

# EVALUATION OF PRICE REDUCTION DURING A SPECIAL OFFER PERIOD IN TERMS OF UNFAIR COMPETITION LAW

*Belirli Dönemlerde Gerçekleştirilen Özel İndirimlerin Haksız Rekabet Hukuku Açısından Değerlendirilmesi*

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*Research Article*

## **Abstract**

The price reduction that took place in a special offer period among other countries also happened in Turkey. In this period, goods or services are offered to customers with highly promoted sales. However, this practice raises some questions about the authenticity of the campaigns offered to customers. For example, it is claimed by customers that the discounts are not real, prices are first increased and then reduced, so that no real discount is made. Another complaint in this opinion is that customers are deceived due to the fact that the stock information of the products claimed to be offered for sale below the supply price is not provided or because these products are offered for sale in very small quantities. Actually, there has been a significant increase in the number of objections raised to the Turkish Ministry of Commerce for these reasons. This paper discusses whether these misleading practices constitute unfair competition based on these objections.

**Keywords:** Unfair Competition Law, Consumer Protection Law, Misleading Commercial Practices, Deceptive Explanations

## **Özet**

Çeşitli ülkelerde belirli dönemlerde gerçekleştirilen indirimlerin yıllarda ülkemizde gerçekleştirilmeye başlanmıştır. Mal veya hizmetlerin müşterilere oldukça indirimli fiyatlar üzerinden sunulduğu bu dönemler, gerçekleştirilen kampanyaların doğruluğu hakkında birtakım soru işaretlerini de beraberinde getirmektedir. Bu çerçevede, yapıldığı iddia edilen indirimlerin aslında gerçek olmadığı, fiyatlarda indirim yapılmadan önce fiyatların yükseltildiği, müşterilerin kampanyalı mal veya hizmetlere ilişkin stok bilgileri konusunda yeterince bilgilendirilmediği yahut stok miktarının son derece düşük olması başta olmak üzere Ticaret Bakanlığı'na sayısız şikayet yöneltildiği görülmektedir. Bu çalışmada, söz konusu ticari uygulamalar haksız rekabet hukuku açısından değerlendirilmeye çalışılacaktır.

**Anahtar Sözcükler:** Haksız Rekabet Hukuku, Tüketicilerin Korunması Hukuku, Aldatıcı Ticari Uygulamalar, Yanıltıcı Açıklamalar

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## I. Legal framework of protection against unfair commercial practices

In cases where customers are deceived, it is possible to protect customers who have a consumer status according to the Code on the Protection of the Consumer numbered 6502<sup>1</sup> (hereinafter: CPC) or according to the unfair competition provisions of the Turkish Commercial Code numbered 6102 (hereinafter: TCC)<sup>2</sup>. In fact, the scope of unfair competition protection provisions of the TCC is wider than the protection provided by the provisions of the CPC<sup>3</sup>. While the CPC covers all kinds of *consumer*<sup>4</sup> transactions and *consumer-oriented* practices (art 2), regulations related to unfair competition of the TCC protect the interests of all participants (art 54(1)). As can be seen, the scope of the CPC is narrower because it only protects consumers<sup>5</sup>. Likewise, the purposes of protection provided by the CPC and the TCC are different from each other. CPC aims to take measures to protect the health, safety and economic interests of consumer in accordance with the public interest, to compensate their damages, to protect them from environmental dangers, to enlighten and raise awareness for consumer, to encourage consumer to protect themselves and to regulate the issues related to encouraging voluntary organizations in the formulation of policies on these issues (art 1)<sup>6</sup>. On the other hand, the purpose of the provisions of the TCC on unfair competition (art 54-63) is to ensure fair and undistorted competition for the benefit of all participants (art 54(1))<sup>7</sup>. Considering all of these, individuals who are accepted

<sup>1</sup> Official Journal, 28 November 2013, No 28836 <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6502.pdf>> accessed 12 December 2020.

