

## **Penal Protection for Consumers from Fake or Unreal Discounts: A Comparative Study of Emirati and French Laws**

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### **ABSTRACT**

When shops offer discounts, consumers are incentivised to acquire merchandise and/or services. So, it is also when merchants attempt to expand their product distribution and boost sales to increase profit margins. Unfortunately, merchants may also resort to disingenuous and fraudulent methods, such as announcing a fake or unreal discount sale. Since consumers require adequate legal protection from such harmful practices, Emirati and French legislators have criminalised fake and unreal discounts. This paper compares penal protection from fake or unreal discounts in Emirati and French legislation to balance the interests of merchants and consumers. This study adopts a qualitative methodology through a comparative and analytical approach and concludes that Emirati and French legislation adopts different criteria to achieve the desired goal of discounts. It was recommended that the Emirati legislator reconsider penalties for natural and legal persons committing commercial fraud by specifying up to three years imprisonment and a fine proportional to the value of the profits obtained from the crime of offering fake or unreal discounts. Furthermore, legislation should address the crime of announcing such discounts.

*Keywords:* Consumer protection, commercial fraud, fake or unreal discounts, natural and legal persons, penal protection

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### **INTRODUCTION**

Several special offers are used to entice consumers to purchase specific goods or services; one such offer is a discount. However, discounted sales can negatively affect consumers, who may experience

reduced satisfaction with contracts, less freedom to choose between alternative products and services, and merchandise that does not conform to regulations designed to protect the health and safety of the consumer (Grewal et al., 1998; Raghubir et al., 2004). In this way, the consumer can be exploited or cheated. Additionally, consumers can be exposed to fake or unreal discounts that affect the right choice. It needs more time and effort to find some goods with unreal offers and requires unnecessary mobility to buy the needed items. A fake or unreal discount can also cause complications concerning returning the goods to the seller and bearing the risk of insolvency of the merchant through getting into what so-called apportionment of the rivals.

Many fake offers and unrealistic discounts exploit the instructions or legislation regulating discount offers. For example, the merchant could manipulate the specifications of the goods for which the discounts were being made or the prices of those goods so that there is no actual change in the prices of the goods. Furthermore, the merchant may announce misleading discounts on the prices of goods by claiming that a particular good is out of stock or announcing a reduction in the price of a commodity where the true quantity has been manipulated. This study compares legislation in the United Arab Emirates (UAE) and France due to the clear differences between UAE and French law to enrich the findings and recommendations of the paper.

Consumer Protection Law came into force on 27 July 1993 in France. In addition to the UAE government Federal Law (2012) on competition and UAE government Federal Law (2016) concerning the fight against commercial fraud (UAE Government, 2012, 2016), the Emirati legislature has enforced criminal protection for consumers via the UAE government Federal Law (2020) to combat commercial fraud (UAE Ministry of Economy, 2020). Furthermore, Emirati and French legislators have imposed binding legal rules that trigger penal sanctions if violated to prevent this. By establishing a minimum level of equality between the seller and consumer at the point of concluding a contract (Lasbordes, 2000), fairer competition in the market can be preserved. The research problem focuses on the statement of criminal responsibility for selling fictitious or unreal discounts. Misleading commercial propaganda depends on fraud, deception, and other immoral acts used when promoting goods, which can harm consumers physically and financially. Therefore, effective legal rules and regulations are required to mitigate these risks and identify the legal conditions that must be presented in sale discounts. Additionally, this study aims to compare the rules of penal protection and their sufficiency in protecting the consumer from fake or unreal discounts in Emirati and French law to balance the interests of merchants and consumers. The recommendation based on the findings of this research highlights the importance of activating a legal promotional tool that protects the rights of both consumers and sellers.

