of Law no. 4077 on the Protection of Consumers (*4077 Sayılı Tüketicinin Korunması Hakkında Kanun*) (hereinafter shortly referred to as the “**Consumer Law**”) dated February 23, 1995 and broadly amended on 14.03.2003 (*Annex-4*). The Advertising Committee constitutes of 25 members, a combination of government officers, members of the chambers of certain professions such as medical doctors, lawyers, dentists, engineers, financial advisers, advertising experts, merchants, etc. The principles, procedures, establishment and duties of the said Committee has been prescribed in the Advertising Committee Regulation (*Reklam Kurulu Yönetmeliği*) published in the Official Gazette no.25186 on 01.08.2003 which was put into force as per Articles 17, 29 and 31 of the Consumer Law (*Annex-5*).

The Advertising Committee, *ex officio* or on written application, considers compliance of the commercial advertising and announcements made by the advertiser, the advertising agencies or by various media (including TV Broadcasters) with the general rules and principles mentioned in Article 16 of the Consumer Law, Regulation related to the Standards and Application Principles of Commercial Advertisements and Announcements (*Ticari Reklam ve İlanlara İlişkin İlkeler ve Uygulama Esaslarına Dair Yönetmelik*) (hereinafter shortly referred to as the “**Commercial Advertising Regulation**”) (*Annex-6*).

The Advertising Committee has gained extreme importance in the advertisement sector due to its strict interpretation of the advertisement legislation as well as its heavy pecuniary penalties reaching to TL 35 billion in 2003 (approximately € 21.059.-) per violation.

Furthermore, any form of surreptitious advertising, especially those related to the products and services whose advertisement is either prohibited or restricted like those of the health-care products and services and the misleading advertisements constitute another major group of violations subject to application of sanctions by the Advertising Committee.

Following a scrutiny, the Advertising Committee imposes certain sanctions both on natural persons and/or legal entities if it finds any violation of the provisions of Article 16 of the Consumer Law, or the provisions of Commercial Advertising Regulation. Pursuant to Article 17 of the Consumer Law and Article 8/(c) of the Advertising Committee Regulation, the said sanctions vary from discontinuation, as a preliminary injunction, up to a maximum period of 3 months of the violating advertisement and/or announcement, to total prohibition of such advertisement of announcement and/or rectification of the same, and/or administrative fines therefore. The Committee might impose one or more of the above mentioned punitive sanctions to the advertiser and/or the advertising agencies and/or the broadcaster with respect to a certain violation depending on the severity of the violation. The Committee, as per Article 8/(c) of the Advertising Committee Regulation, while determining the general rules to be complied with in the commercial advertisements and announcements made, takes into account the definitions, rules and internationally recognized other progress in the field of

advertising, the International Advertising Application Principles, the feature of the products or services advertised, the legislation in force as well as specific certain national conditions.

As per Article 26/2 of the Consumer Law, the distressed persons may appeal before Administrative Courts in Ankara against the administrative fines applied by the Advertising Committee within 7 days from the notification date. The initiation of such a lawsuit does not automatically halt the execution of the administrative fine. In practice, just like in the case of RTÜK, the courts tend to approve the Committee's resolutions. The resolutions rendered by the Administrative Courts are final and binding and they cannot be appealed before the higher courts.

A short comparison reveals that while RTÜK's sanctions apply only for the broadcasters, the Advertising Committee may apply sanctions also on the advertisers and the advertising agencies. Both authorities deal with the violations of general rules, general prohibitions of surreptitious and subliminal advertising and the like. RTÜK also concentrates on further rules regulated in the RTÜK legislation, such as the principles of insertion of advertisings and quantitative restrictions.

3. The last pillar of the control mechanism is the self-regulation. The Self-Regulation Council of Advertising (*Reklam Özdenetim Kurulu*) (hereinafter shortly referred to as "RÖK"), which consists of the representatives of advertisers (5 persons), advertising agencies (4 persons) and the written or visual media (7 persons), has been established in April 1994 to implement the worldwide- accepted advertising principles of the International Chamber of Commerce ("ICC") in Turkey. The aim of RÖK is to ensure, however, with no legally binding effect, the legality, honesty and morality in advertising. In respect of the legal regulations in effect RÖK considers the complaints and concludes each complaint latest within one week. If it is determined by RÖK that the advertisement is in breach of the applicable legislation, the executive board of RÖK, although non-binding, instructs the advertiser to amend or withdraw the advertisement. In the event of non-compliance, the media institutions are asked to refuse the advertisement in concern. In practice RÖK mainly focuses on the advertisers' complaints on the grounds of unfair competition.

One of the basic functions of RÖK is to pre-furnish the advertising agencies, advertisers and advertising channels with the notion of self-regulation and cause them to acquire the habit of applying the International Advertising Application Rules with a view to prevent existence of any complaint. RÖK arranges workshops and promotions with a view to increase the acceptance of self-regulation concept. However, as the advertisements are intensively controlled in Turkey by laws and regulations, the scope of self-regulation rules remain still very limited. RÖK's operation, rules and principles are explicitly regulated in its own statute (*Annex-7*).

Another self-regulation institution to mention about is the Honest Advertising Evaluation Committee of the Istanbul Chamber of Commerce (*Istanbul Ticaret Odası Dürüst Reklamcılık Değerlendirme Kurulu*). However, in addition to the fact that this Committee does not receive many complaints, the resolutions of the said authority *are not much respected among the advertising society*.

In general perspective, the Advertising legislation applicable in Turkey can be arranged under the headings set forth below:

- RTÜK Law
- RTÜK Regulation
- Consumer Law
- Advertising Committee Regulation
- Commercial Advertising Regulation
- Other specific rules dispersed in various special Laws and Regulations concerning certain sectors.

Likewise, two statutory authorities and two self-regulation institutions concerned with the advertising business can be listed as follows:

- The Radio and Television Supreme Council (*RTÜK*)
- The Advertising Committee (*Reklam Kurulu*)
- The Self-Regulation Council of Advertising (*RÖK*)
- The Honest Advertising Evaluation Committee of the Istanbul Chamber of Commerce

## I. Definitions (Article 1 Directive TVWF)

- Television broadcasting

The definition of “*television broadcasting*” is described in Article 3, paragraph (d) of the RTÜK Law no.3984 as amended by the Law no. 4756 on May 21, 2002. In accordance with this Provision “television broadcasting” means:

*“non-permanent transmissions, whether accompanied by sound or not, of moving or still pictures made via electromagnetic waves, data networks and other means for direct reception by the general public” (≠ art. 1 a TVWF Directive).*

The “*television broadcasting*” term is defined also in Article 4, the “definitions” section, of the RTÜK Regulation in exactly the same way as has been defined in the above mentioned RTÜK Law.

Regarding this definition, it is not clear what the Turkish regulation specifically covers under the term “*television broadcasting*” and such lack of specification establishes the main point of divergence from the Directive as relates to the said term.

- Broadcaster

The definition of “*broadcaster*” is described in the Article 3, paragraph (s) of the RTÜK Law as amended by the Law no. 4756. In accordance with this Provision, the “*broadcaster*” means;

*“the natural or legal person who composes radio, television program and data services for reception by the general public and transmits them or has them transmitted, complete and unchanged, to the third party” (// art. 1 b. TVWF Directive). (// art. 1 b. TVWF Directive)*

The “*Broadcaster*” is also described in Article 4, under the “definitions” section, of the aforementioned RTÜK Regulation. In accordance with this Regulation the “*broadcaster*” means;

*“a natural or legal person who has editorial responsibility for the composition of schedules of television and radio programmes and data services to be followed by the general public and who transmits them or has them transmitted by third parties.” (// art. 1 b. TVWF Directive).*

The definition of the “*broadcaster*” included in the above mentioned Regulation is almost the same as the definition made in the Directive.

There is no difference between types of broadcasters and between the types of transmission in Turkish legislation.



- Television Advertising

The definition of “*advertising*” is described in Article 3, paragraph (u) of the RTÜK Law no.3984 as amended by the Law no. 4756. In accordance with this provision, the “advertising” means:

*“any announcement directed to the general public and intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea, or to bring about some other effect desired by the advertiser, for which transmission time has been assigned to the advertiser in return for remuneration or a similar consideration.*

The “*advertising*” term is defined also in Article 4, under the “definitions” section, of the RTÜK Regulation in exactly the same way as has been defined in the above mentioned RTÜK Law. (±// art. 1 c. TVWF Directive, the Turkish regulation being more precise)

- Surreptitious Advertising

There are various other provisions in the Turkish legislation concerning the prohibition of “*surreptitious advertising*”; whereas, the only definition of it is in Article 4 of the RTÜK Regulation as:

*“the representation in words, in pictures, by logo, corporate name and registered trade mark and reminding hints with a view to advertise the products, services, name, trademark or the activities of a producer of goods or a provider of services in programmes by the broadcaster in return for payment or for similar consideration (≠ art. 1 d. TVWF Directive).*

Even though the definition seems very similar to the one of the Directive, one must notice that in Turkish legislation the “*misleading of the public as to its nature*” is not considered as a necessary element of surreptitious advertising.

- Sponsorship

The “*sponsorship*” is described in Article 4, under the “definitions” section, of the RTÜK Regulation. In accordance with this Regulation, “*sponsorship*” means;

*“Any contribution made directly or indirectly, in kind, pecuniary or other forms, by a natural person or legal entity not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes with a view to promoting its name, its trademark, its logo or its activities (// art. 1 e. TVWF Directive).*

This definition is similar to the one of the Directive.

The “*Sponsorship*” has not been explicitly defined in the RTÜK Law no.3984. Despite this fact, Article 23 of the said Law particularly arranges for the limits and procedures of Sponsorship.

