

G-Regs™

France – Consumer Code



Full Title

Consumer Code (*Code de la Consommation*). The Consumer Code is the principle home of, amongst other legislation, the cornerstone of European consumer protection legislation the Unfair Commercial Practices Directive 2005/29/EC of 11 May 2005: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:en:PDF> via the Law 2008-776 of 4 August 2008 on Modernisation of the Economy.

Amends and re-structures

Law 2014-344 of 17th March 2014:

<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000028738036&categorieLien=id>

amends the Consumer Code to incorporate Directive [2011/83/EU](#) of the European Parliament and of the Council of 25 October 2011. The provisions from the Directive relate largely to pre-contractual obligations and distance / off-premises contracts; law 2014-344 also provides, however, some amends to consumer credit legislation contained in the Consumer Code. These amends are shown in the separate “Consumer Code – Credit” file, available in both the Cars and the Financial Services sectors.

Law No. 2014-1545 on the simplification of business life (*LOI n° 2014-1545 du 20 décembre 2014 relative à la simplification de la vie des entreprises*) repealed, inter alia, articles L121-36 to L121-39 relating to promotional information in electronic communications:

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The Consumer Code was also notably re-structured by the Order 2016-3021 of March 14 2016, in force July 1st 2016:

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The purpose of the order was largely to clarify; many of the article numbers have changed from previous iterations. Misleading commercial practices are now covered under articles L121-1 to L121-5. Articles L121-2 to L121-5 address misleading commercial practices; aggressive commercial practices are dealt with in articles L121-6 and L121-7 (there are others, but not related to marketing communications). Comparative advertising rules can now be found in articles L122-1 to L122-6:

<https://www.legifrance.gouv.fr/affichCode.do?idArticle=LEGIARTI000032227301&idSectionTA=LEGISCTA000032227303&cidTexte=LEGITEXT000006069565&dateTexte=20161004>

Articles from the most recent iteration of the Consumer Code that relate to marketing

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and marketing communications (principally Book I, Chapter II) are shown in the following pages.

Title of relevant section	Book I: Consumer Information and Commercial Practices Title I: Consumer information Chapter I: General information obligation
Article L111-1	<p>Created by Order No. 2016-301 of March 14 2016</p> <p>Before the consumer is bound by a contract of sale of goods or provision of services, the trader communicates to the consumer, in a legible and understandable manner, the following information:</p> <ol style="list-style-type: none">1. The essential characteristics of the good or service, taking into account the communication medium used and the good or service;2. The price of the good or service, pursuant to Articles L. 112-1 to L. 112-4;3. If the contract is not to be immediately executed, the date by which, or the period of time in which, the trader undertakes to deliver the goods or perform the service;4. Information relating to the trader's identity, postal, telephone and electronic contact details and business activities, if they are not apparent from the context;5. If necessary, information on legal guarantees, the functionality of digital content and, where applicable, its interoperability, the existence and implementation of guarantees and other contractual conditions;6. The opportunity of resorting to a consumer ombudsman as provided in Title I Book VI. <p>The list and the exact content of this information is set by Decree of the State Council.</p> <p>The provisions of this Article also apply to contracts for the supply of water, gas or electricity, where they are not packaged in a limited volume or set quantity, as well as district heating, as well as digital content not supplied in a tangible medium. These contracts should also refer to the need for responsible consumption respectful of preserving the environment.</p>
Article L111-2	<p>In addition to the particulars provided in Article L. 111-1, any trader, before the conclusion of a contract to supply services and, when there is no written contract, before the execution of the provision of services, provides consumers, or communicates legibly and understandably, with additional information relating to its contact details, its service delivery arrangements and other contractual conditions, where the list and contents are fixed by decree of the Council of State.</p> <p>Additional information which is supplied only at the request of the consumer are also specified by decree of the State Council.</p>
Title of relevant section	Book I: Consumer Information and Commercial Practices Title II: Prohibited and Regulated Commercial Practices Chapter I: Prohibited Business Practices Section 1: Unfair commercial practices Sub-section 1: Misleading commercial Practices (Articles L121-1 to L121-5) Sub-section 2: Aggressive commercial practices (Articles L121-6 to L121-12)

