

PROMOTIONAL SALES IN LAW: TURKISH LAW, GERMAN LAW AND ENGLISH LAW

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Promotional sales is a method of selling used to increase sales of merchants, promote a new product, and encourage consumers to buy the product. In the case of a consumer, a product is subject to a promotional contract, which means either a second free product or a discounted offer of the other products within a specific campaign. For this reason promotion is the reason for the purchase of a product from the consumer point of view.

Keywords: Promotional, Promotional sales, Cunsomer, Selling method.

The Term of Promotion

Promotion is the term of Consumer Law in Turkey. But the term of promotion is using the other law departments. For example; we use this term in unfair competition law. Because people who see in the television or internet the promotion they will buy goods or services. So this advertisement will be deceptive.

When we look the dictionary it says us is Promotion is an effective promotional tool that companies use to promote themselves to potential customers and to market their products¹. It comes from the promotion word in French.

Promotional words is an advertising tool used to increase sales or to increase the appeal of a desired product to be marketed.

In fact, the application of promotions today is very antagonistic. In the markets, in the shopping centers, in the health sector, in the fuel sector. Promotion has a very nice and encouraging feature as long as it is done to attract the attention of the consumer to the main product, to advertise the product, to increase the sales and not to the victim of the consumer.

We generally use promotional sales term in our country to Express. There are applications that include people who are made by press organizations to increase the sales of newspapers or periodicals to this circulation of sales².

¹ <https://tr.wikipedia.org/wiki/Promosyon>

² **ABİK, Yıldız:** *Promosyonlu Satış Sözleşmesi*, Ankara 2002, s. 106-107; **BAYKAL ,Murat:** "Tüketicinin ve Rekabetin Korunması Bakımından Gazete Promosyonları", Yargıtay Dergisi, C.23, Temmuz 1997, S.3, s.346; **ASLAN, İ. Yılmaz:** *Tüketicili Hukuku Dersleri*, Bursa 2013, s. 272; **AYDOĞDU, Murat:** *Tüketicili Kılavuzu- Hukuk Rehberi (Kılavuz)*, İstanbul 2014, s.175; **AYDOĞDU, Murat:** *Tüketicili Hukuku Dersleri (Dersler)*, Ankara 2015, s.321-322; **DERYAL,Yahya:** *Tüketicili Hukuku*, Ankara 2008, s. 129; **ÖZEL, Çağlar:** *Tüketicinin Korunması Hukuk*, Ankara 2014, s.236; **BAYKAN, Renan:** *Tüketicili Hukuku*, İstanbul 2005, <http://www.ito.org.tr/ito yayin/0016004.pdf>.

Promotional sales; Is the name given to a campaign sale that leads to the consumer thinking that if a goods or service is bought, another goods or service is given free or very cheaply, and that the consumer has a chance to buy.

In generally, the term of promotional sales when someone bought something they gave you a promise to give something like goods or service free. But if you want the goods or service you must before purchase the newspaper, magazine. You must promise the newspaper or magazine to buy their magazine or newspaper for a certain time of period. Sometimes you must collect coupons which are in the newspaper or magazine.

Promotional campaigns are not in any way. In the practice, promotional activities carried out by the periodical publications announce the conditions prescribed by the broadcasting company in order to be able to give promotional goods or services to the consumers; The consumer who wishes to obtain promotional goods or services is also receiving promotional goods or services by fulfilling these prescribed conditions. However, since it is not possible for the broadcasting company to know how many people have accumulated coupons or certificates and how many promotions should be prepared for this reason, consumers should be able to make promotions in digital form or some other way, The distributor is notified of the promotion or the promotion of the coupon when the coupon is over or in the form of periodical publication or delivery of vouchers authorized by him. The Promoter promises to promulgate the promise of the contract in advance, the consumer wants to connect with this contract is obliged to fulfill the announced conditions.

Promotion Features

Not Having a Special Conversation about my Promotion

If no price is requested for the promotion, the promotion will be free of charge. In fact, in the majority of the acts presented as promotions, the promotional price is added to the main product or goods and the consumer is sold in this way. For this reason, it is more accurate to accept that there is no special or separate offset for promotions that are actually sold without compensation. Although this is not often the case with promotions given by periodicals, it is often the case for other promotions.