<sup>2</sup> Official Journal, 14 February 2011, No 27846 <<https://www.mevzuat.gov.tr/MevzuatMetin/1.5.6102-20130328.pdf>> accessed 12 December 2020.

<sup>3</sup> Sabih Arkan, 'Haksız Rekabet-Gelişmeler-Sorunlar' (2004) 22/4 Batider 6-7; Ünal Tekinalp, 'Yeni Haksız Rekabet Hukukunda Amaç-İlke ve Üç Boyutluluk' in *Prof. Dr. Seza Reisoğlu'na Armağan* (BTHAE 2016) 28, 33, 37; Metin Topçuoğlu, 'Türk Ticaret Kanunu ve Yeni Tüketicinin Korunması Hakkında Kanun Açısından Haksız Ticari Uygulamalar' (2016) 24 TAAD 26; Ayşe Tülin Yürük, 6102 sayılı Türk Ticaret Kanununun Haksız Rekabete İlişkin Hükümleri Konusunda Bazı Görüşler' (2013) Anadolu Üniversitesi Sosyal Bilimler Dergisi 46.

<sup>4</sup> Consumer refers to a natural or legal person acting for commercial or non-professional purposes (CPC art 3(1)(k)); Regulation on Commercial Advertising and Unfair Commercial Practices (Official Journal, 10 January 2015, No 29232 <<https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=20435&MevzuatTur=7&MevzuatTertip=5>> accessed 17 December 2020, hereinafter: CACPR) art (4)(1)(ö).

<sup>5</sup> Topçuoğlu (n 3) 26; for a similar opinion also see: Mehmet Ali Aksoy, '2005/29/AT Haksız Ticari Uygulamalar Direktifinde Düzenlenen Haksız Rekabet Halleri ve Uygulama Örnekleri' (2015) 73/1 IUHFM 280 fn 1.

<sup>6</sup> For the further information on the purposes of the consumer protection also see: Lale Sirmen, 'Tüketici Hukukunun Amacı ve Özellikleri' (2013) 8 Yaşar Üniversitesi E-Dergisi 2466-2468.

<sup>7</sup> For the further information on the purposes of the unfair competition protection also see:

as consumer, shall apply both the TCC and CPC in cases where these practices lead to distortion of competition due to unfair commercial practices<sup>8</sup> that are misleading about prices during the special offer period<sup>9</sup>. However, in the absence of the consumer statues, the articles of CPC cannot be applied, and in the absence of distortion of competition, the articles of TCC related to unfair competition cannot be applied<sup>10</sup>.

Unfair commercial practices towards the consumer are prohibited. In case the commercial practice is claimed to be unfair, the practiced person is obliged to prove that this application is not an unfair commercial practice (CPC art 62(2)). However, it should not be forgotten that in order to base upon this provision, distortion of competition is not necessary, it is sufficient for customers to have the consumer status. According to art 62 of CPC, a commercial practice is deemed to be unfair if it does not comply with the requirements of professional care and if it significantly distorts or has the possibility of significantly distorting the economic attitude of the average consumer or group to which it reaches<sup>11</sup>. Especially the practices that are deceptive or offensive and the practices included in the annex of the provision are accepted as unfair commercial practices.

Misleading commercial practices are also regulated in art 55 of TCC. The source of this provision is art 3-8 of the Swiss Act Against Unfair Competition<sup>12</sup> and Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005<sup>13</sup>. In this article, first of all, the basic rule regarding which practices will be accepted as unfair competition is included: The advertisement and

Hamdi Pınar, 'Rekabet Hukuku ile Haksız Rekabet Hukuku İlişkisi' (2014) 15/2 Rekabet Dergisi 66-69.

<sup>8</sup> Unfair commercial practice refers to any commercial practice that does not comply with the requirements of professional care and that significantly distorts or is likely to distort the economic behaviour of the average consumer or the average member of the group to which it is directed (CACPR art 4(1)(d)).

