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Reclassification through False Medical Claims

Advertising in the cosmetics industry can be a challenge. Advertisements must stay within legislative limits, but still be creative enough to capture consumers' attention. Given the wide range of competitive products on the market, advertisers often try to differentiate their products from those of their competitors by claiming that their products offer pharmaceutical-like effects. This practice is prohibited under Turkish legislation.

Pursuant to Article 2 of the Cosmetics Act, 'cosmetics' are defined as:

"all preparates or components that are prepared to be used on the epidermis, nails, hair, lips and external organs such as the teeth and mouth and whose sole or main purpose is to clean, give scent to, alter the view and/or better and/or maintain the human body smell or keep it in good condition."

Therefore, a product which is defined as a 'cosmetic' cannot make medical claims (eg, claims that it can be used to treat a disease or physical disorder).

A 'pharmaceutical product' is defined as any substance or combination of substances that is used to treat or prevent disease in human beings. The public promotion of pharmaceutical products is prohibited and permitted only by healthcare professionals.

However, the confusion is not between pharmaceutical products and cosmetic products, but rather between borderline products and cosmetic products. Borderline products, which come under a different product classification under Turkish legislation, make more serious medical claims than cosmetics, but are not considered to be pharmaceutical products. Borderline products are regulated by the Borderline Products Guidelines. The guidelines do not define these products, but rather enumerate them under the following classifications:

- herbal pharmaceutical products;
- pharmaceutical products which offer topical treatment; and
- products which are not pharmaceutical (excluding cosmetics) and are applied topically.

From these classifications, it is clear that a product which is classified as a cosmetic may also be classified as a borderline product if it has a stronger medical effect than a cosmetic product. Direct consumer advertising of borderline products is prohibited and permitted only by healthcare professionals.

As well as facing punishment from the Advertising Board for deceptive advertising, cosmetics advertisements which make false medical claims run the risk of the Ministry of Health launching an investigation into the product's effects. If the product is deemed to have a borderline product effect, it may be reclassified as a borderline product.

Therefore, the advertising strategy of making false medical claims in order to capture consumers' attention may backfire on advertisers. Such claims may lead to the product being reclassified and the advertiser being prevented from directly promoting its product to the public.