- Tele-shopping

The “*tele-shopping*” is described in Article 4 of the RTÜK Regulation in exactly the same way as it is described in the Directive. In accordance with this Regulation, “*tele-shopping*” means;

*“Direct offers broadcasted to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment” (// art. 1 f. TVWF Directive).*

- Other Definitions

The other definitions included in Article 4 of the RTÜK Regulation are as set forth below:

- “**Split Screen**” means *splitting the television screen into multiple geometrical figures and using these parts with the aim of working for the same or different subjects.*
- “**Advertising giving rise to unfair competition**” means *the advertising exploiting the confidence, credulity, deficiency in knowledge and experience of the Consumer.*
- “**Misleading Advertising**” means *the advertising including exaggerated, incomplete and/or unconnected information related to the technical specifications, dimensions, value, endurance or the performance of a product or service.*

- *“**Subliminal Advertising**” means the advertising including messages on the representation of products or services only subliminally perceivable by the viewers using momentary pictures in television broadcasts by technical equipment.”*
- *“**Direct Sales Advertising**” means the advertising including the message that the purchase, sale or lease of the products or services advertised shall be realized or rendered at the address of the person responding to the message.*

When the definition of tele-shopping advertising is compared with that of the direct sales advertising, one concludes that as a matter of fact these two terms are intended to define the same method of TV advertising. The reason that there are two other definitions might have its routes in the fact that the Directive speaks of the tele-shopping while the ICC rules regulate direct sales. The Turkish legislation is a combination of both systems. The Tele-shopping should, indeed, be regarded as a form of direct sales.

- *“**Virtual Advertising**” means the placement of advertisement not associated with the real environment onto the image on the screen through utilization of electronic visual systems that alter the transmission signals.*
- *“**Advertorial Advertising**” means an advertising which is broadcasted as a single advertising spot between two autonomous programmes and which includes words, image, and music related to representation of a product, service or an entity.*
- *“**Subtitle, Logo and Window-advertising**” means the advertisement of the product, service or entity during the broadcast of a programme through sub-titling, reflection onto the screen of the logo thereof or encircling of the image on the screen without, however, any prejudice to the integrity of the programme.*

No definition of “*Product Placement*” exists in the Turkish legislation; however, in practice, the product placement is evaluated as a form of surreptitious advertising (see below).

- Conclusion

In general, the Turkish regulation contains definitions similar to the one of the Directive. However, the Turkish regulation also defines other notion that are not in the Directive such as “the split screen techniques”, “virtual advertising”, “subliminal advertising”, “Direct Sales advertising”, etc.

## **II. ADVERTISING RECOGNITION AND ADVERTISING / PROGRAMME SEPARATION (Article 10 TVWF Directive)**

### **a. Regulations**

- Examination of the rules related to advertising and teleshopping spots recognition (acoustic and / or optical means)

Article 20, paragraph 1 of the RTÜK Law states:

“Advertisements shall be clearly and easily distinguishable as such and be arranged such that they can be distinguished as ‘separate’ from the other items of the programme with respect to their visual and acoustic features. In addition to that, subliminal advertisements shall not be allowed. Moreover, the images or voices of persons introducing the news or daily programs on a regular basis shall not be used in the advertisements.” (// art. 10§1 TVWF Directive)

- Examination of the rules related to the separation between the commercial content and the programme

Pursuant to Article 5, paragraph (d) of the Commercial Advertising Regulation:

“An advertisement should be clearly distinguishable as an “advertisement” without reference to its format or the medium it is broadcasted. When an advertisement is broadcasted in a media containing news and editorial elements, it shall be so presented that it can readily be recognized as an “advertisement”.

As per Article 11 of the RTÜK Regulation:

*“The broadcasts of the advertisements and teleshopping spots shall be clearly and easily distinguishable as such and be arranged such that they can be distinguished as ‘separate’ from the other items of the programme with respect to their visual and acoustic features. (// art. 10§1 TVWF Directive)*

*The word ‘ADVERTISEMENTS’ shall appear on the screen together with the ‘advertisement jingle’ at the beginning and end of each advertising broadcast for a sufficient period of time and in a fashion easily legible by the viewer. (± // art. 10 TVWF Directive, the Turkish regulation being more precise than the Directive))*

*Advertisements in the form of subtitles or logo as well as the window-advertisings shall appear on screen with a note reading "ADVERTISEMENT" written on the part of the screen where the advertisement is being broadcasted in a fashion easily distinguishable from the programme." (± // art. 10 TVWF Directive, the Turkish law being more precise than the Directive)*

- Examination of the rules related to the isolated advertising and teleshopping spots (allowed/ prohibited; specific conditions, etc.)

Not applicable.

- Prohibition of the use of "subliminal techniques"

It is prohibited to broadcast any advertising or teleshopping by using subliminal techniques (Art. 15 RTÜK Regulation) (// art. 10.3 TVWF Directive):

*"No advertising including messages on the representation of products or services perceivable only subliminally by the viewers using momentary pictures in television broadcasts by various technical equipments is allowed."*

"Subliminal advertising" is also prohibited according to Article 20§1 of the RTÜK Law and Article 7/(b) of the Commercial Advertising Regulation:

*"Subliminal advertising, which is obtained through utilization of electronic devices and other instruments sending images in very short terms or which is perceived without being aware of its presence or content, is prohibited."*

- Prohibition of surreptitious advertising and teleshopping

There are various provisions in the Turkish legislation concerning the prohibitions of "Surreptitious advertising and teleshopping". (// art.10§4 TVWF Directive)

Article 16, paragraph 2 of the Consumer Law as amended by Law no.4822: *"Surreptitious advertising is prohibited"*;

Article 5, paragraph (d) of the Commercial Advertising Regulation states that surreptitious advertisement is prohibited.

Article 21/last paragraph of the RTÜK Law: *"Surreptitious advertising is not allowed in any broadcast"*;

*Article 14 of the RTÜK Regulation:*

*“Unless clearly indicated as an ‘advertisement’, the products or services should not be presented in the programmes with the intention of advertising”.*

## **b. Conclusion**

The Turkish TV advertising legislation has explicitly adopted the rule on the recognition of advertising and separation of advertising from the other parts of a TV programme. The national legislation is **basically identical** to the rules provided in the Directive TVWF. However, Turkey has included **more specific rules** in its legislation, almost all, however, derived from the Directive.

There is no definition of, or any specific rule applicable to the *‘isolated advertising’* mentioned in the Directive.

The TV advertisement legislation of Turkey, identical in that respect to those of the Directive, contains provisions concerning the prohibition of surreptitious advertising as well as advertising made by way of subliminal techniques. The Advertising Committee is highly sensitive against the surreptitious advertising and, until present, many resolutions have been granted by the said committee in relation with the violation thereof.

For instance, a resolution related to the infringement of Article 21/5 of the RTÜK Law and Article 11 of the RTÜK Regulation regarding the “surreptitious advertising” in one of the TV competition programmes. The Advertising Committee, in its resolution, determined that the representation in words and image on screen of the name, logo, trademark and package of one of the most famous beverages and designation of the competitors’ room as the “red room” by the speakers of the programme, constituted a surreptitious advertising of such beverage’s trademark and products. As also mentioned below in the Conclusions part of Section IV, the television channel which broadcasted this programme was sentenced to cease of those advertisings.

Another resolution related to the violation of Article 21/5 of the RTÜK Law and Article 16 of the Consumer Law regarding “surreptitious advertising” in one of the competition programmes: the TV channel which broadcasted such competition programme had been subject to application of fines by the Advertising Committee on grounds of violation of the above referred provisions. The Advertising Committee had come to the conclusion that the frequent representation of the logos of some newspapers in the programme, rendering mandatory for the viewers the purchase of these newspapers in order to take part in the said competition, and consequently, advertising those newspapers within the programme constituted a surreptitious advertising confirmed by the 10<sup>th</sup> Administrative Court of Ankara (*Ankara 10 İdare Mahkemesi*).

Another resolution imposed by the Advertising Committee is the one related to the violation of Article 16 of the Consumer Law concerning “surreptitious advertising” within a famous serial ‘*Young and Restless*’. Upon a complaint with the claim that as well as organizing a competition programme at the end of the aforementioned serial through which the competitors were given the ‘Ariston’ products (a well-known household durables firm) as a gift, the representation of the said firm was also being made at the beginning of the programme by showing its trademark, giving place to the expressions such as “*the Young and Restless, presented by ‘Ariston’, will continue after the advertisements*”, or “*Ariston adds value to your home with its excellent technology, aesthetics and its products*”, “*you have watched the Young and Restless presented by Ariston*”. The Advertising Committee has evaluated all these events as surreptitious advertising and has imposed fines to the broadcaster (confirmed by The 8<sup>th</sup> Administrative Court of Ankara (*Ankara 8. İdare Mahkemesi*)).

There are also certain specific rules in the Turkish legislation, which have not been defined or included in the Directive, such as the separation of the subtitle, logo and window-advertising from the programme by visual means. According to the RTÜK Regulation, the time allocated for each such advertising cannot exceed 8 (eight) seconds and the time to elapse until the next insertion cannot be less than 10 (ten) minutes. The RTÜK’s recent sanction in relation with the violation of the said regulation has been issuing a “*warning warrant*” to one of the most popular private television channels on 3 October, 2003.



### **III. RULES RELATED TO INSERTION OF ADVERTISING AND TELE-SHOPPING SPOTS BETWEEN AND WITHIN THE PROGRAMMES (Article 11 TVWF Directive)**

#### **a. Regulations**

These issues are regulated by article 21 RTÜK Law and article 12 RTÜK Regulation (the latter précising the principles established in the RTÜK Law).

According to the constitutional principle of the "Hierarchy of Rules", the Regulations which are secondary rules put into force by Administrative authorities, have to comply with the laws which are rules put into by the Grand National Assembly and cannot introduce further restrictions that do not have their grounds in a law.