Due to the importance of the topic under investigation, many studies have investigated the legislation protecting consumers. One study that examined consumer protection laws in Indonesia found that most scholars use utilitarian and economic theories, supporting the argument that trademarks protect consumers by balancing the trademark holder's economic rights with the interests of the public as consumers. However, this was not the case in Indonesia (Marlyna & Sardjono, 2019). A study from Malaysia discussed consumer discrepancies, such as differences in educational level, age, geographical area, and economic status, which could lead to various issues. The most significant problems identified were possible information vulnerabilities that could affect consumer decision-making and the failure of regulations to safeguard Malaysian consumers and protect them from potential knowledge vulnerabilities (Ghapa & Ab Kadir, 2021). Another study compared unfair terms in consumer contracts in Malaysia and Singapore and concluded that regulatory and legislative steps must be taken to support and attract consumers to the industry. In addition, judicial and legislative actions must be taken to correct market flaws that increase consumer vulnerability while trading in the global market (Abdullah et al., 2021).

By adopting the comparative methodology, this research analyses Emirati and French law due to the clear differences between these two legal approaches to reach an optimal penal to protect consumers from fake and unreal discounts.

## **MATERIALS AND METHODS**

This paper considers penal protection from fake and unreal discounts in Emirati and French law to determine whether there is a balance between the respective interests of merchants and consumers. This study adopts a qualitative methodology through a comparative and analytical approach used in the current study. All related legal legislations and literature related to the aim of this study are analysed, and consumer protection rules in French and Emirati laws are compared to evaluate the protection provided by the legislation mentioned above and propose the optimal form of protection. The specific legislations studied include UAE Government Federal Law (2020), which affords criminal protection for consumers; UAE Government Federal Competition Law (2012), and UAE Government Federal Law (2016) regarding combating commercial fraud (UAE Government, 2012, 2016; UAE Ministry of Economy, 2020). In addition, French legislation also regulates the rules of protection in French trade law and French consumer law. Based on the findings of this comparative critical analysis, conclusions are drawn, and recommendations are suggested.

## **RESULTS AND DISCUSSIONS**

### **How Merchandise is Sold at Discount**

It is important to define the sale of discounted merchandise and address the conditions of this type to understand the rules regulating discount sales.

**Discounts.** Product prices are important to consumers (Khan, 2011; Stoop, 2015), particularly those on low incomes. When prices rise, consumers have less purchasing power and a reduced ability to satisfy their needs; when prices fall, the opposite scenario occurs. In UAE, the legislator defines discounts as ‘offering goods for sale at reduced prices or providing services at lower prices during a specified period in any way whatsoever (UAE Ministry of Economy, 2020) regarding consumer protection. In France, the legislator defines discounts as ‘sales operations accompanied or preceded by advertising that aims to reduce the prices of available goods and to get rid of stockpiled goods in warehouses, during a specified period (De Gaulle Fleurance & Associés, 2019).

The French legislature focuses on clarifying the sales conditions by discount; for example, announcing these discounts before beginning the promotion. These discounts aim to encourage consumers to make purchases, increasing sellers’ cash flow during the discount sale period. The UAE legislator defines a discount sale without explaining any conditions or aims of this sale. The behaviour of the Emirati legislator regarding the definition of a discount sale is more disciplined as other texts detail the terms of sale by discount and the reasons for using it. There are many other jurisprudential definitions of discount sale offers (Mustafa, 2006), such as ‘Discounts announced by some shops to sell their goods which exist in the shop on the occasion of the end of the season, so they offer these goods for sale at reduced prices.’

It should be noted that the use of the word ‘discount’ is not necessary for a sale to be considered a discount sale if the intent of the sale, as seen in the advertisement, is to accelerate the sale of stored goods and includes price reductions, according to the (Court of Cassation Criminal Division, 2004). In line with the definition provided by the FCC mentioned above, a discount sale entails that goods will not be resupplied during the discount season. However, the company may supply its branches with goods from its warehouses as this is not considered resupply under the term ‘discount sale.’ The advertisement specifying the sale must indicate a) pre- and post-discount prices and b) that the sale will continue until the stock is depleted or within the limits of the existing quantity. Moreover, since the sale is a discount sale, it cannot occur outside the legally specified period (Lexis Nexis, 2022).

