

## Case law

### Case Details

**National ID:** #10/00567

**Member State:** France

**Common Name:** link

**Decision type:** Court decision in appeal

**Decision date:** 16/12/2010

**Court:** Court of Appeals, criminal chamber, Angers

**Subject:**

**Plaintiff:** Public prosecutor's office, Association Force Ouvrière des Consommateurs, Union Fédérale des Consommateurs de la Sarthe (UFC 72)

**Defendant:** A. Berramdane, SAS Monoprix Le Mans

**Keywords:** discounts, limited availability, misleading advertising

### Directive Articles

Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(a\)](#) Unfair Commercial Practices Directive, [Chapter 2, Section 1, Article 6, 1., \(d\)](#)

### Headnote

When a supermarket makes a promotional offer but cannot supply all the products announced in the promotion and under the conditions as specified in the advertisement, warning consumers of a supply problem and offering similar products as a replacement does not exclude the infringement on the prohibition on misleading commercial practices.

Announcing a price reduction in a promotional advertisement which is not effectively applied to all articles as announced in the promotional advertisement, constitutes an infringement on the prohibition on misleading commercial practices.

The primary liability for the aforementioned infringements lies with the person on behalf of whom the misleading commercial practice is implemented (e.g. a store manager).

### Facts

A promotional catalogue was issued by a supermarket for a limited period before Christmas. French consumer protection regulation's agents checked whether the information in the catalogue corresponded with the prices and products available in the supermarket. They found that:

- some products advertised in the catalogue were not available; such unavailability was indicated with a sign displayed at the entrance of the supermarket which mentioned a supply problem and which announced that the offer would apply to similar products;

- the price of certain products had not been reduced in conformity with the prices indicated in the catalogue.

### Legal issue

(1) The court rules that an incomplete sign at the entrance to the supermarket that warns the client of an "absence of supplies of some products" does not exclude as such the infringement on the prohibition on misleading commercial practices. Moreover, the general offer of "similar articles at the same price" is vague and without any guarantee. As this was not a case in which a force majeure event could be invoked, the manager should have checked the availability of the products. The manager is also considered to have lacked the necessary level of vigilance by not ensuring that the price reductions as announced in the promotional offer applied to all the products as announced.

(2) Section L.121-5 of the French Consumer Code states that the primary liability for the offense lies with the person on behalf of whom the misleading commercial practice is implemented. In that case, even if the promotional offer originated from the distributor, the supermarket's manager implemented it and had to check the inventory and is therefore liable.

### Decision

(1) Does informing consumers of a lack of availability of some products, part of a promotional offer, and offering similar products at the conditions set forth in the promotional offer, exclude an infringement of the prohibition on misleading commercial practices?

(2) Who is liable for misleading practices in this respect: the distributor that initiated the promotional offer and/or the supermarket manager who implemented such promotional offer?

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### Related Cases

No results available

### Legal Literature

No results available

### Result

The initial decision is confirmed and the appellant's appeal is dismissed.