- Examination of the rules related to the insertion of advertising and teleshopping spots between the programmes

Article 21 of the RTÜK Law regulates the "Insertion of Advertisements" as follows:

*"Advertisements shall be inserted between programmes (...) (// art 11.1 TVWF Directive)."*

Article 12 of the RTÜK Regulation regulates the "Insertion of Advertising and Teleshopping Spots":

*It is a basic principle to insert the advertising spots between two autonomous programmes .The advertising spots inserted between two programmes shall not exceed 8 minutes(...). (more precise than the Directive)*

*Be them inserted between or within the programmes, a period of at least 20 minutes should elapse between any two advertising breaks. (≠ art. 11§4 TVWF Directive)*

*The Advertorials shall only be broadcasted between two autonomous programmes and they shall not exceed 5 (five) minutes.*

*Announcements made by the Broadcaster in connection with its own television programmes shall only be broadcasted between two autonomous programmes."*

- Examination of the rules related to the insertion of advertising and teleshopping spots within the programmes

Article 21 of the RTÜK Law regulates the "Insertion of Advertisements" as follows:

*“(….)Advertisements may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced. (// art. 11§1 TVWF Directive)*

*In programmes consisting of autonomous parts or in sports programmes or similarly structured events and performances comprising intervals, advertisements shall only be inserted between the parts or in the intervals. A period of at least twenty minutes should elapse between each successive advertising break. (≠ art. 11§2 TVWF Directive)*

*The transmission of feature films and films made for television (excluding serials, entertainment programmes and documentaries), provided their duration is more than 45 minutes, may be interrupted once at the end of each period of 45 minutes. If a film lasts longer than forty-five minutes, it may be interrupted at each additional period of twenty minutes after the first complete period of 45 minutes.” (≠ art. 11§3 TVWF Directive).*

Furthermore, Article 12 of the RTÜK Regulation regulates the Rules related to the insertion of advertising and teleshopping spots between and during the programmes in detail and, as set forth below, clearly prohibits the insertion of advertising and teleshopping spots within certain types of programmes:

*Advertising spots may also be inserted during programmes in such a way that the integrity, value of the programme and the rights of the rights holders are not prejudiced. In case of insertion of any advertising during programmes, advertising time shall not exceed 5 minutes (more restrictive than the Directive).*

*In programmes consisting of autonomous parts or in sports and music programmes and similarly structured events and performances containing intervals, advertising spots shall only be inserted between the parts or in the intervals provided; provided that a period of at least 20 minutes should elapse between two advertising breaks.*

*If the schedule duration of feature film or films made for television is more than 45 minutes, advertisements may be broadcast once at the end of first period of 45 minutes, and at twenty minutes interval for each following period of 45 minutes. (≠ art. 11§3 TVWF Directive, the Turkish regulation being less restrictive).*

*Be them inserted between or within the programmes, a period of at least 20 minutes should elapse between any two advertising breaks.*

- Possible prohibitions of insertion of advertising and teleshopping spots within certain types of programme

Article 21 of the RTÜK Law regulates the “Insertion of Advertisements” as follows:

*“Advertisements shall not be inserted in any broadcast of a religious service. News bulletins, current affairs programmes and children’s programmes when they are less than 30 minutes of duration, shall not be interrupted by advertisements”*(±// art. 11.5 TVWF Directive).

Article 12 - Insertion of Advertising and Tele-shopping Spots:

*“News bulletins, current affairs programmes, religious programmes and children’s programmes, when they are less than 30 minutes of duration, shall not be interrupted by advertisements. If the news bulletins, current affairs programmes, religious programmes and children’s programmes are longer than 30 minutes of duration, they may be interrupted by advertising spots once in every 20 minutes after the first complete scheduled period of thirty minutes. (// art. 11§5 TVWF Directive)*

*The sports events that are broadcasted live and the broadcasts of religious services shall not be interrupted by advertisements during the broadcast of the programmes”.* (≠ art. 11 TVWF Directive)

## **b. Conclusion**

It is worth to point out here, that the above Articles apply for the advertising spots as well as the teleshopping ones. The regulation does not make any differentiation between the two and the terms “*advertising*” or “*advertising spots*” used in these Articles comprise both.

The basic principles related to the insertion of advertising spots laid out in Article 21 of the RTÜK Law are observed to be **parallel** to the rules provided therefore in the Directive.

However, as for the rest of Article 11 of the Directive, there are some **major differences** as set forth below:

1. With respect to Article 11/2 of the Directive: The RTÜK Law Article 21 is identical with the Directive. However, the RTÜK Regulation also lists ‘*music programmes*’, giving a concrete example for similarly structured events in relation therewith.

2. Although there is no specific regulation in the Directive regarding the duration of the advertisings inserted between and within the programmes, the Turkish legislation, as quoted below from Article 12 of the RTÜK Regulation, is **extremely restrictive** in that respect:

*“The advertising spots inserted between the two programmes cannot exceed 8 minutes..... In case of insertion of any advertising during the transmission of a programme, the advertising time cannot exceed 5 minutes.”*

However, the above mentioned issue regarding advertising durations has been, with the contribution of many television enterprises, brought up at a meeting (01 September 2003) of the Advertising Commission of the Association of TV Broadcasters (*Televizyon Yayınları Derneği Reklam Komisyonu*). The solution found was that the application of said time limits was extremely restrictive and, as a result, the duration of advertisements should be increased from 5 minutes to 8 minutes as regards the insertions during the transmission of a programme and from 8 minutes to 10 minutes regarding the insertions between two separate programs. Thereafter, a proposal of Article related to the issue was prepared by the said Committee in order to serve as a proposal in a possible future amendment of the RTÜK Regulation. RTÜK, although does not always apply a very strict supervision related to the issue, sends *warning warrants* to the television enterprises from time to time in order to procure their compliance with the legislation currently in force.

3. Just like in the Directive, the Turkish legislation also permits the insertion of advertising spots in principle within the programmes: It is allowed to interrupt in Turkey the transmission of feature films and films made for television for advertising purposes once after the completion of a 45-minutes period, provided that their scheduled duration is more than 45 minutes. This rule is similar to the Directive. The serials, series, light entertainment programmes and documentary films, on the other hand, are exempt from this limitation both as per the Turkish legislation and the Directive. The main difference between the two regulations, however, is with regard to further interruption(s) of films with a scheduled duration exceeding 45 minutes: while, the Directive allows for a further interruption if the scheduled duration of films is at least 20 minutes longer than two or more complete periods of 45 minutes, that is, the minimum duration of a film enjoying from any further interruption is 110 minutes, the Turkish legislation allows for a further interruption at the end of each following 20-minutes period after the completion of the first 45-minute period. Consequently, the rules related to the insertion of advertisements within such films are less restrictive in Turkey than in the Directive.

4. Another Turkish regulation which is **more restrictive** than the Directive is with respect to the duration to elapse between two advertisements interruptions regarding any program other than the films mentioned above. Pursuant to the Directive, such interval should be at least 20 minutes and this time-frame is identical with the Turkish legislation. However Article 12/3 of the RTÜK Regulation also provides for the application of such 20-minutes interval between two different programs and is more restrictive than the Directive. As there is no such restriction in the Directive, it was recently resolved at the aforementioned meeting of the Association of TV Broadcasters that this time limit, in practice, be applied as 15 minutes only.

Furthermore while the Directive exempts the programs covered by Article 11/2 (the ones consisting of autonomous parts, the sports programmes, or similarly structured events and performances containing intervals) from the above mentioned 20-minutes interval rule, there is no such exemption in the RTÜK legislation. In contrary, Article 21/2 of the RTÜK Law and Article 12/4 of the RTÜK Regulation explicitly provide for the application of the said interval. Consequently, the Turkish legislation is **more restrictive** than the Directive.

5. The Turkish regulation on the insertion of advertising within news bulletins, current affair programmes and children's programmes is identical to those of the Directive and they can be interrupted by advertising spots if their scheduled duration is 30 minutes or more.

Example of resolution related to the infringement of Article 21/4 of the RTÜK Law regarding "the insertion of advertising spots" is one of the current affairs programmes: RTÜK determined that the programme broadcasted was a current affairs programme with a duration of 30 minutes and as an advertising spot was inserted at the 18<sup>th</sup> minute of the programme, the broadcaster be warned in regard of its aforementioned violation of the advertisement rules. Although the broadcaster had initiated a lawsuit before the 3<sup>rd</sup> Administrative Court of Ankara (*Ankara 3. İdare Mahkemesi*) against the said warning order of the RTÜK, the Court has complied with the RTÜK's resolution and has decided against the broadcaster.

Although the Directive regulates the above mentioned 30-minutes restriction for documentaries too, the Turkish legislation does not provide for any similar restriction in connection with those. To conclude, the Turkish legislation is **less restrictive** related to the documentaries than the Directive.

The Directive also provides for the same restrictions in connection with the religious programmes while Article 21/last paragraph of the RTÜK Law does not list religious programmes. On the other hand, Article 12/6 of the RTÜK Regulation, in contradiction with the RTÜK Law, names the religious programmes among those subject to the 30-minutes restriction. As a matter of fact, according to the constitutional principle of "Hierarchy of Rules", the

Regulations, which are secondary rules put into force by administrative authorities, have to comply with the laws which are rules put into force by the Grand National Assembly and can not introduce further restrictions that do not have their grounds in a law. Therefore, the application of a sanction by RTÜK on the grounds that Article 12/6 has been violated in connection with a religious program would be against the provisions of law.

As a conclusion, in light of the above comparisons, the Turkish legislation is **more restrictive** and severe than the provisions of the Directive in many aspects with the exception of regulations related to the documentaries and further interruptions of advertising after the completion of the first 45-minute period of feature films and films made for television.

<b>IV. QUANTITATIVE RESTRICTIONS (Article 18 TVWF Directive)</b>
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**a. Regulations**

- Examination of the legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and for other forms of advertising (20% in the TVWF Directive)

As per Article 19, Paragraphs (3) and (4) of the RTÜK Law (±// art. 18.1 TVWF Directive):

*“The duration of advertising shall not exceed 15 percent of the daily transmission time. However, this percentage may be increased to 20 percent to include forms of advertisements such as direct offers to the public for sale, purchase or rental of products or for the provision of services, provided the amount of spot advertising does not exceed 15 percent.”*

Certain quantitative restrictions, as set forth below, also exist in Article 13 of the RTÜK Regulation:

The legal maximum percentage of daily transmission time devoted to teleshopping and advertising spots and for other forms of advertising “*may be increased to 20 percent to include forms of advertisements such as direct offers to the public for the sale, purchase or rental products or for the provision of services, provided that the duration of advertorial advertising does not exceed 15 percent of the advertisement transmission time.*

*In addition to the above mentioned time limits, the broadcasters may allocate 5 % of their daily transmission time to direct sales provided it does not exceed a total of one hour per day.”*

- Examination of the maximum daily transmission time devoted to advertising messages (15% in the TVWF Directive)

As per Article 19, Paragraph (3) of the RTÜK Law

*“The duration of advertising shall not exceed 15 percent of the daily transmission time. (// art. 18§1 TVWF Directive)*

Certain quantitative restrictions, as set forth below, also exist in Article 13 of the RTÜK Regulation:

*“The time that the broadcasters devote to advertisements, shall not exceed 15 percent of the daily transmission time. The daily advertisement transmission time also includes the time used for the subtitle, logo and window advertising”.*  
(more precise than the Directive)

- Examination of the maximum daily transmission time devoted to advertising and teleshopping spots within a given clock hour (20 % in the TVWF Directive)

Article 19 §3 of the RTÜK law states that

*“the amount of spot advertising within a given one-hour period shall not exceed 20%”* (// art 18 TVWF Directive)