#### **The Conditions of a Discount Sale.**

To complete a discounted sale, certain conditions must be met to ensure that legitimate commercial practices are not violated. For example, a legislator can require that a licence for sale be obtained and the sale is advertised, including the sale period, to ensure adherence to the rules of legitimate competition. These points are addressed in the following sections.

**Obtaining a Licence Before the Discount Sale.** Although a discount sale licence provides authorisation from the competent authority and is an important proactive measure, the French legislator does not

require such a licence, possibly because these sales may only be conducted at specific times (French Ministry of Economy and Finance, 2019). Article L310-3 of the FCC stipulates that sales can be held in two periods of the calendar year, each for three to six weeks, and the Minister of Economy determines the start date and time for these periods. This decision sets specific dates for some geographical regions by considering the nature of competition in these areas (De Gaulle Fleurance & Associés, 2019). Article L310-5 of the FCC stipulates a fine of €15,000 for non-compliance with these dates (Court of Appeal of Bourges, 2001); therefore, merchants need not apply for a licence to sell at reduced prices if the discount period is made public. Conversely, the UAE legislator requires a pre-sale licence for discount sales. Art. 18 of the UAE Government Federal Law, 2020 on consumer protection (UAE Ministry of Economy, 2020) states that the supplier is prohibited from promoting goods or services, making general price discounts, or advertising the same in any way until a licence has been obtained from the competent authority. Moreover, Art. 130(4) of the UAE Government Federal Law, 1993 on commercial transactions (UAE Government, 1993) requires that a trader wishing to sell goods or services at a discount must obtain a permit before advertising the sale, hold a valid trading licence, and be registered with the appropriate regional Chamber of Commerce.

Considering these French and UAE legislation trends, the UAE legislator has

sought to ensure the seriousness of discount sales by exercising control over licences to prevent consumers from being deceived. Additionally, it enables merchants to sell goods and services at a discount as and when required and in more than one period—as will be discussed later—rather than during only two periods defined by the French legislature.

**Advertising.** Advertising usually targets an unlimited audience and aims to promote goods and services rather than make direct sales (Dahiyat, 2011); its success usually depends on repeated advertising over a long period. A merchant will resort to selling goods at a discount for several reasons, such as because the goods are due for replacement by newer models, meaning their price will decrease, or because the goods are damaged. In the UAE, the merchant can only advertise the sale after obtaining a license from a competent authority. Such advertising is indispensable as it protects the consumer from being misled by an unscrupulous merchant offering goods for sale at a ‘discount’ price, which is higher than that offered before the advertisement.

The French legislature requires that the advertising of discount sales be arranged fairly and transparently; accordingly, using the word ‘discount’ or any of its derivatives to describe an activity unrelated to actual discounts is prohibited and carries a fine of €15,000. While any form of advertising is permissible, as the French legislature has made no specification, it must include a price reduction or will be viewed as false

or misleading advertising. It is because the consumer connects the word 'discount' to reduced prices. For example, the Paris Court of First Instance and the FCC found that advertising by post or sending invitations that include price reductions fulfil the advertising conditions required by Article L310-3. Sellers who wish to advertise discount sales must also have offered these goods for sale and paid the value of the goods at least one month before the discount period, except when the seller is the producer of these goods. The FCC also prohibits the publication of false or misleading information, by any means, by placing offers in the market or using deceptive methods with the intent of creating confusion in the market or attempting to fabricate the prices of goods or services.