Although the promotion does not have a special counterpart, it is not objectively objectless in fact; Promotional goods or services are added to the original goods or services and offered to consumers. For this reason it should be accepted that the promotion does not require a special interest or special compensation.

Dependence on Promotion of the Promotion

The main aim of the promotion is; To increase the sale of the original good or act. For this reason, promotions should generally affect the consumer's decision to acquire or purchase the original good or act, that is, to purchase or acquire the original good or product.

It is important to tell the customer or customer that the reason for the promotion is the actual transaction or acquisition, and that of the consumer or the customer.

For example; The main aim of a promotional journalist is to think that purchasing newspapers will be sustainable as a consumer who wants promotional goods or services will have a connection with the ending newspaper that purchases the newspaper regularly. The main aim is; By promoting the interest of the consumer by increasing the sales of the original product. For this reason, the promotional goods or services can not be sold separately from the actual performance.

The main purpose of the promotion is to ensure that the original goods or services are purchased but that the consumer is also harmed by unfair or deceptive advertising. The proposal of the promotion or the notification of the advance is an application that encourages the buyer to make a contract.

Promotion can not be given independently of the actual action. The promotion should only be given as a result of the purchase or supply of the original goods or services. For this reason, promotion is only an adjunct when the original legal process is offered, pre-announced or notified, with no special provision to the promoter.

Separation or Discrimination of the Promotion from the Original Act

In order for the promotion to take place, it must be the same as the original goods or services, or the same as the original goods or services. In other words, it will not be the case that a promotion is given only if the original goods or services are provided. On the contrary, promotional goods or services refer to goods or services that are announced or announced in advance with the original goods.

The promotion must be distinguishable from the actual performance, but it should not interfere with the giving of one of the original performance. For example; Like a free application to an area. Or a lot of confusion like the “pay three, two” promotions.

Promotion is the name given to a second good or service given to the consumer together with the original product. Such as the provision of encyclopedia, book, CD with periodical publication.

Other Features of the Promotion

The most important feature of the promotion is; The sales of the main product or service can be increased by affecting the customer. For this reason, it is contrary to the principle of honesty and unfair competition to cause the consumer to be deceived, misled or mistaken except for this purpose. It is also forbidden to resort to deceptive advertisements in order to deceive the consumer in this sense.

It is important that the promotion is informed in advance of what, how and in what way, and that the consumer is informed about this situation. For this reason, the consumer who receives the actual product or service will have information about how the promotion can be reached. For example; Announcement that the end of the collection of beverages will be given a new beverage free of charge. The consumer should also know where and how to get this free new drink.

Another important point in terms of promotions is; Promotions are usually a regular practice. Promoters or performers usually state “this campaign runs between”. It is declared in the form of.

One point emphasized by promoters or promoters in promotional campaigns is “this campaign can not be combined with other campaigns”. If they are promoting or conducting multiple promotional campaigns at the same time, the consumer has to choose one of these campaigns. For example; Such as getting a chance to win a trip with this beverage cap promising to give you a free drink after the beverage caps are taken at a certain point. In this case, the consumer should make a choice, either buy it for free or hid the cover for a chance to win a trip.

It does not matter what the promotion is for. It may be the case that a new commodity is advertised, the sale of an existing product is increased, or a product that is not sold is made more attractive. One of the interesting promotional examples is the kind of promotion we give the name “get old, get new”. At this point, the consumer is getting rid of the troubles such as where to put the old product and how to sell it, and also thinks that he has got the goods or service at a discount when he gets the new product.

Promotions are generally offered free or at a very low price to the consumer.

The consumer should be aware that he or she will be given an additional good or service with the original product and that this good or service will be presented with the original product.

Promotional Variables

Promotional sale is classified as the most classical type of promotional article made according to the product variety. According to this, the theme of promotion is; Goods promotions, service promotions and other promotions. In terms of the Consumer Law, only the promotions given by the broadcasting

companies have been regulated. In the case of promotional applications, which are organized by periodical broadcasting organizations and for which a second goods or services other than the periodical publication are committed or given, such as tickets, coupons, participation numbers, games, draws and the like, whatever their purpose and form, Or other goods or services other than services³.

Commodity Promotion

Promotional goods are usually movable goods. It is also seen that movable goods such as books, magazines, CDs are given in promotions given by periodicals. Examples of this are promotional applications for newly married couples in our country. It's like giving television in exchange for the purchase of household goods.