Article 13 of the RTÜK Regulation (// art. 18.2 TVWF Directive):

*“The duration of spot advertising within a given one-hour period shall not exceed 20 percent”.*

Article 12 paragraph 8 of the RTÜK Regulation states that:

*The time devoted to the advertising spots within a given clock hour shall not exceed 6 (six) minutes in children’s programmes. (≠ art. 11 TVWF Directive)*

- Examination of the other possible quantitative restrictions

Article 19, Paragraphs (3) and (4) of the RTÜK Law:

*“Forms of advertisements such as direct offers to the public for sale, purchase or rental of products or for the provision of services shall not exceed one hour per day.”*

Article 12 of the RTÜK Regulation:

*“The advertising spots inserted between the two programmes cannot exceed 8 minutes..... In case of insertion of any advertising during the transmission of a programme, the advertising time cannot exceed 5 minutes.”*



Article 13 of the RTÜK Regulation:

*"in addition to the above mentioned time limits, the broadcaster may allocate 5% of their daily transmission time to direct sales provided, it does not exceed a total of one hour a day"*

*"Broadcasters can also allocate 15 % of the teletext broadcasts to advertisements."*

- Examination of the factors to take into account or not for the calculation of the advertising time

In accordance with the RTÜK Regulation Article 13 Paragraph (3) (≠ art. 18.3 TVWF Directive):

*"Social service advertisements and public service spots are not included in the calculation of total advertisement and teleshopping times and their percentages."*

As per Article 14 Paragraphs (2) and (3) of RTÜK Regulation (≠ art. 18.3 TVWF Directive):

*"Prompting certain brands, products or services a component of a competition through a certain grading system and broadcasting the same as a programme service does not distort qualification of those programmes as an advertisement. However, if and when the subject matter of a competition does not relate to commercial goods or services, only the time allocated for the audio-visual announcement of the brand, type and value only of the commercial goods or services furnished to the competitors as a present at the end of the competition, shall be deemed as an advertising time."*

*"With the exception of virtual advertisements, the publicity signs and advertising posters placed at the site where the artistic, cultural, or sports events take place shall not be deemed as an advertising so long as the said events are not arranged by the broadcaster."*

## b. Conclusions

The percentages regarding the daily transmission times of the advertising and teleshopping spots are **similar** to the regulations in the TVWF Directive. In addition, however, there are certain **more restrictive** regulations in the Turkish legislation as set forth below:

1. As per Article 13, paragraph (1) of the RTÜK Regulation, the advertising period devoted for advertorial advertising should not exceed 15 % of the daily total advertising duration while there exists no specific regulation in the Directive concerning this subject matter.
2. According to the Directive, the advertising does not include any public service announcements and charity appeals broadcasted free of charge. This regulation is not identical with the Turkish legislation. As mentioned above, pursuant to Article 13/3 of the RTÜK Regulation, it is not necessary that these advertisements are free of charge.
3. Pursuant to Article 18 paragraph 3 of the TVWF Directive, advertising does not include announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes. An identical provision was placed in Article 4, paragraph 4 of the Regulation on the Principles and Procedures of Advertisement Broadcasts of the Radio and Television Enterprises and the Payment of Supreme Council's Advertisement Revenue Shares (*Radyo ve Televizyon Kuruluşları Reklam Yayın İlkeleri ve Usulleri ile Reklam Gelirleri Üst Kurul Paylarının Ödenmesi Hakkında Yönetmelik*) (hereinafter shortly referred to as the "Advertisement Revenue Shares Regulation") (*Annex-8*). However as Articles 1–19 of the said Regulation were superseded by the RTÜK Regulation that came into force on 17 April 2003 and the RTÜK Regulation does not include any rules regarding this subject matter, the program announcements will have to be taken into account for the calculation of the advertising time.

**The main financial burden imposed on the TV advertising sector in Turkey as a sort of fee is the RTÜK share, which is retained from the total gross advertising revenue and should be paid to RTÜK. The RTÜK share is mainly aimed at financing RTÜK itself.**

Pursuant to Article 12, paragraph (b) of the RTÜK Law and Article 20 of the Advertisement Revenue Shares Regulation; the commercial television enterprises have to pay each month 5 % of their gross advertising revenues to RTÜK. As per Article 13 of the RTÜK Law, the RTÜK shares related to a certain month are to be paid latest by 20<sup>th</sup> of the following month.

In accordance with Article 13, paragraph (2) of the RTÜK Law and Article 23 of the Advertisement Revenue Shares Regulation, if the television enterprises fail to duly make their said payments, they will first be warned and should pay it within 7 days following such warning. If they still fail to pay it despite the warning, the Supreme Council awards discontinuation of the transmission until payment thereof. In case the payment is not effected within 2 months, the Supreme Council may revoke the imprimatur and the license of the television enterprise and the unpaid share will then be collected by way of execution.

Another financial burden that comes together with the RTÜK share is the so called *EKP*, the Education Contribution Fund. Pursuant to Temporary Article 1/A, paragraph 8 and Article 1/D of Law no. 4306 (a tax law) (*Annex-9*), this fund is equal to the RTÜK share, which means an additional 5 % of the total gross advertising revenue. This fund will be levied until December 12, 2010.

Furthermore, pursuant to Article 9 of Law no. 4481 (another specific tax regulation) (*Annex-10*); 0,5 % of the gross advertising revenue has to be paid as special process tax.

All in all, the total extra financial burden on the TV advertising sums up to 10,5%.

## V. QUANTITATIVE RESTRICTIONS RELATED TO TELESHOPPING PROGRAMMES (Article 18 bis TVWF)

### a. Regulations

Save for the ones mentioned above, there is no regulation in the Turkish legislation concerning the teleshopping programmes ( $\neq$  art. 18bis TVWF Directive). However, Turkey is a party to the Protocol amending the European Convention on Transfrontier Television and there exists certain provisions related to the teleshopping windows in this Protocol. In accordance with Article 16, paragraph (3) of the said Protocol amending the 12th Article of the Convention:

- Examination of the minimum duration of windows devoted to teleshopping programmes (15 minutes in the TVWF Directive)

Windows devoted to teleshopping programmes broadcasted within programme services which are not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes. (// art. 18bis 1 TVWF Directive)

- Examination of the maximum number of windows (8 in the TVWF Directive)

The maximum number of windows per day shall be eight. (// art. 18bis 2 TVWF Directive)

- Examination of the maximum daily duration (3 hours in the TVWF Directive)

Their overall duration shall not exceed three hours per day. They must be clearly identified by optical and acoustic means. (// art. 18bis 2 TVWF Directive)

However, Article 19, Paragraph (4) of the RTÜK Law states;

*“Forms of advertisements such as direct offers to the public for sale, purchase or rental of products or for the provision of services shall not exceed one hour per day.”* ( $\neq$  art. 18bis 3 TVWF Directive)

## **b. Conclusion**

As mentioned above, there exist certain regulations concerning the teleshopping windows only in the Protocol amending the European Convention on Transfrontier Television which Turkey is part thereof.

However, except the provisions on *direct offers to the public for sale, purchase or rental of products or for the provision of services* there is no domestic regulations yet which accomplish the terms of the said Protocol. In accordance with the Turkish Constitution, the international conventions duly approved by the Grand National Assembly have the effect of statutes. Therefore, it has to be concluded that even if there is no specific national regulation related to the issue, the said Protocol is already a part of the Turkish Law for the said reason.

## VI. SPONSORING (Article 17 TVWF Directive)

### a. Regulations

- Examination of the rules related to editorial independence of the broadcaster

Article 23 paragraph 2 of the RTÜK Law as set forth below (// art. 17.1 a TVWF Directive):

*"The sponsors may not exert any influence on the content and the scheduling of sponsored programmes in such a way as to affect the responsibility and editorial influence of the broadcaster".*

- Sponsor identification

Article 23 of the RTÜK Law as set forth below (±// art. 17.1 b. TVWF Directive):

*"When a programme or series of programmes is sponsored in whole or in part, it shall clearly be identified as such by appropriate credits at the beginning and/or the end of such programme".* The Turkish Regulation does not precise how exactly must the sponsor be identified.

Article 20 of the RTÜK Regulation:

*" When a program is sponsored in whole or in part, the sponsors shall clearly be identified as such by optical and/or acoustic means at the beginning and/or the end of such programme. (// art. 17 .1 b TVWF Directive). (...) Such credits may be 'written' as regards the television programmes, or 'verbally communicated' concerning the ones transmitted through the radio.*

- Examination of the rules related to the insertion of the sponsor's name or logo within the programme (beginning/end, break bumper, during all the programme)

Article 20 of the RTÜK Regulation sets out the rules for 'Programme Sponsorship' as follows:

*"Broadcasting enterprises may take financial support in whole or in part from natural persons or legal entities with a view to broadcast individual programmes, feature films or series of programmes. When a program is sponsored in whole or in part, the sponsors shall clearly be identified as such by optical and/or acoustic means at the beginning and/or the end of such*

*programme. (// art. 17 .1 b TVWF Directive). (...) Such credits may be 'written' as regards the television programmes, or 'verbally communicated' concerning the ones transmitted through the radio.*

- Identification of the programmes that cannot be sponsored

As per Article 22 of the RTÜK Law (// art. 17.4 TVWF Directive):

*"Sponsorship on news and current affairs programmes shall not be allowed."*

Article 20 of the RTÜK Regulation sets out the rules for 'Programme Sponsorship' as follows (≠ art. 17.4 TVWF Directive):

*"The news, the current affair programmes containing political, economical, social and financial events and issues including comment and analysis, as well as the religious broadcasts shall not be sponsored. However, the weather forecasts, sports programmes, and the highway reports may be sponsored and they must be presented outside of and be clearly separated from the news, current affairs and religious programmes and the products and services belonging to sponsors or third parties shall not be inserted".*

- Examination of the rules related to the content of the message (moving images, mention of the product, slogan, etc.)