The UAE legislator prohibits incorrectly describing a good or service. Art. 17 of Federal Law No. 15 on Consumer Protection (UAE Ministry of Economy, 2020) states that 'the advertiser, the supplier, and the commercial agent are prohibited from describing the good or service in a manner that contains incorrect data and from making any misleading advertisement in connection therewith.' Misleading advertising is provided for in Art. 1 of the same law as follows: 'Advertising a good or service based on deceptive information or omitting essential or basic information related to the good or service, which affects the consumer and leads [them] to enter into a contract that [they] would not have entered into without that information. For example, announcing fake or unreal prizes

or discounts shall be considered misleading advertising.' Here, commercial advertising can be defined as a method the merchant follows to psychologically influence consumers and convince them of the advantages of a particular good, service, or offer. A misleading advertisement involves false, misleading, or deceptive information that will likely cause the average consumer to act in a way they might not otherwise. The remarkable growth in advertising on the internet has also generated immense challenges for consumer protection. The absence of in-person interactions may create concerns regarding consumers being exposed to deceptive marketing or misleading advertisements online. At the regulatory level, the Telecommunications Regulatory Authority (TRA) in UAE has issued specific regulations for consumer protection. Under these regulations, advertisers must ensure that all advertisements are fair, truthful, and accurate, and must not, either by act or omission, directly or by implication, mislead or confuse any consumer (Dahiyat, 2019).

#### **Adherence to Time Limits for Discounts.**

The merchant must sell goods and services at a discount only during the period specified in their licence or the period specified by the competent authorities if no licence is required. In UAE, Art. 130(1) of Law No. 18 of 1993 on commercial transactions (UAE Government, 1993) prescribes the period of sale with discounts for seasonal goods and other goods. Seasonal goods may only be sold twice in the same year at a reduced price, while all other goods

may only be sold once. Discount sales may continue for up to thirty days, and biannual seasonal sales must be at least five months apart. However, the UAE Law of 2016 (UAE Government, 2016) added more flexibility by enabling merchants to apply for four permits. The discount duration is determined by the duration of the permit granted to the merchant, and he made the duration of the permit thirty days. The retail store owner may be granted up to four permits to conduct sales during one calendar year, provided each permit covers sixty days. Merchants can also extend the permit period for up to two weeks from the date of expiry of the previous permit upon request before the end of the permit period, as per Art. 7 of UAE Law No. 19 of 2016 (UAE Government, 2016). This law does not distinguish between seasonal and other goods.

The French legislator also requires that discount sale advertising include the start date and the nature of the goods covered by the discount unless the discount covers all goods sold by the merchant (Article R. 310-17, FCC). It is also prohibited to advertise discount sales outside the legally specified period (Cass com, 28 janv 2004: Gaz Pal., 28, 29 avril 2004, juris. nXVII, note J. Joseph; Cass.com., 2 juin 2004: RJDA 8–9/04, doct.).

***Observance of the Rules of Fair Competition.*** Although trade should be based on the principle of fair competition, this principle can be exploited when traders resort to illegal methods to achieve quick

profits, negatively affecting the commercial environment, the consumer, and society. For example, some merchants resort to discount sales to restrict the freedom of competitors to set prices by selling goods and services at cost to monopolise the market (La Base Lextenso, 2022). Otherwise stated, when a merchant sells at a discount to harm the competition, this behaviour constitutes unfair competition.

UAE Federal Competition Law No. 4 of 2012 (UAE Government, 2012) emphasises the need to protect the consumer's interests by adhering to the rules of competition in the market and prohibiting anything that might breach, limit or prevent competition. Likewise, Art. L420-5 of the FCC also prohibits selling at extremely low prices compared to the expenses of production, processing, transfer, and trade if this may exclude or impede entry to the market of an institution, company, or competing merchant or one of their products. When a merchant sells at a loss (Bout R. et Alii, Lamy droit économique 2002, La revente à perte), in some cases, it is to generate liquidity and take the whole market share in the short term. However, this allows the merchant to gain a market monopoly, after which the merchant may increase prices dramatically. This monopoly practice contradicts direct and fair competition and carries with it prejudice against the interests of consumers. French law prohibits a merchant from selling or announcing the sale of a commodity at a price lower than its purchase price to maintain a healthy competitive environment. French commercial law also prohibits a

merchant from selling or announcing the sale of a commodity at a price lower than its purchase price if the commodity is in the same condition (Crim. 10 oct. 1996: Bull. crim. n° 358; D. 1997, IR, 20; D. affaires 1997, 216. Crim. 4 avril 2001: RJDA 2001, n° 1269) (De Gaulle Fleurance & Associés, 2019).