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Sub-section 1	Misleading commercial practices
Article L121-1	<p>Unfair commercial practices are prohibited.</p> <p>A commercial practice is unfair if it is contrary to the requirements of professional diligence and it materially distorts or is likely to materially distort the economic behavior in respect of a good or service of the averagely informed and reasonably observant and circumspect consumer.</p> <p>The unfairness of a commercial practice aimed at a particular category or group of consumers who are vulnerable because of a mental or physical infirmity, age, or gullibility, shall be assessed with regard to the perspective of the average member of the category or group.</p> <p>Unfair commercial practices and misleading commercial practices are specifically defined in Articles L. 121-2 to L. 121-5, and aggressive commercial practices defined in Articles L. 121-6 and L. 121-7.</p>
Article L121-2	<p>I. A commercial practice is misleading if it is committed in any of the following circumstances:</p> <p>1° When it creates confusion with another product or service, a brand, a trade name, or another distinctive sign used by a rival business;</p> <p>2° When it is supported by allegations, indications or presentations that are false or of a nature that is liable to mislead on any of the following points:</p> <ul style="list-style-type: none">a) The existence, availability or nature of the property or service;b) The essential characteristics of the product or service, namely: its substantial qualities, composition, accessories, origin, quantity, method and date of manufacture, conditions for use and appropriateness, properties and the expected results of usage, as well as the results and main characteristics of the tests and checks carried out on the product or service;c) The price or the method used to calculate the price, the promotional nature of the price and the conditions of sale, payment and delivery of the product or service;d) The after-sales service, and servicing, spare parts, replacement or repair requirements;e) The scope of the advertiser's undertakings, the nature, process or reason for the sale or service;f) The professional's identity, qualities, aptitudes and rights;g) The processing of consumer claims and rights; <p>3° When the person on behalf of whom the service is implemented is not clearly identifiable.</p>
Article L121-3	<p>II. A commercial practice is also misleading if, given the limits inherent to the means of communication used and the surrounding circumstances, it omits, conceals or provides in a non-intelligible, ambiguous or untimely manner, a substantial item or amount of information or fails to indicate its true commercial intention, whenever this is not already made clear by the context.</p> <p>When the means of communication used imposes spatial or temporal constraints, due</p>

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consideration should be given, when assessing whether substantial information has been omitted, to take account of these constraints and of any other measure taken by the professional to make this information available to the consumer by other means.

In any commercial communication targeting the consumer, encouraging the latter to make a purchase, and mentioning the price and characteristics of the property or service offered, the following information is considered to be substantial:

- 1° The main characteristics of the property or service;
- 2° The address and identity of the trader;
- 3° The price, including tax and delivery costs that will be charged to the consumer, or, if this cannot be calculated in advance, the method of calculation used;
- 4° The methods used for payment, delivery, and execution and processing of consumer claims insofar as they differ from customary practice in the professional sector concerned;
- 5° The existence of a right of withdrawal, should this be provided for by law.

Article L121-4

Created by Order No. 2016-301 of March 14 2016

Commercial practices pursued for the following purposes are deemed misleading as understood in article L.121-2 and L121-3:

- 1° For a professional, to falsely claim to have signed a code of good business conduct;
- 2° To display a certificate, quality label or equivalent without having secured the required authorisation;
- 3° To falsely claim that a code of good business conduct has been approved by a public or private body;
- 4° To falsely claim that a professional, notably via commercial practices, a product or a service has been accredited, approved or authorised by a public or private body, or to fail to comply with the conditions of the accreditation, approval or authorisation received;
- 5° To offer to sell products or provide services at an specified price without disclosing the existence of reasonable grounds that the trader may have for believing that he will not be able to offer for supply or to procure another trader to supply, those products or services or equivalent products or services at that price for a period that is and in quantities that are, reasonable given the product or service, and the scale of advertising of the product or service and the proposed price;
- 6° To offer to sell the products or provide the services at an indicated price and then:
 - a) Refuse to present the advertised item to consumers;
 - b) Or refuse to take orders concerning these products or services or deliver or supply them within a reasonable time frame;
 - c) Or present a flawed sample of a product or service with a view to promoting an alternative product or service;
- 7° To falsely state that a product or service will only be available for a very limited period of time and will only be available under special conditions for a very limited period of time in order to secure an immediate decision and deprive consumers of the opportunity of having sufficient time to make a soundly based decision;