Article 23 paragraphs (3) and (4) of the RTÜK Law as set forth below (±// art. 17.2 and 17.3 TVWF Directive):

*"Sponsored programmes shall not encourage references to products or services of the sponsor or a third party, or their purchase, sale or rental. Programmes may not be sponsored by natural persons or legal entities who are concerned with the manufacture or sale of products or the provision of services the advertising of which is prohibited by virtue of Article 22".*

As per Article 22 of the same, the advertising of particular products has been arranged as follows:

*"Advertisements for alcoholic or tobacco products shall not be allowed." (≠ art. 17 TVWF Directive)*

*"Advertisements for medicines and medical treatment which are only available on prescription shall not be allowed. Advertisements for other medicines and medical treatment shall be composed of elements that are honest, truthful and subject to verification, and shall comply with the requirements of protecting the individual from harm." (± // art. 17§2 TVWF Directive)*

Article 20 of the RTÜK Regulation sets out the rules for ‘Programme Sponsorship’ as follows:

*“Political parties, bodies, organizations, people whose aims are wholly or mainly of a political nature and natural persons or legal entities who are concerned with the manufacture or sale of products or the provision of services, the advertisement of which is prohibited, are not allowed to sponsor television programmes.” (≠ art. 17 TVWF Directive)*

Article 21 of the above referred Regulation outlines the ‘products and services for which advertisement, teleshopping and programme sponsorship are prohibited’ as set forth below:

*“Advertising, teleshopping and programme sponsorship are not acceptable for the below listed products and services concerning, especially:*

- a) All sorts of alcoholic beverages,*
- b) Cigarettes, other tobacco products and non-tobacco products or services which share same or connotative brand name with a tobacco product,*
- c) Medicinal products and medical treatment available only on prescription,*
- d) Services given by therapy and rehabilitation centres,*
- e) Advertisements of all kinds of weapon or weapon manufacturers and retailers,*
- f) Services given by fortune-tellers, mediums, astrologists, etc.,*
- g) Services given by gambling and any similar places,*
- h) Matchmaking services and escort agencies,*
- i) Products and services for which advertisements are prohibited according to Law.”*

In addition to the Directive, the Turkish legislation regulates also the “sub-title, logo and window-advertising”. In accordance therewith, such advertisements should not be inserted in a way as to cover the picture of the players or the game in any sports competition, and the speakers, the television announcers or the actors in other programmes. Additionally, the sub-title, logo and window-advertisings should not be broadcasted in religious and children’s programmes and the proportion of advertising area should not exceed 20 % of the screen.

- Examination of the maximum duration of the mention and/or maximum daily/per hour volume

Article 20 of the RTÜK Regulation sets out the rules for ‘Programme Sponsorship’ as follows

*“The length of identification credits given to the natural persons or legal entities whose products or services are benefited complimentary by*



*broadcasting enterprises may last up to five seconds at the end of the programme".*

- Examination of other relevant rules related to product placement, price mentioning during TV shows, sponsorship linked to schedule/points indication during sport broadcasts, etc.)

#### Product placement

Another issue to address is the product placement. The concept of “product placement” is neither defined in the Turkish media legislation, nor any regulation put into force by the media authorities. On the other hand, however, the Turkish advertising authorities consider this concept as an element of surreptitious advertising.

#### Prices in competition

*Prompting certain brands, products or services as a price for a competition through a certain grading system and broadcasting the same as a programme service does not distort qualification of those programmes as an advertisement. However, if and when the subject matter of a competition does not relate to commercial goods or services, only the time allocated for the audio-visual announcement of the brand, type and value only of the commercial goods or services furnished to the competitors as a present at the end of the competition, shall be deemed as an advertising time.*

*With the exception of virtual advertisements, the publicity signs and advertising posters placed at the site where the artistic, cultural, or sports events take place shall not be deemed as an advertising so long as the said events are not arranged by the broadcaster. (Art 14 RTÜK Regulation)*

### **b. Conclusion**

As mentioned above, Articles 20 of the RTÜK Regulation and 23 of the RTÜK Law are **similar** to the rules provided in the Directive TVWF with respect to the programme sponsorship.

However, Article 21 of the RTÜK Regulation which is related to the products and services for which advertisements, teleshopping and programme sponsorship are not acceptable, (except for subparagraphs (b) and (c) thereof) include **more restrictive** rules than the Directive, e.g. the sponsoring of an alcoholic beverage is not allowed.

Furthermore, it is noticeable that a time limit for the identification of the sponsor is provided in accordance with Article 20 of the RTÜK Regulation.

A good example for the infringement as a common practice of Article 20 of the RTÜK Law and Article 23 of the RTÜK Regulation regarding the sponsoring is one of the TV competition programmes. Although a sponsor of a certain TV programme can be announced, in ‘writing’ and for a specific period of time, either at the beginning or at the end of such programme, it is mostly throughout the above referred programme that one can observe frequent ‘verbal’ references to certain product or service brands, might most of which not even be a formal sponsor of this programme. In relation to the aforementioned infringement, the Advertising Committee has requested the justifications and defence of the concerned broadcaster and, as a consequence, has resolved upon positive violation by the said party of the relevant rules of the legislation as concerns the sponsoring and as a sanction, the broadcast of the advertisement was suspended by the Advertising Committee for a period of three months.

Following complaint containing the claim that the products of *Tefal*, a kitchen tools manufacturer, were being used and constantly emphasized throughout a cooking programme with a view to encourage the consumers to buy the said manufacturer’s products, the Advertising Committee has resolved upon discontinuation of the said programme. Therefore, the broadcaster initiated a lawsuit at the 10<sup>th</sup> Administrative Court of Ankara (*Ankara 10. İdare Mahkemesi*) against this resolution of the Advertising Committee. The said court denied the case on the finding that the surreptitious advertisements were made by only using and specifying by name the *Tefal*’s products throughout the programme and that the complaint made against the programme was consistent with the provisions of law. As obvious, this type of sponsorship infringes both the prohibition of surreptitious advertising and Article 23/3 of the RTÜK Law.

An exemplary resolution related to the infringement of Article 16 of the Consumer Law concerned with the general rules is as follows:

During the famous “*Wheel of Fortune*” competition programme the sponsoring company’s trademark was placed on the wheel spun and, in the meanwhile, the announcer of the competition sang a song containing the name of the sponsoring company within the programme. Furthermore, aside identification of the sponsoring company at the beginning and at the end of the programme, the trademark of the sponsoring company was mentioned during the advertising breaks and during the programme. The Advertising Committee evaluated all these aforementioned events as ‘*surreptitious advertising*’ and the 2<sup>nd</sup> Administrative Court of Ankara (*Ankara 2. İdare Mahkemesi*) resolved that this ruling was lawful.

As mentioned above under Section-II, the Advertising Recognition, the Turkish advertising authorities consider the concept of “product placement” as an element of surreptitious advertising. In practice, however, the “product placement” is currently highly encountered in almost all the popular TV series.

Another issue to comment upon is a contradiction of the RTÜK Law with the RTÜK Regulation. Article 21 of the RTÜK Regulation enlarges the scope of the products stated in Article 22 of the RTÜK Law as being non-permitted for any advertising, sponsoring or tele-shopping. For instance, the advertising, sponsoring or teleshopping of the services given by the therapy and rehabilitation centres are unrestricted in accordance with their specific laws and are neither included among the restrictions of Article 22 of the RTÜK Law. However, they have all been prohibited due to Article 21 of the RTÜK Regulation. It is a general rule of law that, as per the hierarchy of laws and the principle of legality, no regulation can contravene with or enlarge the scope of a law. Therefore, whatever sanction the RTÜK may impose taking into account the RTÜK Regulation only, shall, unfortunately, be illegal.

## VII. NEW ADVERTISING TECHNIQUES

### a. Split Screens

The definition of “Split screen” exists only in Article 4 of the RTÜK Regulation as follows:

*“Splitting the screen into more than one geometric shape with the aim of viewing different contents simultaneously.”*

Such definition does not precise neither the conditions of use of such advertising technique, the specific rules related to insertion, nor the volume of it.

### b. Interactive Advertising

The “Interactive Advertising” has not been defined in Turkish Law. Neither the conditions of this considerably new technique, nor the specific rules and prohibitions related thereto exists in the Turkish legislation.

### c. Virtual Advertising

The definition of Virtual Advertising exists in Article 4 of the RTÜK Regulation as:

*“the placement of advertisement not associated with the real environment onto the image on the screen through utilization of electronic visual systems that alter the transmission signals.”*

Article 16 of the said Regulation sets the rules for virtual advertising as follows:

*“The Broadcaster must inform, in writing or verbally, the television viewers at the beginning and/or the end of the broadcast that a virtual advertisement has been or will be used during the broadcast.*

*Each enterprise that includes a virtual advertisement in its broadcasts, should inform other channels thereof.*

*Virtual advertisements may not be placed into the transmission signal without the consent of the broadcaster(s) holding the transmission right, or the organisers, agencies or third parties. In addition:*

- a) *The utilization of virtual advertisement should not alter or violate the quality and integrity of the programme or the perception of the environment related to the episode.*
- b) *Audio effects should not be used during virtual advertisements.*

- c) *Virtual advertisement can be placed in accordance with Article 6 of this Regulation (that means, in accordance with general principles related to advertising content) and only onto areas where an advertisement might be physically placed.*
- d) *No virtual advertisement may be placed onto the persons appearing in the screen, the sportspersons, actors or audiences, or onto any equipment used by them.*
- e) *A virtual advertisement has to be given within the general image of the environment and cannot draw more attraction than the advertisements appearing in the environment itself.*
- f) *Subliminal techniques are prohibited during visual advertisements.*
- g) *Virtual advertisement may not be used for products or services the advertisement of which is forbidden in the country where the advertisement is received.*
- h) *No virtual advertisement can be placed into the news bulletins, news programmes, current affairs programmes, children's programmes or religious programmes.*

*The Broadcasters may not waive their liabilities related to the virtual advertisement content or assign it by any agreement.”*

In practice, the virtual advertisements are mainly placed during the football games. It is obvious that had this specific regulation permitting the virtual advertisements not existed, this technique would be evaluated as a form of surreptitious advertising.

