

## FOCUS IP

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### LOI ÉVIN: SANCTION IMPOSED FOR A CONTEST CONDITIONED ON THE PURCHASE OF ALCOHOLIC BEVERAGES CONSTITUTING AN EXCESSIVE INDUCEMENT TO CONSUME



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**Paris Judicial Court, 4<sup>th</sup> Chamber, 2<sup>nd</sup> section, May 22, 2025, No. 23/00960**

**IMPACT:** *Contests may be considered as unlawful advertising when participation is conditioned upon the purchase of a significant quantity of alcoholic beverages — in this case, 12 bottles of beer — even in the absence of promotional imagery or valorizing terms.*

#### ➤ The facts

As part of its marketing operations, the company ITM ALIMENTAIRE INTERNATIONAL (ITM), responsible for the commercial policy of the INTERMARCHÉ network (French large retailers), published an advertisement in the form of a promotional contest on the chain's website from May 3 to May 16, 2021.

The campaign offered participants a chance to have their groceries reimbursed, provided they purchased at least two products from the 1664 beer trademark — amounting to a minimum of 12 bottles of 25 cl.

The advertising banner displayed the following statements: "1 in 25 chance of winning. YOUR GROCERIES 100% REIMBURSED. Starting with 2

products purchased," along with the mandatory disclaimer: "Alcohol abuse is dangerous for your health, consume in moderation."

The French National Association for Prevention in Alcoholism and Addictology (ANPAA) initiated proceedings against the company ITM before the Paris Judicial Court on January 12, 2023, asserting that the contest constituted unlawful inducement to excessive alcohol consumption.

#### ➤ Non-intrusive and non-interstitial nature of the online advertisement

In its ruling, the court recalled that advertising for alcoholic beverages is allowed on certain media, including online communication services, provided (1) the said services are not aimed at young people or associated with sports, and (2) the advertisement is neither intrusive nor interstitial.

The court defined "intrusive" as "a format that imposes itself on the screen, notably through techniques such as pop-ups or flash ads, covering part of a website or including sound, without always allowing the user to dismiss them." Similarly, it defined "interstitial" ads as

"those appearing while viewing a page and taking up all or part of the screen."

In this case, the court noted that the ANPAA did not dispute the compliance of the platform used — specifically, whether the ad was aimed at youth or sports audiences, nor whether the banners were intrusive or interstitial.

## ➤ ***Excessive inducement to alcohol consumption***

The court further emphasized that advertising for alcoholic beverages is only legal if it strictly adheres to the content authorized under Article L. 3323-4 of the French Public Health Code. Such content must remain objective and informative, covering elements such as alcohol level, origin, composition, production methods, manufacturer details, terms of sale, and sensory characteristics.

However, the court found that "requiring participation in a contest to be conditional on the purchase of at least two packs of six 25 cl bottles of beer — i.e., at least 12 bottles —" does not qualify as an authorised product description or sales condition. Rather, it constituted an inducement to purchase.

By tying contest entry to the purchase of a minimum of 12 beers, the advertisement inherently encourages excessive alcohol consumption. The court held that the absence of flattering language, promotional imagery, or the inclusion of the required health warning had no bearing on the assessment.

Accordingly, the mere fact that contest entry was subject to the purchase of a significant quantity of alcohol — specifically, two packs of beer — was sufficient to constitute unlawful encouragement of consumption in breach of Article L. 3323-4 of the Public Health Code.

## ➤ ***Assessment of ANPAA's Moral Damages***

To support its claim, ANPAA argued that the contest undermined its human and financial efforts to prevent alcohol-related risks and requested €50,000 in compensation.

The court ultimately awarded €20,000 in damages, taking into account "the importance and reach of the advertising campaign, as shown by the promotional contest participation conditions submitted by ITM," and based on a bailiff's report submitted by ANPAA.

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