

Case Montpellier Court of Appeal Public hearing on May 12, 2015
No. RG: 13/07492 ; summary in French [here](#)
Appellant: S.A.R.L. ALDI MARCHE TOULOUSE
Respondent: S.A.S SOTOURDI
By contradictory judgment delivered on 3 September 2013, the Commercial Court of Rodez, inter alia, the scope of Articles L.121-8 of the Consumer Code and L.713-3 of the Code of Intellectual Property (see links below)

Background A comparative advertisement was published October 24th, 2012 in a free weekly local newspaper; the advertising from SAS Sotourdi, operating the outlet SUPER U in the same catchment area, reproduced a receipt supposed to represent a "food basket" from the ALDI supermarket in Saint Affrique. The ALDI store receipt totalled 76.69 and Super U 69.91; receipt totals were visually enhanced

Claims

- The basis of the demands of society ALDI Market Toulouse is Article 1382 of the Civil Code (negligence), because of the use of unlawful comparative advertising between the two competing stores
- Article L.121-8 of the Consumer Code (*as was*) cites that any advertising which provides a comparison of goods or services by identifying, implicitly or explicitly, a competitor or goods or services offered by a competitor, is only lawful if 1) It is not misleading or likely to mislead 2) it relates to goods or services meeting the same needs or intended for the same purpose, 3) it objectively compares one or more material, relevant, verifiable and representative features of those goods or services, which may include price
- The comparison was not objective nor easy, due to poor readability of the reproduced till receipts, notwithstanding the presence of a consolidated list of products in the second page, which only took up 44 of the 57 items on the receipt, even though there were only 55 articles on the SUPER U ticket, supposedly to allow the price comparison, besides the fact that the ground coffee was only present on one of the tickets
- Based on publicity of November 9, 2012, the SUPER U store increased some prices when there was a commitment to leave them unchanged until 30 November 2012
- The amounts and packs of products whose prices were compared were not identical for 8 of the 44 products listed
- Product quality is not objectively compared, while the specifications of ALDI products are more demanding than those of SUPER U, for raw materials (flour type 45 instead of 55, large size eggs rather than medium, etc.)
- The number of products compared is insufficient to constitute a representative sample that allows an objective comparison of consumer products in supermarkets, and in addition there is no meat, vegetables or fruit, or any fresh produce included
- SUPER U's defense appeared to be confined to the limited scope of the distribution of the free newspaper, and the excessive demands of Aldi for compensation

Ruling Having regard to Articles 6, 9 and 564 of the Code of Civil Procedure, Article L.121-8 of the [Consumer Code](#), Article 1382 of the [Civil Code](#), Article L.713-3 of the [Code of Intellectual Property](#), the Appeal Court reversed in its entirety the judgment of the Commercial Court in Rodez delivered on 3rd September 2013. Costs and damages (1,000 euros versus the claimed 40,000) were awarded to Aldi.

Commentary

- Appears to be a straightforward case of failing to compare like with like
- It is not clear why the original hearing concluded that the advertising was compliant