In estimating whether the sale was made at a loss or not, the French judiciary relies on the economic balance criterion for sale itself (Crim. 7 mai 2002: Bull. crim. N° 109; Contrats Conc. Consom. 2002, Comm. 159, obs. Malaurie-Vignal; JCP 2003, I, 103, n° 15, obs. Robert; RTD com. 2002, 738, obs. Bouloc). The same law defines the ‘real purchase price’ as ‘the total price appearing on the invoice plus taxes on the turnover, the special tax related to this sale, and transportation expenses.’ Therefore, the total value of the sale is considered (the general economic balance of the sale) to verify if the sale was made at a loss or not. Despite this general prohibition on selling at a loss (see Art. L.442–5), this is permissible in specific cases, as stipulated in Art. 2–L442 of the FCC, including discount sales (Art. L442–5). Thus, legal regulation of the sales process through discounts is necessary to eliminate unscrupulous methods of manipulating prices and balance the interests of merchants and consumers. To protect the consumer, the merchant also must not place restrictions on the guarantee of the sale or be a guarantor of the hidden sales in the sale, and, within the retail store, the merchant must distinguish those goods covered by discounts from those which are not. In application of the general rules in

the UAE Civil Transactions Law (Articles 543 to 555) and Articles 10, 11, 12, and 13 of the UAE Consumer Protection Law, it is forbidden for the merchant to place restrictions on the warranty of the sale as it was stipulated that no defect in sold goods should be guaranteed by sale. In French Civil Law, particularly Articles 1641–1649, 217–30, and 211–2 of the consumption rationing.

Thus, selling through discounts may be unreal or fake when a merchant resorts to displaying their products using false statements or claims that directly or indirectly deceive or mislead the consumer. It includes announcing a sale at a discount while pretending to obtain the proper permit while not possessing one and selling the commodity at a higher or similar price to that at which it was offered before the advertisement. Such actions are considered commercial fraud and are punishable by commercial fraud law (The Lawyers and Jurists, 2022).

### **Elements of the Crime of Unreal or Fake Discounts and ITS-Prescribed Penalties**

The crime of fake or unreal discounts, as a form of commercial fraud, can only occur when the material (*actus reus*) and mental elements (*mens rea*) are present; therefore, the elements of the crime were clarified, and then more focus was placed on the prescribed penalty.

### **The Material Element (*Actus Reus*).**

We have shown that discounted sales are regulated by the UAE legislator through

licencing, advertising, and specifying periods for conducting sales. However, the same legislator, in Art. 2 of Federal Law No. 19 of 2016 on combatting commercial fraud (UAE Government, 2016), considers the announcement of fake or unreal prizes or discounts as a form of commercial fraud. Undoubtedly, commercial fraud is related to consumed goods and the honesty and integrity required for commercial transactions. This matter goes beyond the individual to threaten public health and affect food stability and security since fake reductions contradict reality (El-Gendy, 1996; Yousef, 2009). A deception is achieved when the consumer is misled that the subject of a discount has advantages and qualities which do not exist; the offender's aim in so doing is the financial advantage gained by replacing the item the buyer chose with one of lesser value. Accordingly, commercial fraud occurs when fake or unreal prizes or discounts are proactively announced by an offender who does not adhere to the legislative conditions, such as making general price reductions or obtaining a pre-sales license from the competent authority, as per Art. 18, UAE Federal Law No. 15 of 2020 (UAE Ministry of Economy, 2020).