Promotional items are usually movable goods, but this does not prevent the immovables from being promotional. In 1990, it was seen that the periodical publications were bought for a certain period and certificates were collected with coupons⁴, so that the consumer house, the land, even the period property were given.

In our country, especially in the 1990s, we see that promotional items of different goods are made in promotional applications. Cell phones, dinner sets, television, washing machine. However, the Consumer Law requires that promotions issued by periodical publishers be cultural goods or services that are appropriate for the purpose of the periodical publication. For this reason, it is seen that the periodical publishing institutions have been providing appropriate cultural goods or services for the purpose of the periodical publication such as encyclopedia, CD, book in case of the recent purchase of the broadcasting company within a certain order.

The provision of appropriate goods or services for the purpose of the periodical publication promising to give the Promotion is openly debatable. While the promotions that can be given by periodicals have been subject to the conditions of being suitable for the periodical broadcasting purposes, the method of counting the promotional goods or services has been followed in the regulation. The point

³ In a decision submitted by the Constitutional Court in relation to a dispute and a clear claim of contradiction to the Constitution, "... The third paragraph added to Article 11 of Law No. 4277 with Article 1 of Law No. 4226 states that" No matter what purpose or form it is organized, such as tickets, coupons, participation numbers, games, lotteries and similar means No other goods or services can be undertaken and distributed except in the case of campaigns for which a second product other than the periodical publication is committed, except for cultural products which are not contrary to the purposes of the periodical publishing such as books, magazines, encyclopedias, banners, flags, posters, oral or visual magnetic tapes or optical discs. .. "is said; In the fifth paragraph of Article 25 of the same Law, a fine of 500,000,000 TL shall be imposed on those who violate the third and fourth paragraphs of Article 11. The violation shall be applied 20 times of the penalty if it is realized with the periodical publication broadcasting at the country level. In case of continuation of this irregularity, a penalty of 1,000,000,000 liras is applied for each number starting from the date when the obligation to stop advertisement and announcement is due and the Ministry shall suspend all kinds of advertisements and advertisements related to the campaign and the request to the consumer court Appeal "has been included in the rule. It is in the discretion of the legislator to decide which products can be given to the reader as second products and which products will be excluded from this scope, provided that they are kept within constitutional limits. In the third paragraph of the 11th Article, additional products other than cultural products, the related campaigns and advertisements are prohibited and the announcement and advertisement of the campaign and the campaign are stopped only by the consumer court. With this rule, the use of work and contract freedom has not been explicitly or implicitly prohibited, the public interest has been limited to commercials and campaigns related to products other than cultural products. These limitations brought for the sake of public good and public order and not contrary to the requirements of the democratic society order came to the conclusion that they did not contradict with Articles 48 and 13 of the Constitution ... "Decision Day: 29.9.1998, Number of Principle: 1998/25, Decision Number of Official Gazette: 1998/56, Date of Official Gazette: 18 March 1999, Number of Official Gazette: 23643

⁴ In a decision of the Supreme Court in this respect; The consumer has accepted the promissory issue, but in case the promised product is not delivered to him, he has accepted the court case, but the decision of the Court of Cassation has been violated. If the Court of Cassation has reason; The consumer does not submit the coupons it has collected to the computer to receive the promotional computer. www.kazanci.com.tr

to be argued at this point is: Can a travel magazine with travel content give me a food book? Or should a baby magazine only give a promotion to dolls? The concept of providing promotions appropriate for the purposes of reasonably periodical publications should be construed as narrow. That is, the baby magazine should be able to give promotions only to babies or pregnant mothers or new mothers. In another example, an atlas of travel magazine is a common occurrence. However, you should not be prevented from giving a promotion by being associated with the original product. For example; As a promotional book of a cookbook in which a description of the famous dishes of that country is given in a travel magazine where the promotion of a particular country is made.

Service Promotion

A service promotion is a free service or a very low price for a particular service as a result of a particular goods or action⁵. In order for the service to be offered to be promotional, it should not have a special counterpart. For example; Such as the presentation of a free car wash service to gasoline stations at petrol stations.