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- 8° To undertake to supply an after-sales service to consumers with whom the professional has been in communication prior to the transaction in a language that is not the official language of the member state of the European Union in which the professional is established, and then provide this service only in another language without clearly informing the consumer prior to the latter committing to the transaction;
- 9° To declare or give the impression that the sale of a product or supply of a service is licit when it is not;
- 10° To present a customer's normal legal rights as constituting a characteristic specific to the proposal made by the professional;
- 11° To use written content in the media to promote a product or service when this content has been financed by the professional himself, without clearly indicating this origin in the content or by the use of images or sounds clearly identifiable by the consumer;
- 12° To formulate claims that are materially inaccurate as regards the nature and magnitude of the risks to which the consumer or his or her family is exposed in terms of personal safety should he or she fail to purchase the product or service;
- 13° To promote a product or service similar to that of another clearly identified supplier, in such a way as to deliberately encourage the consumer to wrongly think that the product or service is being provided by said supplier;
- 14° To declare that the professional is on the point of winding up his or her business or setting up a business elsewhere when this is not the case;
- 15° To claim that a product or service will increase the chances of winning a game based on luck;
- 16° To falsely claim that a product or service is liable to heal diseases, malfunctions or malformations;
- 17° To communicate materially inaccurate information on market conditions or on the possibilities of finding a product or service, with a view to encouraging the consumer to purchase the latter at conditions less favourable than those of the market;
- 18° To claim as part of a commercial practice that a competition is organised or that a prize may be won without attributing the prizes described or a reasonable equivalent;
- 19° To describe a product or service as being "free", "ex gratia", "without cost" or using other similar terms, if the consumer must pay any sum over and above the inevitable costs linked to the response to a commercial practice and to the fact of taking possession or delivery of the item;
- 20° To include in advertising media an invoice or similar document requesting payment that falsely implies to the consumer that the latter has already ordered the commercialised product or service;
- 21° To falsely state or give the impression that the professional is not acting towards purposes that fall within the scope of his or her commercial, industrial, craft or self-employed practice, or to present himself or herself as a consumer;
- 22° To falsely create the impression that the after-sale service in connection with a product or service is available in a European Union member state other than in which the product or service is sold.
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Article L121-5	Created by Order No. 2016-301 of March 14 2016 The provisions of articles L121-2 and L121-4 apply equally to practices which are aimed at professionals (i.e. B2B)
Sub-section 2	Aggressive Commercial Practices
Article L121-6	Created by Order No. 2016-301 of 14 March 2016 A commercial practice is aggressive when due to repeated and insistent demands or the use of physical or moral coercion, and taking into account the surrounding circumstances: <ol style="list-style-type: none">1. It alters or is likely to significantly affect the consumer's freedom of choice;2. It impairs or is likely to impair the consent of a consumer;3. It hinders the exercise of a consumer's contractual rights. In determining whether a commercial practice resorts to harassment, to coercion, including physical force, or to undue influence, account shall be taken of the following: <ol style="list-style-type: none">1. The time and place where the practice has occurred, its nature and its persistence;2. The use of verbal or physical threat;3. The exploitation, knowingly, by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgment, in order to influence the consumer's decision with regard to the product;4. Any onerous or disproportionate non-contractual barriers imposed by the trader where a consumer wishes to exercise their contractual rights, particularly rights to terminate a contract or to change the product or supplier;5. Any threat to take any action when that cannot legally be taken.
Article L121-7	Created by Order No. 2016-301 of 14 March 2016 - art. Within the meaning of Article L. 121-6 commercial practices are deemed aggressive when they have as their aim: <ol style="list-style-type: none">1. To give the consumer the impression that he cannot leave the premises until a contract has been concluded;2. To conduct personal visits to the consumer's home, ignoring their request that the professional leaves or that they don't return, except if national legislation so permits in order to ensure the implementation of a contractual obligation;3. To engage in repeated and unwanted solicitations by telephone, fax, email or other remote communication means;4. To require a consumer who wishes to claim under an insurance policy to produce documents which could not reasonably be considered relevant to establish the validity of the request or systematically failing to answer relevant correspondence in order to dissuade a consumer from exercising their contractual rights;5. In advertising, direct exhortation to children to buy or to persuade their parents or other adults to buy for them the advertised product;6. Explicitly informing the consumer that if they do not buy the product or service, the

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employment or livelihood of the trader will be in jeopardy;

7. To give the impression that the consumer has already won, will win, or will win when carrying out a particular act, a prize or other equivalent benefit, when in fact:

-either there is no prize or other equivalent benefit;

-or the completion of an action in relation to claiming the prize or other equivalent benefit is subject to the consumer being obliged to hand over money or incur a cost.