Further, the advertiser, supplier, and commercial agent are prohibited from describing the good or service in a manner that contains incorrect data and from using misleading advertisements (Art. 121(2) of the French regulation on consumption). The UAE legislator defines misleading advertisements in Art. 1 of Federal Law No. 15 of 2020 on consumer protection,

stating that 'A misleading advertisement is advertising a good or service based on misleading information or omitting essential or basic information related to the good or service, which affects the consumer and leads [them] to enter into a contract that [they] would not have entered into without that information. Announcing fake or unreal prizes or discounts shall be considered misleading advertising'. Hence, the material element of the crime is achieved through the proactive behaviour of the offender but is not achieved by abstention. For example, such behaviour occurs when a merchant substitutes a discounted, advertised commodity for a different one. Such differences can relate to the discount terms on form, content, price, expiry date, weight, quality, and legal specifications and standards. These differences can also relate to a false declaration that a product or service is only available for a limited period or that it will only be available under exceptional circumstances for a limited period to obtain an immediate decision and deny consumers the ability or sufficient time to make an informed decision (Art. 121(4) of the FCC). The dealer promotes goods and services by various means of advertising and publicity, which can be implemented by display, publication, or other means.

The use of the word 'discount' is not necessary for the sale to be considered a discount sale if the intent, as it appears from the advertisement, is to expedite the sale of stored goods, and the advertising wording includes the price reduction (Crim. 13<sup>th</sup> Jan. 2004, Bull. Crim. N 10) (Court of Cassation

Criminal Division, 2004). However, the criterion adopted for considering the sale one of discount is to dispatch a quantity of previously existing and non-renewable stored goods by accelerating their sale through a reduced price with the help of publicity and advertising. Therefore, criminality is not covered here; instead, a discount sale is implied where it is enough that the conditions are met, regardless of what it is called.

**The Mental Element (*Mens Rea*).** The crime of announcing fake or unreal discounts is considered a premeditated crime in which the mental element takes the form of general criminal intent. It is based on knowledge and will, whereby the offender's will is directed towards committing the crime with knowledge of its elements and components, as required by law. The UAE legislator defines criminal intent in Art. 38(1) of the Penal Code as follows: 'the intent is present when the will of the perpetrator is directed towards the perpetration of the act or forbearance thereof, whenever this perpetration or forbearance is considered by law a crime, with the intent to produce a direct result or any other result penalised by law and which the perpetrator expected.'

The knowledge element must include all the components of the material element of the crime, Art. 2 of Federal Law No. 19 of 2016 (UAE Government, 2016), that is, when the offender is aware that their action constitutes the announcement of a fake discount, is contradictory to honest commercial practice and does not meet the

conditions for a discount sale (a licence, advertising, observing a specified period for conducting discounted sales and respecting the rules of fair competition). However, if the offender is unaware of committing a crime, this abolishes the mental element and accordingly terminates the existence of the crime. The criminal intent is not achieved by knowledge alone, as the offender's free and flawless will must be to announce fake or unreal discounts, and their volition should be to violate the terms of discount sales. If there is no will, the mental element is absent, and, as a result, the crime does not exist. Hence, an offender who announces fake or unreal discounts under the influence of coercion or insanity is exempt from criminal accountability as they are not consciously willing to achieve this act.

The French judiciary considers the misdemeanour of deception as a misdemeanour based on criminal intent of the commercial practices you engage in of your own free will (cour de cassation criminelle, criminelle, 13 janvier 2016, décision n0 14-88,136, le legifrance.gov.fr, consulte le 9-1-2022. See also: Cour de cassation, criminelle, Chambre criminelle, 19 novembre 2019, 18-84.693, Inédit and Cour de cassation, criminelle, Chambre criminelle, 19 novembre 2019, 18-85.900, Inédit).

**The Prescribed Penalty for the Crime.** A criminal penalty is an impact that the legislator stipulates for the crime. In this regard, the UAE legislator distinguishes whether the perpetrator of the crime is a

natural or legal person and stipulates several circumstances that tighten the penalty. The next sections focus on the prescribed penalty for natural and legal persons. A natural person is someone who can acquire rights and responsibilities. A legal person is a collection of money or individuals for whom the law has recognised legal personality, i.e., the ability to acquire rights and perform obligations; this collection is viewed separately from the natural persons or constituent elements such as a company or organisation.