Especially in the health sector, the service promotion is very often confronted. Private hospitals offer one or two free check-ups per year for patients who are constantly on their own (preferring their health care facilities to multiple medical interventions to be treated).

Other Promotions

If a promotion is not clearly understood for which goods or services it is provided, then it should be considered as another promotion. For example; Providing a holiday service for the purchase of a good or service, giving a free cinema or theater ticket ...

Promotional practices in the shopping centers on the weekend are examples of this. Such as giving a car or a home item in case of a certain shopping at a place or several times from any one of the shopping centers in the shopping center ... or getting the right to participate in a gift drawing if a certain amount of shopping is done in the same way.

Parties to Promotional Sale

There are three sides of the contract, the distributor and the consumer, who make or carry out promotion on the promotional sales contract.

Promoter or Performer

Any person, company or organization that initiates promotions on behalf of, or for the benefit of, the Promoter. For this reason, the manufacturer or the person who makes or promotes the promotion may be the owner or any third party.

The person making or promoting the promotion must be clearly understood from the announcement of the promotion, that is, the person who performed the promotion should not be mistaken about the identity. This is particularly important in the case of promoters filing lawsuits or complaints against such persons or organizations in the event of breach of the honesty principle.

⁵ In a file of the Supreme Court; The consumer gave a less expensive computer instead of the computer promised by the promotional campaign organized by the journalist and demanded that the newspaper fee of 160 dollars be given to him with a contribution of 240 dollars. The court accepted the case, but the appeal of the case was dismissed by the Court of Cassation which ruled the case. The reason for the dismissal is that the plaintiff pays for the newspaper he reads and the case must be rejected because of the newspaper price. www.kazanci.com.tr

The intention of the person or organization that promoted or performed the promotion; Increasing sales, making products or services more accessible to people and making them more attractive.

Distributor

The distributor refers to the person or organization that assists in the delivery of the merchandise promotional item and the delivery of the merchandise, and at the same time guarantees to increase its version. The distributor is involved in promoting sales of promotional items.

Distributor refers to the person or organization that performs the distribution task in delivering the goods or services offered by the promoter or promoter to the consumer.

Consumer

In this sense, the consumer is not the person who takes to sell the goods or services again, but the person who acquires them for the purpose of using, utilizing or saving the goods or services. That is, the consumer does not put the goods or services back into commercial life. For this reason, the consumer is often the actual person who ultimately consumes a good or service for their personal or family needs. The consumer is the person who acquires certain goods and services.

Promotional Sales In Turkish Law

In our country we regulate the promotional sales in our consumer law. Our consumer act be accepted in 2014. For our consumer law the promotional sales regulate only sell magazine or newspaper.

Promotional sales contract in turkey has been regulated in article 53 of Law No. 6502. For the article the promotional sales contract is about periodical newspaper or magazine. If you want to benefit the promotion you must buy newspaper or magazine perodical or collect the coupons which are in the newaspaper or magazine⁶.

According our consumer law Consumers are forbidden to cheat with promises to promotion.

If the newspaper or magazine wants to give any promotion first they announce it. People who see the announcement they buy this newspaper or magazine regularly or collect the coupons. In generally the newspaper or magazine gives the promotion free.

According the consumer law the promotional sales contract consumer harm is prohibited. So the newspaper or magazine doesn't do any deceptive advertisement⁷.

They can determine the shape of the contract as desired. But in general consumer and buyer make the contract in writing. According Turkish Cunsomer Law the promotional sales must be carry this qualifications:

1. The Promotion will remain to fulfill the terms or conditions. The promotion will be subject to the conditions stipulated for delivery.
2. You may give the Promotion, it will not increase the publication price when it is sold in relation to this product or service as it will be promotional when it is published.

⁶ **EREN, Fikret:** *Borçlar Hukuku Özel Hükümler*, Ankara 2016, s.91; **ZEVKLİLER, Aydın – GÖKYAYLA, Emre:** *Borçlar Hukuku Özel Borç İlişkileri*, Ankara 2016, s.18; **GÜMÜŞ, Mustafa Alper:** *Borçlar Hukuku Özel Hükümler* İstanbul 2016, s.8; **AYDOĞDU, Murat – KAHVECİ, Nalan:** *Türk Borçlar Hukuku Özel Borç İlişkileri*, Ankara 2014, s.38; **YAVUZ, Cevdet:** *Türk Borçlar Hukuku Özel Hükümler*, İstanbul 2014, s. 24.