There are further articles within the sub-section above, but not connected to marketing communications

Chapter II

Regulated Commercial Practices

Section 1

Comparative advertising

Article L122-1

Created by Order No. 2016-301 of March 14 2016

Any advertising that makes a comparison between goods or services by identifying, implicitly or explicitly, a competitor or goods and services offered by a competitor is only legal if:

1° It is not false or likely to mislead;

2° It relates to goods or services fulfilling the same requirements or having the same objective;

3° It objectively compares one or more essential, pertinent, verifiable and representative characteristics of these goods or services, one of which may be the price.

Article L122-2

Comparative advertising may not:

1° Take unfair advantage of the reputation attached to a trademark, manufacturer's brand or service mark, to a trade name or to other distinctive marks of a competitor or to the designation of origin as well as the protected geographical reference of a competing product;

2° Lead to the discrediting or denigration of marks, trade names, other distinctive signs, goods, services, activity or situation of a competitor;

3° Cause confusion between the advertiser and a competitor or between the advertiser's marks, trade names, other distinctive signs, goods or services and those of a competitor;

4° Present goods or services as an imitation or reproduction of goods or services with a protected mark or trade name.

Article L122-3

For products with a protected designation of origin or geographical reference, comparison is only authorised between products with the same reference or designation of origin.

Article L122-4

The display of comparative statements as defined in articles L. 122-1 and L. 122-2 on packages, invoices, travel tickets, means of payment or tickets giving access to shows or sites open to the public is prohibited.

Article L122-5

The advertiser on whose behalf the comparative advertising is being circulated must be in a position to prove, within a short time, the factual accuracy of the statements, references and presentations contained in the advertising.

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Article L122-6	The publication in the press of advertising as defined in articles L. 122-1 and L 122-2 does not give rise to the application of article 13 of the law of 29 July 1881 in the freedom of the press and article 6 of law no. 82-652 du 29 July 1982 on audiovisual communication.
Section 2	Offers and promotions made by electronic means
Article L122-8	Created by Order No. 2016-301 of March 14 2016 Advertising approaches made by electronic mail and, in particular, offers such as discounts, premiums, gifts or promotional games must be clearly and unequivocally declared on receipt or, if this is technically impossible, in the body of the message. These messages must state an address or electronic means enabling the addressee to send a request for the advertising to be discontinued.
Article L122-9	Created by Order No. 2016-301 of March 14 2016 The conditions applying to the possibility of benefiting from promotional offers or participating in promotional games or competitions when these offers, games or competitions are made by electronic mail, must be clearly stated and easily accessible.
Article L122-10	Created by Order No. 2016-301 of March 14 2016 Articles L. 122-8 and L. 122-9 also apply to advertising, offers, competitions or games sent to professionals.
Section 8	Sales or services with premiums
Article L121-19	Created by Order No. 2016-301 of March 14 2016 All sales or offers for sale of goods or any provision or offer to provide services made to consumers and giving entitlement, free of charge, immediately or at the end of a fixed period, to a premium consisting of products, goods or services, are prohibited when the practice in question is unfair within the meaning of Article L. 121-1. The provisions of this article apply to all production, distribution and service activities, including those that are done by public persons, particularly in the context of public service delegation agreements. The rules on sales with premiums for products and services for the management of a deposit account are established in point 2 of I of Article L. 312-1-2 of the Monetary and Financial Code.
Section 9	Advertising lotteries
Article L121-20	Created by Order No. 2016-301 of March 14 2016 Commercial practices carried out by professionals that target consumers, in the form of promotional campaigns implying the conferring of a profit or any kind of advantage whether through a lucky draw or some form of random selection, are prohibited if they are seen as "unfair" in the sense of article L 121-1.

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