**The Prescribed Penalty for a Natural or Physical Person.** The UAE legislator stipulates the penalty for the crime of announcing fake or unreal discounts in Art 12 of Federal Law No. 19 of 2016 on combatting commercial fraud (UAE Government, 2016) (hereafter: the law) as follows: ‘Whoever commits the crime of commercial fraud shall be sentenced to imprisonment for a period not exceeding two years and to a fine not less than fifty thousand dirhams and not exceeding two hundred and fifty thousand dirhams, or to either penalty’ In Art. 13 of the law, the UAE legislator attempts to provide criminal protection to the consumer; thus, the penalty is not limited to the complete crime but also to merely attempting the crime, as in the following: ‘Whoever attempts to commit the crime of commercial fraud shall be sentenced to imprisonment for a period not exceeding one year, and to a fine not less than ten thousand dirhams and not exceeding one hundred thousand dirhams, or to either penalty.’

Regarding foodstuffs, the legislator has also tightened the penalty in the following context: ‘Whoever commits the crime of commercial fraud or attempts the same if the commodities are food for humans or animals, prescription drugs, crops or organic food products, shall be sentenced to imprisonment for a period not exceeding two years, and to a fine not less than two hundred and fifty thousand dirhams and not exceeding one million dirhams, or to either penalty (Art. 14). The legislator also accounts for recidivism in violation of the law in Art. 20 by doubling the prescribed penalty. If the purchaser knows a commodity is fake, corrupt, or counterfeit, the merchant is not exempt from the penalty prescribed under Art. 16 of this law. Food must be intended for human or animal use, and if it is for industrial purposes, the fraud here does not fall under this phrase. Likewise, foodstuffs related to animals are covered by the legislator’s protection, which is specific to animals held by humans, such as domestic animals (Hoseini et al., 2014; Sadek, 2001). In this regard, the legislator has successfully tightened the penalty, thus offering important protection to consumers from foodstuffs that can endanger human life and safety and have negative effects long after the individuals have consumed the products. Art. 17 also provides, in addition to the prescribed penalty, for a mandatory confiscation or destruction of the food, prescription drugs, crops, products, or tools used therein and for publication of the ruling at the expense of the losing party in two local daily newspapers, one issued in Arabic.

This penalty applies to all forms of commercial fraud provided for by the law. It is inconsistent with the principle of individualising sanctions and prescribed penalties, as the law allows the judge to impose one of two penalties, meaning it is possible to impose only a fine. Given the importance of commercial activities, such provision is insufficient to achieve public and private deterrence, reducing the seriousness of the crime. Therefore, it was recommended that a unique text should distinguish the crime of announcing fake or unreal prizes or discounts in the law and that the penalty be commensurate with the crime's importance. It was also believed that a sanction of imprisonment be imposed of up to three years, left to the judge's discretion, and that the fine is proportional to the value of the profits obtained through the crime. These penalties are more aligned with those sanctioned in France, where Art. L132-2 of the FCC provides that whoever commits any deceptive business practices mentioned in Arts. L.121-2 to L.121-4 shall receive a prison sentence of two years and a fine of €300,000. This fine may be increased proportionately to the benefits derived from the crime to 10% of average annual turnover, calculated across the last three known annual sales at the date of the facts, or to 50% of the expenses incurred in the realisation of the advertisement or practice from the offence (Cour de cassation, criminelle, Chambre criminelle, 2 avril 2019, 19-90.008, Inédit <https://www.legifrance.gouv.fr>).

A natural person who commits any act stipulated in Art. L.132-3 of the FCC

shall be punished with additional sanctions that prevent them from exercising a public office, practising a commercial or industrial profession, undertaking any social activity whatsoever, and directing or managing any activities, whether commercial, industrial or functional, directly or indirectly, on their own or their employer's behalf, such as is the case of acting on behalf of a commercial or industrial company. The French legislator has stipulated that the ban period may not exceed five years and can be pronounced in omnibus form. Undoubtedly, the UAE legislator has not stipulated the additional penalties applicable to a natural person in French legislation. Therefore, this requires amending Emirati law to include such penalties to deter natural persons from committing deceptive and misleading commercial practices.