⁷ **EREN, Fikret:** *Borçlar Hukuku Genel Hükümler*, (Borçlar Genel), Ankara,2016, s. 460; **İNAN,Ali Naim-YÜCEL Özge:** *Borçlar Hukuku Genel Hükümler*, Ankara 2014, s.360; **YILDIRIM, Abdülkerim:** *Türk Borçlar Hukuku Genel Hükümler*, Ankara 2014, s. 74; **OĞUZMAN, Kemal – ÖZ,Turgut :** *Borçlar Hukuku Genel Hükümler*, İstanbul 2014, s.209; **NOMER, Haluk:** *Borçlar Hukuku Genel Hükümler*, İstanbul 2015, s.358; **KOCAYUSUFPAŞAOĞLU, Necmi – HATEMİ, Hüseyin – SEROZAN, Rona – ARPACI, Abdülkadıir:** *Borçlar Hukukuna Giriş, Hukuki İşlem, Sözleşme*, İstanbul 2014, s. 257.

3. The promotion may only be suitable for periodical publishing purposes and may be cultural goods or services.

It is forbidden to give promotions other than cultural products with our law. So they give the consumer for example free CD, free book or free coupon. According our consumer law our magazines, newspapers could give only these items:

- A) Books, magazines, encyclopedias,
- B) map, atlas, earth,
- C) Flag, poster, poster,
- D) Organizer, calendar,
- E) Printed puzzles in the paper environment,
- F) Chess team,
- G) Tickets for cinema, theater, museum, concert, opera, ballet, exhibition, festival and sports activities,
- H) Cultural tour,
- I) Ğ) Foreign language education foreseen to be performed in Turkey or abroad,
- J) CDs, DVDs, Blu-Ray and similar optical discs for books, magazines, encyclopedias, documentaries, films, theater, music, concerts,

No other goods or services can be provided.

Promotional Sales In German Law

The protection of consumers in the context of the German Unfair Competition Law has also been included as a primary priority. Regulations on the fundamental rights of consumers continue to be handled in accordance with the German Civil Code, but now the interests of consumers as well as the firms and the general public are important in the practice of competition. Another change has been allowed provided that it does not deceive practitioners such as discount campaigns, special offers, seasonal discounts, opening anniversary discounts of companies⁸.

According to German law, providing products or services through tele-marketing, contests and lotteries will be considered as promotional sales⁹.

Very short price reductions will be considered deceptive if consumers can not justify why it is so short. In addition, if the amounts of the products subject to the campaign are not adequate to meet the demand, the campaign related advertisement will not be able to be reached. The qualification criterion here is the amount of stock to cover two days of sales. However, this criterion is not very reasonable and sufficient for each product group, so the criteria are developed by the courts. As a result, these amendments made in the context of the widely accepted and self-educated consumer understanding in the EU are allowed, provided that consumers are not deceived by many pre-forbidden applications. Periodic broadcast promotions that are not allowed before 2004 can also be done after the new regulations¹⁰.

Promotional Sales in English Law

The British Code of Sales Promotion Practice (BCSPP) entered into force in 1974 for the first time. The British Promotional Sale Act of 1990 stipulates that the promotion must comply with the law after describing the product that will constitute the promoter, intermediary, main product, promotional item and

⁸ **GLOY, Wolfgang/ KLOSFERDE, Walter/ JAEGER-LENZ, Andrea:** *Handbuch des Wettbewerbsrechts*, 2. Auflage, München 1997, & 52 Rdn.1.

⁹ **ULMER, Eugen/ REIMER, Dietrich:** *Das Recht des unlauteren Wettbewerbs in den Mitgliedstaaten der Europäischen Wirtschaftsgemeinschaft*, Band III: Deutschland, München- Köln 1968, s. 811-812.

¹⁰ **GLOY/ KLOSFERDE / JAEGER-LENZ**, &52 Rdn.5.

has established protective provisions against the consumer promotion. In particular, it has established a precautionary rule against exploitation of the consumer. As stated in Article 4.4 of BCSPP, the promoter or organization must not abuse the consumer's trust or infringe on the lack of knowledge and experience¹¹.