## VIII. GENERAL RULES RELATED TO ADVERTISING AND TELE-SHOPPING CONTENT (Article 12 TVWF Directive)

### a. Regulations

As per Article 16 of the Consumer Law;

*“The Commercial advertisements and announcements should conform to the laws, general standards specified by the Advertising Committee, the general decency, public order and personality rights, and be honest and truthful.*

*Advertisements and announcements which are deceptive, misleading, exploiting the inexperience and lack of knowledge of the consumer, prejudicial to safety of the consumer itself or its property, provoking violence or anti-social behaviour, harmful to public health, exploiting the ill, aged and disabled people as well as the children; or any surreptitious advertising is prohibited.”*

Pursuant to Article 19 of the RTÜK Law;

*“All advertisements shall be fair and honest. They shall not be misleading and shall not prejudice the interest of consumers; advertisements addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities. The advertiser shall not interfere in any way with the content of programmes.”*

As per Article 6 of the RTÜK Regulation;

*“All forms of advertising and tele-shopping broadcasts shall comply with the following criteria:*

- a) They shall be fair and honest;*
- b) They shall not be misleading and shall not prejudice the interests of consumers;*
- c) They shall not prejudice respect for human dignity (// art. 12 a. TVWF Directive);*
- d) They shall not include any discrimination on grounds of race, sex or nationality (// art. 12 b. TVWF Directive);*
- e) They shall not be offensive to religious or political beliefs (// art. 12 c. TVWF Directive);*
- f) They shall not feature Turkish or foreign statesmen, religious persons and shall not include religious subjects;*
- g) They shall not encourage behaviour prejudicial to public health and safety (// art. 12 d. TVWF Directive);*
- h) They shall not encourage behaviour prejudicial to the protection of the environment (// art. 12 e. TVWF Directive);*

- i) *The advertiser shall not interfere in any way with the content of programmes;*
- j) *The children shall not be used in advertisements which are not directly addressed to or targeted at them;*
- k) *Advertisements addressed to or using children shall avoid anything likely to be prejudicial to their interests and shall have regard to their susceptibilities;*
- l) *They shall not feature, visually or verbally, persons regularly presenting news and current affairs programs;*
- m) *Article 5 of this Regulation shall be taken into consideration concerning the language to be used in advertising and teleshopping broadcasts.”*

The general rules regarding the content of advertisements have been regulated in the Commercial Advertising Regulation as set forth below;

Article 5 - General Principles: *“Commercial advertisements and announcements are based on the general principles mentioned below:*

- a) *They shall conform to the law and public morality, be honest and truthful;*
- b) *They shall be prepared with a sense of responsibility and shall respect the principles of fair competition generally accepted in business practice and by the public;*
- c) *They cannot contain any visual presentation or any description concerning practices or situations dangerous for human life or which disregard safety*
- e) *The design and presentation of advertisements should allow them to be easily and clearly understood by average viewers. Where footnotes are to be used, they should be verbally spoken and/or in writing provided that they are legible;*
- f) *They shall not be prejudicial to human dignity;*
- g) *They cannot be prejudicial to human rights;*
- h) *Advertisements cannot, without prior permission, portray or refer to one’s private or a social life, nor can they, without prior permission, depict or refer to one’s private property in a way likely to convey the impression of a personal consent;*
- i) *The advertisements cannot impair public order, appear to acknowledge, incite or induce violence, or encourage unlawful or reprehensible behaviour.*
- j) *They cannot incite discrimination, and loathing, nor can they be based on any abuse of or discrimination with respect to language, religion, race, sect, philosophical belief or sex.*

The Commercial Advertising Regulation further contains provisions on:

- Decency (art. 6)
- Honesty and truthfulness (art. 7)
- Advertisements Promoting Sales (art. 8)
- Direct Sales Advertisements (art. 9)
- Products delivered without being ordered (art. 10)
- Comparative advertising (art. 11)

- Advertising based on testimonials (art. 12)
- Burden of proof (art. 13)
- Denigration (art. 14)
- Misuse of commercial admiration (art. 15)
- Imitation (art. 16)
- Public health (art. 17)

As per Article 26 of the Law no.2954 on the Public Radios and Televisions (*TRT Kanunu*) (*Annex-11*), published in the Official Gazette no. 18221 on November 14, 1983:

*“Advertisements shall not deceive or mislead the public, encourage unfair competition, result in replies by either party, denigrate other products or their qualities, induce -directly or by implication- the consumption in excessive amounts of any product, be harmful to the economical situation of the country or be used for political propaganda.”*

Advertisement Regulation of Turkish Radio and Television Institution (*Türkiye Radyo ve Televizyon Kurumu Reklam Yönetmeliği*) (*Annex-12*), published in the Official Gazette no. 21555 on April 17, 1993):

Article 5 of the said Regulation as amended on March 11, 2000, sets out the general rules for advertising and contains information same as the one included in the Commercial Advertising Regulation mentioned hereinabove.

Pursuant to Article 12 paragraph (10) of the RTÜK Regulation;

*“Advertisements in connection with chatting, friend-searching and similar other advertisements made by giving out private phone numbers, shall be broadcasted between 23:00 and 05:00 hours. In such advertisings, the duration and the charge per minute of the given service shall be clearly announced both verbally and in writing.”* (≠ art. 11 TVWF Directive)

## **b. Conclusion**

The Turkish regulation contains provisions as the ones stated in article 12 TVWF Directive. However, it should be noticed that the Turkish Regulation also contain more detailed regarding the content of the advertising i.e. on the decency, honesty and truthfulness, advertisements promoting sales, direct sales and comparative advertisements, advertisements based on testimonials, burden of proof, denigration, misuse of commercial admiration, imitation, and public health all in line with the advertising codes of the International Chamber of Commerce.

Unlike the non-regulation in the Directive, the Turkish legislation provides for the chatting, friend searching and similar other advertisements made by giving out private phone numbers to be broadcasted between 23:00 and 05:00 hours. One of the most



popular television channels which has violated this provision had been subject to application of fines and was sentenced by the Advertising Committee to discontinuation of those advertisings.

As regards the above-mentioned matters, there are not many infringements encountered within the Turkish advertising sector. Both the broadcasters and the advertisers apply certain self-control and extra care not to broadcast or come with such advertisements.

The main problem arises, however, with respect to the advertisements likely to mislead or deceive the consumers. The advertisement authorities play a very important role here on the evaluation of misleading and deceptive advertisements. Although in the past, prior to the amendment of the Commercial Advertising Regulation in April 2003, the Regulation did not differentiate between the liabilities of the advertiser, the advertising agency and the broadcaster with respect to non-conformity of advertisements with the legislation, the current legislation in effect now provides for such differentiation. In fact, as per Article 21/last paragraph of the said Regulation, the broadcasters are now liable only with the exertion of “due care reasonably expectable from it” to understand whether an advertisement is deceptive and/or misleading as opposed to their previous strict liabilities which ran alongside those of the advertiser and the advertising agency. The issue remaining unanswered as for the time being is how the controlling authorities shall approach this new concept. That is, how strict an evaluation shall be made when testing whether the “due care” criteria has been applied by the broadcasting institution prior to the broadcast of a certain advertisement.

Many cases resolved so far, or are in the stage of inspection by the Advertising Committee, can constitute good examples regarding the sanctions applied to infringement of general rules. Those can be summarized as set forth below:

The Article 13 of the above-mentioned Regulation was alleged to be infringed in a yoghurt advertisement. The advertisement contained the phrase that allegedly 2000 medical doctors, all members of the National Pediatrics Association of Turkey, have recommended the product advertised. Since the said recommendation was questioned as to its sincerity, verification thereof was required by the Advertising Committee as the above referred Article requiring that the explanations related to verifiable matters, claims or illustrative presentations were all to be verified and the evidence relating thereto should be promptly presented by the advertisers to the authorities authorized to supervise the prudent application of the principles. As a result, the Advertising Committee has requested the justification and written submission of defence from the broadcaster. (The above explained issue has not yet been concluded.)

Upon a complaint with the claim that an advertisement promoting a wine boutique was being made in a gourmet food programme with the specific purpose, interest and view to cause unfair competition RTÜK has submitted a warning to the broadcaster on the finding that the advertisement contained unfair competition. The broadcaster initiated a lawsuit at the 4<sup>th</sup> Administrative Court of Ankara (*Ankara 4. İdare Mahkemesi*) against the warning order of the RTÜK. The case was accepted by the said court based on the finding that the statements made in the promotion of the wine boutique did not result

in any unfair competition as they were found not to be misleading or deceiving the consumers, prejudicial to the counter parties, did not service any private purposes and interests, were merely informative, and that the complaint made against the said programme was not consistent with the provisions of law.

An exemplary resolution related to the infringement of Article 16 of the Consumer Law concerning the general rules is as follows:

It was mentioned within the advertising of a mattress company that the patients who had back pain were cured without using any kind of medicines by only using the said mattress. However, the Advertising Committee has evaluated that the report offered as the proof of the advertisement and realized that the report contained nothing related to the therapeutically effect of the mattress, but only the results obtained after application of physiotherapy, and in some cases, analgesic treatment, to the patients. Thus the Advertising Committee has decided to make a recommendation for the interception of the said advertisement. The broadcaster initiated a lawsuit at the 10<sup>th</sup> Administrative Court against the interception. The said court has rejected the case on the finding that the statements made in the advertisement resulted in the infringement of the Article 16 of the Consumer Law.

As a last remark, the advertising authorities, while performing their scrutiny, pay a remarkably high amount of attention in order not to miss out on any advertisement which violates the general objectives and basic principles of the Turkish national culture and language.

## IX. SPECIFIC PRODUCTS AND TARGETS

### a. Regulations

- Tobacco (Art. 13 and 17 of the TVWF Directive)

Pursuant to Article 3 of the Law dated November 7, 1996 and no. 4207 relating to the Prevention of the Harmful Effects of Tobacco Products (*Tütün Mamullerinin Zararlarının Önlenmesine Dair Kanun*) (Annex-13)(// art. 13 TVWF Directive):

*“Any advertisement or promotion of cigarettes and other tobacco products whatsoever with indication of their names, trademarks and symbols, or the organization of inducing or encouraging campaigns with a view to stimulate the utilization such products is prohibited.”* This provision also covers the television advertising

As per Article 22 and 23 of the RTÜK Law:

*“Advertisements for alcoholic or tobacco products are not allowed...”*

*“Programmes may not be sponsored by natural persons or legal entities, who are concerned with the manufacture or sale of products or the provision of services, the advertising of which is prohibited by virtue of Article 22(// art. 17.2 TVWF Directive)”*

In accordance with the Article 20 of the Commercial Advertising Regulation:

*“The advertising of goods and services not allowed, as per their related legislation, to be supplied to the market or to be advertised including the ones with same name and/or their connotations cannot be made.”*

The general rules have been regulated in the RTÜK Regulation as set forth below:

Article 14/last paragraph: *“It is not allowed to include in anyway and in any programme any cigarette, tobacco product, or alcoholic beverage brands or any image or phonation reminding the same.”* (As already explained in detail the Article 14 regulates the prohibition of “surreptitious advertising” in general).