<sup>9</sup> Aynur Yongalık, 'Genel İşlem Koşulları-Haksız Ticari Uygulamalar ve Haksız Rekabet İlişkileri' in Hüseyin Can Aksoy (ed) *Tüketici Hukuku Konferansı* (Yetkin 2016) 137; Sevilay Uzunallı, 'Genel İşlem Şartlarının Haksız Rekabet Hükümleriyle Denetlenmesi' (2013) 71/2 IUHFM 414-415; Şirin Güven, *Haksız Rekabet Hukukunun Amacı ve Koruduğu Menfaatler* (Adalet 2012) 94; Yürük (n 3) 46.

<sup>10</sup> For a similar opinion also see: Topçuoğlu (n 3) 26.

<sup>11</sup> For a similar opinion also see: Güven (n 9) 81.

<sup>12</sup> Gesetz gegen den unlauteren Wettbewerb vom 19.12.1986, UWG, AS 1988 223 < [https://www.fedlex.admin.ch/eli/cc/1988/223\\_223\\_223/de](https://www.fedlex.admin.ch/eli/cc/1988/223_223_223/de)> accessed on 7 June 2021.

<sup>13</sup> OJ L 149, 11 June 2005; For a similar opinion also see: TCC, General Preamble, para 50 <[https://www.tbmm.gov.tr/d23/1/1-0324.pdf?TSPD\\_101\\_R0=08ffcef486ab20000752d-f6ef1cb163cb8f2bd2e4cfd9fa32c2b5115e262e2132ab80e7f132ad8dd089d4a0e-8014300010c5358aab260d3ca71cfbe9bbd003f31a3bc961ff01e5af9a0b29a23acd7a5f-9014f8e71eebcb1268bac8dc6c663b6b](https://www.tbmm.gov.tr/d23/1/1-0324.pdf?TSPD_101_R0=08ffcef486ab20000752d-f6ef1cb163cb8f2bd2e4cfd9fa32c2b5115e262e2132ab80e7f132ad8dd089d4a0e-8014300010c5358aab260d3ca71cfbe9bbd003f31a3bc961ff01e5af9a0b29a23acd7a5f-9014f8e71eebcb1268bac8dc6c663b6b)> accessed 14 December 2020.

sales methods against good faith and other unlawful attitudes are accepted as unfair competition. After this general rule, various unfair commercial practices are given as non-restrictive examples in TCC art 55. When these examples are examined, it is possible to say that three requirements are needed for the existence of unfair competition: Commercial practice, act against good faith or deceptiveness and distortion of competition. However, it is not necessary to damage the assets of a person who is exposed to unfair competition, and there is also no need for the fault or benefit of the person leading to unfair competition<sup>14</sup>.

One of the most common ways customers are deceived during discount periods is to increase the price before making a discount. In such cases, an exorbitant price is determined for which the product is never sold, and the customer is tried to be deceived by claiming that a huge discount is made on that price. In fact, that product was never sold at the specified higher price (no discounted raw price) or until recently, a serious discount was already made on the product. Another method of deception, which is frequently encountered in these periods, is to present the discounts that will shock the customers by offering the impression that all products are sold at the same price without giving the stock details. In such cases, customers enter the store or visit the shopping website to buy that product, but unfortunately those products are always out of stock. It is possible to say that these practices are against the good faith. In this opinion, according to art 55(1)(a)(2), making inaccurate or misleading statements about himself, his commercial enterprise, business signs, goods, business products, activities, prices, stocks, form of sales campaigns and business relations or putting the third party ahead in the competition regarded as unfair commercial practices. In addition, offering certain selected goods, business products or activities for sale more than once under the supply price, especially emphasizing these presentations in their advertisements, and thus misleading customers about their own or competitors' ability cause unfair competition (TCC art 55(1)(a)(6)). As stated before, in order to be able to upon these provisions, the customer does not have to be a consumer, the distortion of the competition is enough. Finally, it is possible to say that, if competition is intended to be protected, the provisions of TCC are *lex specialis*, on the other hand, when it is aimed to protect consumers against the unfair commercial practices instead of protecting the competition, the provisions of CPC are *lex specialis*.