On the other hand, according to this law, the design or management of the promotion must not be in conflict with the interests of the people and should not lead the people to violence. The obligation of the deed not to be deceitful is also the guiding principle of the law. In addition, every factor that can be effective in consumer promotional purchasing must be explained in advance¹².

Promotional applications are made by determining the basics such as how to participate, the name and business address of the promoters, the date of the end of the campaign, the conditions of purchase, the amount of the product, geographical and personal limitations, post delay.

Ten of the Best Popular Promotions in the World¹³

The promotion's main idea is "if you run the right sales promotion you're gonna see the dollars on it". "How can I get more sales? How can I improve my bottom line? Are there sales promotions that I can implement that will help me do that?" so if you want to answer this questions you must see and learn ten of the best popular promotions in world.

1. **Starbucks:** Starbucks have a promotion programme its name is loyalty. Every time a person make a purchase tehy collect a star on their loyaly card. So person who have ten star he or she could buy a free coffee or drink.
2. **Nuface:** Nuface have a promotion programme its name is free shipping deal. Nuface is the company which sell cream for woman's anti aging skin care. So woman prefer this firm because of their promotion programme.
3. **American Appeal:** American appeal have a promotional programme its name is the flash sale. American appeal sell people clothing. A flash sale typically lasts 24-36 hours and is a great way for Ecommerce owners to quickly shift unwanted stock, and boost their sales. In American Apparel's case, they managed to shift their stock in just one hour. You'll have to keep reading to find out the results, but we can promise you this, it's totally worth it.
4. **Jewelscent:** Jewelscent have a promotion programme its name is the contest. Jewelscent sell people candles, beads and luxury soaps. If you're in the early days of your online store then a contest is one of the best ways to attract your customers. At first you may find it difficult to build up buyer trust, so you'll need to work a little harder to encourage people to buy from you...
5. **John Lewis:** John lewis have a promotion programme its named The Price Match Promise. John lewis sell people electronic tools. If you have a ton of competitors then it can be hard to stand apart. So that's why a price match promise policy is a smart move. It's a true confidence builder than can help people shop with you ahead of anyone else.
6. **Kellogs star wars food manufacturer:** It has a promotion programme its named The Giveaway. They sell people cornflakes. Similar to a contest, a giveaway is a great way to bring more exposure to your brand – and it's the perfect way to let people try out your product before they buy more!
7. **Verizon wireless:** It has a promotion programme itsnamed The QR Code. They sell people Internet. A QR code is a piece of technology that may at first seem gimmicky, but it can work well for your promotion if you're smart. QR – short for Quick Response – is a code that you can feature on your marketing materials, advertisements, products, or even on your website, so people

¹¹ **CIRCUS, Philip/PAINTER, Tony:** *Sales Promotional Law: A Practical Guide*, London And Edinburgh, 1989, s.6.

¹² **CIRCUS/PAINTER:** s. 6.

¹³ <https://www.sparkpay.com/Shared/2015Content/Resources/10-of-the-best-sales-promos.pdf>

can scan the code and be taken to content that you assign to that code. In Verizon's case, it was used to direct people to their promotion...

8. **Pretzel crisps:** It has a promotion programme its named The Coupon. They sell people cracker. Ah the coupon, it's an oldtactic – dating back to 1887 - but it's still going strong today, with so many brands still using it as a formidable way to bring in more sales. The coupon has since advanced to the digital age, and many brands are using it as a way to increase their social profile. In fact, the number one reason that people like a brand on Facebook is because they want to receive discounts. And, what's the top type of sales promotion to boost your social engagement? You guessed it, the grandfather of all promotions - the coupon.
9. **John Lewis:** It has a promotion programme its Sales Promotion The Holiday promotion As we mentioned earlier, a holiday promotion is perfect for driving conversions. The truth is, people are willing to spend more around the holidays, so it's the perfect chance to take make the most of this liberal spending.
10. **Pepsi:** It has a promotion programme its named The billion dollar giveaway So this case study is a little different from all the rest, but we couldn't have a list of best promotions of all time, without including one of the boldest campaigns to date. Never before had a company given away so much money as a cash prize, until Pepsi decided to make one lucky fan, the world's next billionaire in a summer long promotion. Now, we don't expect you to be the next company to offer such an extravagant prize, but let's see how it played out to see what we can learn...