Article 20/last sentence: *“Television programmes may not be sponsored by those whose principal activity is the manufacture or sale of products, the advertising of which is prohibited.”*

Article 21/b: “*The [broadcasting] enterprises may not make any advertising or tele-shopping broadcasts concerning the cigarettes, other tobacco products and goods and services with the same name and/or their connotations.*”

- Medicine (Article 14 of the TVWF)

There are various provisions in Turkish legislation concerning the prohibitions imposed on the “medicine advertising on TV”. Such prohibitions can be traced with the following wordings in the laws and regulations set forth below:

(1) Article 20 of the Commercial Advertising Regulation is also effective for the regulation on medicine.

(2) Articles 22 and 23 of the RTÜK Law are aforementioned in the regulation section on tobacco.

(3) Articles 20/(last sentence), 21/ c and 21/ d of the RTÜK Regulation:

(The Article 20/last sentence has been mentioned above.)

Article 21/c: “*The [broadcasting] enterprises may not make any advertising and teleshopping broadcasts concerning the medicinal products and medical treatments available only on prescription*” (// art. 15.1 TVWF Directive).

Article 21/d: “*The [broadcasting] enterprises may not make any advertising and teleshopping broadcasts concerning the services rendered by therapy and rehabilitation centers and institutions*”.

Article 8 of the Regulation on Publicity Activities for Medical Products for Humans (*Beşeri Tıbbi Ürünlerin Tanıtım Faaliyetleri Hakkında Yönetmelik*) (Annex-15). The General Rules related to the advertisement of medical products for humans can be summarized as set forth below (these provisions comply with the 2001/83/EC Directive):

“The public advertisement of a medical product for humans:

- a) cannot offer any distant diagnosing or treatment of an illness and cannot give the impression that a medical consultation or surgical operation is unnecessary,
- b) cannot claim that the effects of a product are guaranteed, that the product is free of any side effects, or an equivalent or better therapy can be achieved *vis-a-vis* another treatment or medical product,
- c) Advertising shall not suggest that health can be improved by using a product,

- d) cannot suggest that the health condition of one could be adversely affected if the product is not taken/used,
- e) cannot be aimed principally or exclusively at the children,
- f) cannot contain recommendation of a product by scientists, health professionals or any person who, due to his/her celebrity, may encourage consumers to take/use the medical product,
- g) cannot suggest that a product is a foodstuff, cosmetic or other non-medicinal consumption product,
- h) cannot imply that the safety or efficacy of a product is due to it being natural,
- i) cannot contain any material which could, either by detailed description or case history, lead to an erroneous self-diagnosis by a consumer,
- j) cannot contain improper, terrifying or misleading statements claiming recovery,
- k) cannot contain any improper or disorienting statements or images which describe the changes in the human body caused by the disease or wound or the affect of the medical product in human body or its parts,
- l) cannot mention that the medical products are licensed.
- m) cannot draw a misleading comparison by using pharmaceutical effects of medicines.
- n) cannot contain any statement likely to imply any misleading price or cost comparison between various other medicines.
- o) *cannot make a clear judgment based on no sufficient sampling, detailed examination or study which is insufficient in scientific stability.*

It is also not allowed for the producers of a prescription medicine to contribute to any programme as a sponsor. Here arises the question of whether the producers of both prescription and non-prescription medicines shall also be banned from sponsorship. It is our perception that the competent authorities in Turkey shall not be as liberal as to tolerate to any sponsorship by a producer of a non-prescription medicine if the said company is, at the same time, the producer of a prescription medicine.

- Alcoholic Beverages

Advertising regarding the alcoholic beverages have been regulated as follows:

Article 20 of the Commercial Advertising Regulation is also effective for the regulation on the alcoholic beverages:

*"The advertising of goods or services are not allowed, as per their related legislation, to be supplied to the market or to be advertised including the ones with same name and / or their connotations cannot be made"*

Articles 22 and 23 of the RTÜK Law are also effective for the regulation on the alcoholic beverages:

*"Advertisements for alcoholic products are not allowed. Programmes may not be sponsored by natural persons or legal entities, who are concerned with the manufacture or sale of products or the provision of services, the advertising of which is prohibited by virtue of article 22" (≠ art. 15 TVWF Directive)*

Article 21/ a of the RTÜK Regulation:

*"Enterprises may not broadcast advertising and teleshopping regarding all sorts of alcoholic beverages" (≠ art. 15 TVWF Directive).*

*Pursuant to Article 19/ last paragraph of the Law dated June 12, 1942 and no. 4250 on Monopoly of Ethyl Alcohol and Beverages as amended by the Law no. 4619 on January 11, 2001), published in the Official Gazette No.5130 (İspirto ve İspirto lu İçkiler İnhisar ı Kanunu) (Annex-16):*

*"Alcohol or any kind of alcoholic beverage, including also beer and wine, cannot be advertised on TV, or through cable broadcast, radio or public broadcasting means."*

In accordance with the Article 19 of the Regulation on the Procedures and Principles concerning the Domestic and Foreign Trade of Alcoholic Beverages, published on June 6, 2003 (Alkol ve Alkollü İçkilerin İç ve Dış Ticaretine İlişkin Usul ve Esaslar Hakkında Yönetmelik) (Annex-17):

*"Alcohol or any kind of alcoholic beverage cannot be advertised on TV, or through cable broadcast, radio or public broadcasting means."*

- Minors (Article 16 of the TVWF Directive)

As regards Article 18 of the Commercial Advertising Regulation the advertisements addressing or likely to affect the children and juveniles, or the advertisements in which the children or juveniles play a role:

- a) *cannot exploit their credulity, lack of knowledge or inexperience. (// art. 16§1 TVWF Directive)*
- b) *cannot contain nothing that is likely to adversely affect in their physical, mental, moral or psychological conditions. (// art. 16b TVWF Directive)*
- c) *cannot suggest that the possession or utilization, alone, of a product or service shall give them a physical, social or psychological advantage over their companions , or that non-possession or non-utilization of the same would have the opposite effect.*
- d) *cannot include any violence which they might assume.*
- e) *cannot include any price indication related to a product or service which can lead them to have an unreal perception about the true value or the price thereof; cannot imply that the advertised product or service is suitable for the budget of all families; or, cannot include any announcement which directly encourages them to persuade their parents or others to purchase or rent the goods or services being advertised.*
- f) *cannot understate the degree of skill or age level generally required to use or enjoy the product, exaggerate what is attainable by an ordinary child using the product being advertised*
- g) *Children shall not be shown in hazardous situations or encouraged and asked to talk to strangers and enter strange or dangerous places (// art. 16d TVWF Directive)*
- h) *should include prominent warnings and signs for the advertisements of products or services which are likely to harm their health or environment in the absence of necessary precautions.*
- i) *should not contain any announcements or images likely to mislead them related to the actual size, value, features, durability and performance of the product advertised; and should clearly indicate so if the product needs additional equipment for operation thereof or for obtaining the advertised or portrayed result.*
- j) *cannot include any wording which implies the execution of a contract for the sale or rental of the goods or services.*
- k) *cannot contain any images of children or juvenile in which they are portrayed playing with or using equipments, tools or objects hazardous for themselves or for their environment.*
- l) *cannot include any wording or announcement destined for exploiting the special trust they have in their parents, teachers or other persons; and cannot*

*undermine or repeal the authority, emotions of responsibility, judgment or liking of the parents or teachers. (// art. 16c TVWF Directive)*

*m) cannot exploit the parents' feelings of love, tenderness and devotion for their children."*

The Turkish Regulation is far more precise than the Directive.

Pursuant to Article 7 of the RTÜK Regulation:

Save for paragraph (c) mentioned below, all the provisions and criteria included in this Article match with Article 18 of the Commercial Advertising Regulation:

*c) the experience of a child should be taken into consideration in order not to trigger establishment of any unrealistic expectations.*

While the RTÜK Regulation is applicable only to those aged 15 or less, the Commercial Advertising Regulation is applicable to the children and juvenile under 18. RTÜK Regulation is more of a specific rule in comparison to the Commercial Advertising Regulation. Thus the RTÜK Regulation should prevail to the application of Commercial Advertising Regulation rules.

Article 16 of the Consumer Law outlines:

*“Commercial advertisements and announcements shall conform to the laws, general standards specified by the Advertising Committee, the general decency, public order and personality rights, and be honest and truthful.*

*Advertisements and announcements which are deceptive, misleading, exploiting the inexperience and lack of knowledge of the consumer, prejudicial to safety of the consumer itself or its property, provoking violence or anti-social behaviour, harmful to public health, exploiting the ill, elderly and disabled people as well as the children; or any surreptitious advertising is prohibited.*

- Other Products, Services and Targets Subject to a Specific Regime

### **Products**

#### 1. Infant Food Products-Formulas:

- Article 12 of the Communiqué no. 98/20 on Infant's Food and Infant Formulas (*Bebek Mamaları - Bebek Formülleri Tebliği*) (Annex-18), published in the Official Gazette no. 23447 states:



- a) *Infants' foods which do not comply with all relevant rules of this Communiqué cannot be marketed or promoted as infant formulas.*
- b) *The infant formulas cannot be advertised, promoted to the public, given as sample, be subject to any draw, promotion or discount coupons through press, radios, televisions or any other announcement media. The promotion of the product and the distribution of free samples thereof can be made only to the medical doctors and to the authorized personnel of the health-care institutions.*

Advertising of the infant foods is currently highly encountered in one of the popular TV series as in form of product placement. This infringes the prohibition of the surreptitious advertising as well as the above mentioned Article.

## 2) Cosmetic Products:

- In accordance with the cosmetic products, the Law dated February 26, 1994 and no. 3977 on Cosmetics (*Kozmetik Kanunu*) (*Annex-19*) and the Regulation no. 21899 on Cosmetics, published on April 8, 1994 (*Kozmetik Yönetmeliği*) (*Annex-20*) has been regulated.

The meaning of cosmetics is defined in the Law on Cosmetics as well as in the Regulation on Cosmetics. It is defined as a material and/or a product applied to the external body surface such as epidermis, hair, fingernails, lips and outer genital organs as well as teeth and mouth mucous with a view to clean, protect, hold in good condition, odorize, change the look and condition body scents.

As per Article 21 of the Regulation on Cosmetics, the advertisements are prohibited which are likely to mislead the consumer or lead to the misuse of the product except for the main purpose of usage authorized by the Ministry or cause unfair competition by emphasizing the advantages of those products over the others.