<sup>14</sup> N. Füsün Nomer Ertan, *Haksız Rekabet Hukuku* (Oniki Levha 2016) 99.

## II. Evaluation in terms of TCC art 55(1)(a)(2)

According to this provision, three conditions must occur together for the existence of unfair competition: existence of explanations<sup>15</sup>, the fact that a person puts himself or the third party ahead of the competition with explanations, and these explanations being inaccurate or misleading<sup>16</sup>. Deceptive explanations refer to inaccurate or misleading statements that have the potential to affect the decisions of customers<sup>17</sup>. The subject of explanations is about the owner of the explanation, his commercial enterprise, business signs, goods, business products, activities, prices, stocks, form of sales campaigns, financial status or business relations<sup>18</sup>. The subject of the explanations is not limited to these. In other words, these are issued as examples of unfair commercial practices. It is necessary to state that unfair competition may also occur due to misleading or inaccurate explanations on other matters not listed here<sup>19</sup>.

According to this provision, the second condition for unfair competition to occur is the fact that the explanations are to be inaccurate or misleading. Inaccurate explanation means that the explanations are not correct<sup>20</sup>. Inaccurate explanations can be in the form of giving false information or also in silence<sup>21</sup>. Customers do not need to be actually deceived here as the possibility of being deceived is sufficient<sup>22</sup>. Misleading explanations, on the other hand, are accurate statements, which can be misunderstood by the addressee when evaluated together with their nature, style and content<sup>23</sup>. In such a case, the existence of the will to mislead is not essential, the important thing is the impression left on the addressee and the possibility of the addressee being mistaken as a result of this impression<sup>24</sup>. Therefore, it is possible to say that the behaviour of those who present the prices of products or services higher than ever and make big discounts on this high (and unreal) price is inaccurate

<sup>15</sup> Explanations refer to objectively verifiable statements of factual nature in Swiss law, Carl Baudenbacher, *Lauterkeitsrecht* (Helbing&Lichtenhahn 2001) 296 para 30; All of the communication relations are able to be accepted as explanations by the means of this provision in Swiss law, Mathis Berger, 'Art. 3 Abs. 1 lit. b' in Reto M. Hilty/Reto Arpagaus (eds) *Basler Kommentar UWG* (Helbing&Lichtenhahn 2013) 185 para 14.

<sup>16</sup> The equivalent of this provision is UWG art 3(1)(b).

<sup>17</sup> Nomer Ertan (n 14) 149.

<sup>18</sup> For further examples also see: Lucas David and Reto Jacobs, *Schweizerisches Wettbewerbsrecht* (Stämpfli Verlag 2005) 65-66 para 216.

<sup>19</sup> Nomer Ertan (14) 150.

<sup>20</sup> Thus, the term inaccurate explanations include the term misleading explanations, Baudenbacher (n 15) 304 para 45.

<sup>21</sup> Baudenbacher (n 15) 306 para 54-55, 309 para 58.

<sup>22</sup> Baudenbacher (n 15) 312 para 64.

<sup>23</sup> Nomer Ertan (n 14) 151.

<sup>24</sup> Nomer Ertan (n 14) 151.

and so affects the will of the customers<sup>25</sup>. The behaviour of those who use a guarantee trademark even though it does not have the necessary standards for the use of that trademark; or the claim that a detergent is recommended by a good washing machine trade mark, but actually is not recommended, are examples of inaccurate commercial practices. On the other hand, although the discount rate and prices are accurate, if highly promoted discounts are made for only a very small amount of product, and the stock information or product information is not shared with the customers, it will constitute to misleading explanations, not inaccurate ones<sup>26</sup>. Because in such a situation, the impression created by customers is that the same discount will be made on all products and it misleads the customers. For example, the explanations, if a business that actually only offers a purple colour shoe size 13 (a size that can be used by very few people) to its customers at an extremely lower price gives the impression that there is such a discount on other shoes, are likely to be misleading. In such cases, mid-level consumers<sup>27</sup>/addressees should be taken as a basis for evaluation<sup>28</sup>.

