

## Retailers and TV advertising: interpretation grid

Interpretation grid concerning Article 8 of the n° 92-280, 27 March 1992 decree, as amended by decree N ° 2003 960, 7 October 2003.

Adopted by the industry in June 2006,

"In view of the opening of television advertising for retailers, ARPP, in agreement with the advertising industry, considered it useful to clarify the article 8 of Decree No 92-280 of 27 March 1992, completed by the CSA statement of 23 December 2004.

This article, which allows television advertising for retailers on all linear television services, nevertheless maintained a ban on commercial promotional operations. It is understood that, in compliance with the rules applicable to promotional operations, television advertising for the distribution sector must respect the following interpretation grid. "

### Article 8:

"Advertising is prohibited for products whose television advertising is prohibited by law and, also for the following economic products and sectors:

...

Retailers, for commercial promotional operations taking place entirely or partly within the national territory.

For the purpose of this Decree, a commercial promotional operation shall mean any offer of goods or services to consumers or any event organization which is of an occasional or seasonal nature, resulting in particular from the duration of the offer, price and conditions of sale, the size of the stock put up for sale, the nature, origin or special features of the goods or services or the ancillary products or services offered. "

### **1. Commercial promotional operations concerned by the decree**

#### **1.1 Organization of an event**

Reference to an event consisting of a commercial operation is not possible in an ad for a retailer or in which a retailer is mentioned.

For example, promotion by games (contests and lotteries) is an event that constitutes a prohibited commercial promotional advertising.

The reference in television advertising of a retailer's support for an event does not immediately constitute a commercial promotional operation prohibited by the Decree of 27 March 1992.

For example, the event may be of general interest. It is then understood as a philanthropic, educational, scientific, social, humanitarian, sports, family, cultural or artistic event, the promotion of the artistic heritage, the defense of the natural environment or the diffusion of culture, language and French scientific knowledge (concepts covered by the Law of 23 July 1987 on the development of patronage).

However, the event of general interest must not be accompanied by a commercial promotional operation in favor of the retailer. The promotional character must be assessed in the light of a number of elements, including the nature of the retailer's participation in the event and the claims of the ad.

For example, ads such as: "X% discount on prices for an event of general interest" or "X% of sales paid in conjunction with a charity event" fall under the prohibition set in the decree.

Other illustrations include the following:

- The opening of a new store does not, in itself, constitute a commercial promotional activity within the scope of the decree. Thus, the opening of a store in an exceptional way, on certain days of the week (e.g. "open-day" operation) constitutes an event perceived as a commercial promotional therefore prohibited in television advertising. But, the opening, for example, every Sunday cannot be appreciated as promotional.
- The announcement of the arrival of a product, and in particular its novelty, if it is not associated with a period of availability or a limited stock, does not constitute a commercial promotional operation (cf., Points 1.2, 1.3 and 1.4)

## 1.2 Duration of the offer

Specific indications of the period of validity, such as literal references (e.g. "the anniversary of ..., the week of ...") to an event or a period, imply the promotional nature of the goods or services.

Durable but non-permanent offers (e.g. "valid on certain days of the week") are also considered promotional.

## 1.3 Prices and terms of sale announced

### A / OPERATIONS

Promotional transactions by price (ex: discount offer and refund) and / or by the object (promotional sales) are excluded from television advertising

### B / PRICE ANNOUNCEMENTS

Any announcement of prizes does not necessarily reflect its promotional nature. According to the CSA's position, the message should not indicate, nor even suggest, the period of validity of the offer.

This lack of explicit or induced duration implies a presumption of price stability.

This presumption of stability is reversed by the reality of the operation. In order to be able to communicate in television advertising on the price of goods and services, the retailer must declare to the ARPP (see appendix) that the price charged and the availability of the product (stock) are not promotional, price is normal, stable, that it fits, with the availability of the corresponding product or service, over time.

Thus, could constitute a reference period, a duration of a 15 weeks application of the announced price and the available stock.

However, this duration may be assessed after examination by the ARPP taking into account the nature of the goods or services.

## 1.4 Importance of stock put up for sale

Advertisements highlighting the existence of a limited stock are, of course, excluded.

If the advertisement remains silent on the quantity available but the operation is based on the existence of a limited stock, the advertising contravenes the provisions of the decree, except to provide for a renewal of the stock.

## 1.5 Nature, origin or special qualities of the goods or services

The promotional nature of the offer will be assessed in compliance with the legal and regulatory provisions and in particular Article L.441-2 of the French Commercial Code on perishable food products.

Messages in favor of shows (e.g. concerts), sports events or specific titles of retailers (e.g. TV program No 10) do not, because of their temporary nature alone, refer to a commercial promotional operation.

On the other hand, the claims cannot focus on a promotion carried out on this occasion by the retailer.

## **1.6 Accessory products or services offered**

Advertisements in favor of permanent advantages offered by retailers (e.g., accumulated points on a loyalty card) are not considered promotional commercial operations.

On the other hand, temporary benefits or services (e.g. doubling of loyalty points, exceptional credit rates, etc.) are excluded from television advertising.

## **2. Activity diversification and retailer brands out of the scope of the decree**

### **2.1 Diversification of activity**

Advertisers who meet the qualification of business diversification may communicate on their business promotional transactions, as these companies are not considered to be retailers.

The criteria for assessing the diversification of activities necessarily vary according to the activity of the retailer.

The diversified activity is established by a series of indications which must contribute so that it cannot be considered as an alibi, allowing the retailer to broadcast a television commercial for a commercial promotional operation. The diversification of activity implies that the entity is legally and financially distinct from the entity which carries out the retailing activity and that this activity is autonomous and different. These criteria are not comprehensive, and other additional criteria may indicate diversification: different denomination and charter, dissociated geographical location...

### **2.2 Retailer brands**

The doctrine applicable to retailer brands is intended to remain, so that television advertising for promotional operations relating to them remains possible. This possibility is subordinated to the prevailing criteria (absence of allusion to the retailer, possible supply of all competitors ...).

## Appendix

*Declaration accompanying a request for ARPP clearance on a television campaign, for a retailer and including a price announcement.*

In compliance with Article 8 of Decree 92-280 of 27 March 1992 amended by Decree 2003-960 of 7 October 2003 and with its interpretation grid adopted by the advertising interprofession in June 2006,

The signatory, representing the company ... (Enter the name of the advertiser)

Confirms to ARPP that its message does not constitute advertising in favor of a promotional price.

This message does not therefore refer to a promotion, which is defined as an offer:

- limited in time or by stock,
- whose promotional character is assessed in accordance with the interpretation grid attached.

The retailer shall ensure, within the rules and good practices applicable in its sector of activity, the availability of the products and services advertised in the area concerned and, more generally, compliance with the rules on misleading advertising and price advertising.

Please indicate,

*The title of the commercial:*

*The name:*

*The reference and the price (s) of the product (s):*

*Name of the advertiser and of the signatory:*

<b>Denomination, product number</b>	<b>Price</b>

**Date**

**Name and position of the signatory**

**Signature**