## 3) Food Products:

- *As per Article 14 of the Decree of the Council Ministers with the effect of Law no. 560 on Production, Consumption and Control of Foods (Gıdaların Üretimi, Tüketimi ve Denetlenmesine Dair Kanun Hükmünde Kararname No:560) (Annex-21)*

*“Making food products subject of exchange by using misleading expressions and statements on their labels or through misleading packagings, or advertising the food products by using general or specific misleading descriptions and similar statements; or utilization of publishing's, articles and written statements encouraging the treatment of diseases by food products in the advertisements designed for any food product.”*

## Services

1. The following services and professions are totally banned from advertising as per their specific laws and regulations set forth below:

- Lawyers: The Regulation on Advertising Prohibited by the Turkish Bar Association, published in the Official Gazette no. 25296 (*Türkiye Barolar Birliği Reklam Yasağı Yönetmeliği*) (Annex-22), The Law dated April 7, 1969 and no. 1136 on Lawyers (*Avukatlık Kanunu*) (Annex-23)
- Opticians: Law no. 3958 on Opticians, published in the Official Gazette no. 4703 on January 1, 1941 (*Gözlükçülük Kanunu*) (Annex-24)
- Doctors and Dentists: The Medical Deontology Regulation, published in the Official Gazette no. 10436 on February 19, 1960 (*Tıbbi Deontoloji Nizamnamesi*) (Annex-25), Article 24 of the Law no. 1219 (as amended by the Law no. 3575 on June 14, 1989) on the Methods and Execution of Medical and Medical-correlated Practice (*1219 sayılı Tababet ve Şuabatı San'atlarının Tarz ve İcrasına Dair Kanun*) (Annex-26), Regulation no. 23846 on Private Health Institutions offering Health Service for Mouth and Teeth, published on November 14, 1999 (*Ağız ve Diş Sağlığı Hizmeti Sunulan Özel Sağlık Kuruluşları Hakkında Yönetmelik*) (Annex-27)
- Accountants: Law no. 3568 on Independent Accountants, Financial Advisers and Certified Public Accountants, published in the Official Gazette no. 20194 on June 13, 1989 (*Serbest Muhasebecilik, Serbest Muhasebeci Mali Müşavirlik ve Yeminli Mali Müşavirlik Kanunu*) (Annex-28)
- Pharmacists: The Turkish Deontology Rules of Pharmacists, published in the Official Gazette no. 12961 on July 27, 1968 (*Türk Eczacıları Deontoloji Tüzüğü*) (Annex-29)
- Education: Law no. 625, as amended by the Law no. 3035, on Private Educational Establishments (*Özel Öğretim Kurumları Kanunu*) (Annex-30)

Although there is no ban as regards the RTÜK Law, the Article 21 of the RTÜK Regulation outlines some other products which are also completely banned from advertising:

- Advertisements of all kinds of weapon or of weapon manufacturers and retailers
- Services given by the fortune-tellers, mediums, astrologists, and the like
- Services given by gambling entities and other similar places
- Matchmaking services and escort agencies

2. Services for which the advertisements are subject to certain limitations can be named as follows:

- In accordance with Article 60 of the Private Hospitals Regulation, as amended on April 13, 2003 (*Özel Hastaneler Yönetmeliği*) (Annex-31), the advertisements which are contrary to the medical deontology and professional ethics, misleading, misinforming the people and acting against other hospitals to cause unfair competition cannot be broadcasted.
- As regards Article 58/last paragraph of the Regulation on Private Health Institutes with Outpatient Diagnosis and Treatment Facilities, published in the Official Gazette no. 29388 on March 9, 2000 (*Ayakta Teşhis ve Tedavi Yapılan Özel Sağlık Kuruluşları Hakkında Yönetmelik*) (Annex-32) such private health institutions are obliged to get prior authorization from the Directorate for Health of the Province before broadcasting any advertisements.
- As per the Article 19 of the Artificial Reproduction Treatment Centers Regulation, published in the Official Gazette no. 24359 on March 31, 2001 (*Üremeye Yardımcı Tedavi Merkezleri Yönetmeliği*) (Annex-33) outlines the advertisement rules as set forth below;

*“As per the provisions of the Regulation, the health-related informations and statistics cannot be broadcasted without obtaining the prior authorization of the Ministry of Health.*

*Any exaggerated result and announcements of accomplishment ratios and all kinds of activities likely to misinform the public and ill people by using the visual or printed media should be followed and warned by the Ministry.”*

*While the Private Hospitals, Private Health Institutes with Outpatient Diagnosis and Treatment Facilities and the Artificial Reproduction Treatment Centers are, albeit the non-regulation of the RTÜK Law in relation thereto, disallowed by the RTÜK Regulation to make any advertising, when the ‘hierarchy of rules’ principle of law mentioned above under Section VI/B, paragraph 4 is taken into consideration, it is required to conclude that they can, subject to the aforementioned limitations, advertise themselves due to non existence of any ban provided therefore in any LAW.*

- Due to Article 34/first paragraph and 12 of the Regulation on Health Institutes for Beauty and Aesthetics, published in the Official Gazette no. 25106 on May 12, 2003 (*Güzellik ve Estetik Amaçlı Sağlık Kuruluşları Hakkında Yönetmelik*) (Annex-34), the services given by aestheticians such as facials, make-up and peelings can be advertised. However the services given by doctors such as the acne treatment, laser applications, botox treatment, or slimming, etc. cannot be advertised.

## **Specific Targets**

Some advertisements are only targeted at a specific group named as the “vulnerable group”. This group consists of the children, disabled, elderly and ill people. The subparagraph 2 of Article 16 of the Consumer Law states:

*“Advertisements and announcements which are deceptive, misleading, exploiting the inexperience and lack of knowledge of the consumer, prejudicial to safety of the consumer itself or its property, provoking violence or anti-social behaviour, harmful to public health, exploiting the ill, elderly and disabled people as well as the children; or any surreptitious advertising is prohibited.”*

## **b. Conclusions**

### **Tobacco**

The above-referred regulations for tobacco are **identical** to the rules provided in the Article 13 of the Directive TVWF. The Association of Turkish Doctors (*Türk Tabipler Birliği*) has submitted a complaint to the Advertising Committee with the claim that indirect advertisements of tobacco were made during the broadcast of Formula-1 races on a private television as the some of the racing cars seen on screen were embedded with advertisements of certain tobacco products. Upon the above mentioned complaint, the Advertising Committee has resolved that said program violated the provisions of law and ordered the television enterprise to suspend the broadcast of such F-1 programs.

### **Medicines**

The Turkish TV advertising legislation on medicine is **almost identical** to those regulated by the Directive. Although there is no hindrance for the advertisement on TV of the medicines and medical treatments with the exception of prescription medicines, there is yet no example of any such non-prescription medicine advertisement in Turkey. On the contrary, a prescription medicine has been advertised by one of the biggest private television enterprises of Turkey and RTÜK, in return, has recently requested the justifications and defence of the concerned broadcaster related to such alleged violation of Article 22 of the RTÜK Law. (The above explained issue has not yet been concluded.)

Upon the complaint of the Turkish Association of Medical Doctors with the claim that the surreptitious advertisements of some medicines were being made during the broadcast of a health programme named “Clinic” by way of mentioning the product names, the Advertising Committee has resolved to impose a fine on the finding that the

information which was supposed to be available only to the medical doctors and pharmacists was shared with the public thus manipulated their choice of medicines. The broadcaster initiated a lawsuit at the 1<sup>st</sup> Administrative Court against the fine imposed. However, the case was rejected on the finding that both surreptitious advertisement defined in the Article 21 of the RTÜK Law was made and that the prohibition of advertising related to the prescription medicines was infringed.

However, as per the provisions of Law on Medicinal and Pharmaceutical Products (*İspençiyari ve Tıbbi Müstahzarlar Kanunu*) (*Annex-14*), a more specific, and hence, prevailing regulation, the health-related advertising made in the medical magazines addressing only the medical professions are exempt from the bans of Article 22 of RTÜK Law.

Any form of sponsoring is prohibited, which is **more restrictive** than the Directive.

### **Alcoholic beverages**

While the advertising and sponsoring of alcoholic beverages is possible as per the Directive so long as certain criteria related thereto are met, the Turkish legislation with regard to the same is **totally prohibitive**.

Having said that, such prohibitions are in effect for the television and radio advertisements and sponsorships, only, whilst the said products can well benefit from advertising, sponsoring, or teleshopping on any other medium. In relation with the above mentioned prohibition, RTÜK has asked for the justification and defence of a private television enterprise due to its claimed violation of Article 22 of the RTÜK Regulation as one of the publicity signs placed upon the banks of a basketball field demonstrated advertisements of a famous Turkish alcoholic beverage. Subsequently, RTÜK issued a warning to the concerned private television enterprise in relation to the said alcoholic beverage advertisement.

### **Minors**

Turkey's TV advertisement legislation on children's advertisements **exceeds the Article 16 requirements** of the Directive by introducing more restrictive rules as concerns the advertising, sponsoring and teleshopping. The said prohibitive restrictions have been exerted particularly on the following items: The misleading and deceptive advertisements, inducement to execute contracts for the sale or lease of goods and services, appearance of children playing with or using hazardous tools and objects likely to harm themselves or their surroundings, exploitation of parents' feelings of love, tenderness and devotion, prohibition of the advertisements likely to harm the health of minors.

Regarding the regulations on minors, a resolution of the Advertising Committee can be mentioned upon the relevant rule of the Consumer Law as concerns the general rules, namely, the prohibition of the children's exploitation on the credulity, lack of knowledge or inexperience. The resolution is about a biscuit product of a famous company and includes a phrase, namely "*Have you eaten your milk?*", which, according to the Advertising Committee, infringes the concerned rule as it distorts the language and might lead to confusion of perception of the product by children as not a food product but a beverage. The Advertising Committee has requested justification and the necessary information concerning the infringement. The above explained issue has not yet been concluded.

### **Other products**

The Turkish regulation also provides advertising restrictions as to the following products or services or activities: infant food products-formulas, cosmetic products, food products, lawyers, opticians, doctors and dentists, accountants, pharmacists, weapons or of weapon manufacturers and retailers, fortune-tellers, mediums, astrologists, gambling entities and other similar places, matchmaking services and escort agencies, private health institutions, health-related informations and institutes for Beauty and Aesthetics.

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