Finally, it is possible to talk about the existence of unfair competition if the person who causes unfair competition not only puts himself ahead with his explanations on these subjects, but also puts a third person ahead in the competition<sup>29</sup>.

### III. Evaluation in terms of TCC art 55(1)(a)(6)

Offering<sup>30</sup> certain selected goods, business products or activities for sale more than once under the supply price, especially emphasizing these presentations in their advertisements, and thus misleading customers about their own or competitors' ability is caused unfair competition. According to this provision, four conditions must occur cumulatively in order to speak of unfair competition. The first of these is that sales are made many times below the supply price<sup>31</sup>, meaning that the person who causes unfair competition

<sup>25</sup> Berger (n 15) 212 108.

<sup>26</sup> For a similar opinion also see: Berger (n 15) 212 108.

<sup>27</sup> According to art 4(1)(j) of CACPR the average consumer refers to the natural or legal person acting for commercial or non-professional purposes, having reasonable knowledge at every stage of the consumer transaction or consumer-oriented practices.

<sup>28</sup> Nomer Ertan (n 14) 154; For a similar opinion also see: CACPR art 4(1)(d), 7(3), 18(1), 28, 29, 30.

<sup>29</sup> Berger (n 15) 189 para 29.

<sup>30</sup> What is meant here is not an offer in terms of the law of obligations (Turkish Code of Obligations art 3-10, cf. Swiss Code of Obligations art 3-9), it must be evaluated regarding unfair competition law, Baudenbacher (n 15) 538 para 73.

<sup>31</sup> Baudenbacher (n 15) 540 para 81; Mario M. Pedrazzini and Federico A. Pedrazzini, *Unlauterer Wettbewerb UWG* (Stämpfli Verlag 2002) 140 para 6.62.

makes a sale at his loss and repeats it more than once. In other words, selling below the supply price is the sale of the product at a price lower than the real purchase price of this product. In such cases, a rebuttable presumption is regulated in TCC art 55(1)(a)(6). According to this provision, if the sales price is below the procurement price applied in the purchase of the same kind of goods, business products or services in similar volumes, the existence of deception is presumed; If the defendant proves the actual procurement price, this price becomes the basis for evaluation. During certain discount periods such as Black Friday, it is highly likely that the sale below the supply price will be repeated more than one time and lead to unfair competition<sup>32</sup>.

According to TCC art 55(1)(a)(6), the second condition for unfair competition to occur is that the offer below the supply price has to be for some selected goods, products or services. Therefore, discounting on all products in a store does not constitute to unfair competition according to this provision<sup>33</sup>. Considering that the aim is to deceive the customer into the store and direct them to the products that are not discounted, according to this provision, in order to be able to talk about unfair competition, the presentation below the supply price must be in question for only certain products<sup>34</sup>.

According to this provision, the third condition required for unfair competition to exist is that the offer below the supply price is particularly emphasized in the advertisements. In other words, unfair competition cannot be mentioned in cases where this situation is not specifically emphasized in advertisements<sup>35</sup>. Therefore, only announcing in advertisements that sales will be made below the procurement price is not sufficient for unfair competition to be in question according to this provision. It is also essential that this point be particularly and clearly emphasized in the advertisements<sup>36</sup>. Likewise, these activities of businesses (for example, discount markets) that implement a low price policy without advertising, will not constitute unfair competition according to this provision.

Finally, according to this provision, the last condition required to talk about unfair competition is that the person who causes unfair competition misleads<sup>37</sup> the customers about the ability of himself or his competitors<sup>38</sup>. Here,

<sup>32</sup> For a similar opinion also see: Nomer Ertan (n 14) 226.

<sup>33</sup> Baudenbacher (n 15) 538 para 74; Urs Wickihalder 'Art. 3 Abs. 1 lit. f' in Reto M. Hilty/ Reto Arpagaus (eds) *Basler Kommentar UWG* (Helbing&Lichtenhahn 2013) 331 para 10.

<sup>34</sup> Nomer Ertan (n 14) 227.

<sup>35</sup> Baudenbacher (n 15) 542 para 85; Pedrazzini/Pedrazzini (n 31) 140 para 6.64.

<sup>36</sup> Wickihalder (n 34) 335 para 21; Baudenbacher (n 15) 542 para 86.

<sup>37</sup> Misleading means manipulating the customers with false information, Baudenbacher (n 15) 543 para 91.

<sup>38</sup> Pedrazzini/Pedrazzini (n 31) 141 para 6.65.

the general understanding (impression) is that the person who sells below the supply price generally offers cheaper goods or services compared to his competitors. Customers are given the impression that discounts are made on all products, and customers are directed to buy products that are not actually discounted, thus deceiving and misleading<sup>39</sup>. It is stated in Turkish doctrine that it would be more appropriate to regulate this provision in the legislation on consumer protection instead of provisions on unfair competition<sup>40</sup>. However, we do not agree with this view, considering that the provisions protecting the consumer and preventing distortion of competition, serve different purposes and complement each other. Moreover, even if this provision did not exist, and even if the conditions for its occurrence were not fulfilled, the provisions on unfair competition could already be applied in the presence of the conditions in TCC art 54(2)<sup>41</sup>.

After all these evaluations, it is possible to talk about unfair competition in cases where the special offers to be made during certain discount periods are specially emphasized weeks in advance in the advertisements and it is stated that sales will be made below the supply price for only selected products. However, it is essential that the explanations are misleading to the customer and thus aim to gain an advantage over the competitors. What is important here is whether customers are misled by being left with impression that discounts are made on all products, even though it is not true. Therefore, in such cases, unfair competition will no longer be mentioned in cases where it is not implied that all products will be sold below the supply price. In this framework, it is no longer possible to talk about unfair competition in special offers where the discounts are particularly emphasized in their advertisements with accurate stock information and which products will be included to, i.e. in campaigns where sufficient transparency is provided on discount and campaign information.

#### IV. Evaluation in terms of provisions protecting the consumer

As stated before, in the presence of unfair commercial practices such as the behaviours considered within the scope of our study, it is also possible to apply the legislation that protects the consumer. The provisions of TCC on the protection of competition are broader provisions aimed at regulating both business to consumer (B2C) and business to business (B2B) transactions. It is stated that the purpose of the provisions of this Section (TCC art 54-

<sup>39</sup> Nomer Ertan (n 14) 227.

<sup>40</sup> Nomer Ertan (n 14) 227.

<sup>41</sup> TCC Art 54(2): Misleading or other acts and commercial practices against good faith that affect relationships between competitors or between suppliers and customers are unfair and unlawful.

63) on unfair competition is to ensure fair and undistorted competition for the benefit of all participants (art 54(1)). Consumers are included in the scope of all participants. Especially in business to consumer commercial transactions, provisions protecting unfair competition are also included among the provisions protecting the consumer. These provisions are applicable together with the provisions of the TCC on unfair competition and complement the provisions of the TCC, in cases where the prevention of the distortion of competition and the protection of the consumer are aimed together in the relations where the consumers are one of the parties of a transaction<sup>42</sup>. The provisions that complement the provisions of the TCC on unfair competition are CPC art 61 ff and the provisions of the Regulation on Commercial Advertising and Unfair Commercial Practices (hereinafter CACPR). According to CPC art 61(2) advertisements must be accurate and fair (CACPR art 7). Advertisements should be prepared with an awareness of economic and social responsibility and of not causing unfair competition, prepared considering the level of perception of the average consumer and the possible effect of the advertisement on the consumer (CACPR art 7(2), (3)). Also, advertisements cannot abuse the consumer's trust and cannot contain expressions or images that may mislead the consumer directly or indirectly (CACPR art 7(4), (5)).

Art 13 and 14 of CACPR are directly relevant provisions in terms of possible problems to be experienced during the discount period considered within the scope of our study. In particular, CACPR art 13 titled as “Advertisements with price information” provides detailed rules on how such advertisements should be or should not be made. First of all, consumers cannot be misled by providing deficient information or causing ambiguity about the price (CACPR art 13(1)). In addition, if there is a time or stock limit regarding the validity of the price, this period and stock amount are clearly stated in the advertisements (CACPR 13(9)). In the advertisements that include any written, audio or visual statement indicating a discount for goods or services; If the starting and ending dates of the discounted sale and the quantity of the goods or services offered for sale at a discounts are limited, this amount must be stated clearly and understandably (CACPR art 14(1)). In discounted sales advertisements, expressions or images that may mislead consumers by causing confusion about which goods or services will be subject to discount or how much discount will be applied, or that may create the impression that more discounts are applied than they actually are, cannot be used (CACPR art 14(2)). The proof that the goods or services subject to discounted sale are offered for sale at a price lower than the supply price before the discount belongs to the advertiser (CACPR art 14(3)). In a similar framework, it was stated that unfair commercial practices

<sup>42</sup> Yongalık (n 9) 137; for a similar opinion also see: Yürük (n 3) 46.

and deceptive acts are prohibited (CACPR art 28-29), and such practices are included in the appendix of the regulation. Finally, advertisers are obliged to prove the accuracy of the claims in their commercial advertisements (CPC art 61(6), CACPR art 9(1)). Also it is stated in CPC art 62 (1) that unfair commercial practices are prohibited<sup>43</sup>. Whether this prohibition is violated or not will be audited by the Advertisement Board<sup>44</sup>. In case of violation of this prohibition, such as some penal sanctions will be applied by advertisement board.

### Conclusion

Deceiving customers in certain discount periods brings to mind the provisions regarding the protection of competition as well as the provisions on consumer protection. Those who claim that competition is distorted and therefore whose economic interests are violated can make a claim based on the provisions of the TCC regarding unfair competition (art 56). In such cases, especially in B2C commercial transactions, since the interests of the consumers are also in question, it may be also possible to apply regulations that protect the consumer. These provisions in the legislation on consumer protection and also on unfair competition are complementary to the provisions on unfair competition in the TCC. However, in cases where the aim is not to prevent distortion of competition and only consumer protection is desired, only provisions to protect the consumer are applicable. Similarly, in cases where the interests of consumers are not violated, only the provisions on unfair competition of TCC are applicable.

In cases examined in our study, for example, deceiving consumers by giving the impression of discounts on goods or services or by not providing accurate and honest information about discounts may lead to unfair competition. Especially, consumers cannot be misled by providing deficient information or causing ambiguity about the price. Besides, misleading customers due to insufficient transparency regarding discounted goods or services and their stock information during discount periods may also constitute unfair competition depending on the situation. To avoid that, in the advertisements that include any written, audio or visual statement indicating a discount for goods or services, if the starting and ending dates of the discounted sale and the quantity

<sup>43</sup> In cases where unfair commercial practice is carried out through advertising, CPC art 61 is applied (CPC art 62(3)).

<sup>44</sup> This Board refers to the Board in charge of determining the principles to be followed in commercial advertisements and making arrangements to protect the consumer against unfair commercial practices, examining within the framework of these issues and making inspections when necessary, stopping according to the results of the examination and inspection, or correcting with the same method, or to administrative fine. For further information about the structure of the advertisement board also see: CPC art 63.

of the goods or services offered for sale at a discount is limited, this amount must be stated clearly and understandable. In discounted sales advertisements, expressions or images that may mislead consumers by causing confusion about which goods or services will be subject to discount or how much discount will be applied, or that may create the impression that more discounts are applied than they actually are, cannot be used. Otherwise, those whose interests are violated are entitled to request compensation, as well as the advertisement board may decide to remove the unfair and inaccurate advertisements.

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Carl Baudenbacher, *Lauterkeitsrecht* (Helbing&Lichtenhahn 2001).

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