**The Prescribed Penalty for a Legal or Moral Person.** The UAE legislator stipulates in Art. 65 of the Federal Penal Code that legal persons may not be condemned to penalties other than fines, confiscation, and the criminal measures provided for by the law. Accordingly, the original penalty prescribed for a legal person when a crime is committed on their behalf, in their name, or through one of their agencies, representatives, or employees is a fine, as stated in the original sanction for a natural person. In addition to this penalty, the UAE legislator stipulates an additional penalty, which is the closure of the violating establishment for a period not exceeding six months; if the establishment is a department

store, the violating department or section related to the violating commodity shall be closed and a notice placed on the closed section or department stating the reason for the closure (Art. 18 of the law). Furthermore, the relevant court will cancel the licence of the establishment (Art. 20 of the law) in case of recidivism paired with aggravating circumstances (Art. 14 of the law).

In French law, the penalty for a legal person, in addition to the fine stipulated in Art: L132–38 of the French Penal Code (Office of Justice Programs, 2019), is five times that stipulated in Article L132–2 of the FCC, i.e., the fine will be  $5 \times \text{€}300,000 = \text{€}1,500,000$ . One or more of the other penalties stipulated in Clauses 2–7 of Arts: L131–39 of the Penal Code shall also be imposed, including the following:

1. a prohibition from exercising, directly or indirectly, one or more social or professional activities, either permanently or for a maximum period of five years
2. placement under judicial supervision for a maximum period of five years
3. permanent closure or closure for up to five years of the establishment, or one or more of the establishments, of the enterprise that was used to commit the offences in question
4. disqualification from public tenders, either permanently or for a maximum period of five years
5. a prohibition, either permanently or for a maximum period of five years, from making a public appeal for funds

6. a prohibition from drawing cheques, except those allowing the withdrawal of funds by the drawer from the drawee or certified cheques, and a prohibition from using payment cards for a maximum period of five years.

After reviewing the prescribed penalty for the crime of announcing fake or unreal discounts in French and UAE legislation, it was found that the penalties stipulated in the former more successfully achieve public and private deterrence than in the latter. Therefore, the UAE legislator must reconsider the current penalties to deter commercial fraud.

## CONCLUSION

This paper has covered how discounts affect consumer protection and fair competition in the market. The respective competition and consumer protection rules aim to enhance consumer welfare, ensuring the effective functioning of markets and correcting defects within them. However, the approach of each set of rules concerning this goal is different; competition rules address the supply side and aim to ensure that consumers have adequate choices at low cost, while consumer protection rules address demand and aim to enable consumers to exercise choices freely and transparently. This comparison of French and UAE legislation has focused on how these laws regulate discounts and shown how each affects consumer protection and fair competition.

Emirati and French legislators have worked to control the process of selling

discounts by imposing a set of restrictions that every merchant or facility must abide by and not leave resorting to them without imposing control over them by ensuring that the necessary conditions are met to conduct them and, in case of violation, subjecting the merchant to the stipulated penalty. It would provide the necessary protection for the consumer from illusory discount offers; the legislator worked to establish a balance by affording merchants the right to engage in discount selling to trade accumulated goods or obtain cash. However, this is subject to the availability of the conditions set by the legislator to engage in such sales to provide the necessary protection for the consumer.

Based on the findings of this study, it is recommended that the UAE legislator amend the Federal Law No. 19 of 2016 regarding combating commercial fraud by reconsidering penalties for natural and legal persons committing commercial fraud, including fake or unreal discounts, and that the crime of announcing fake or unreal prizes or discounts should be uniquely specified in the Law on Combatting Commercial Fraud. In addition to protecting the consumer from sale offers with discounts publicised via online websites.

Popular figures often announce promotional offers at discounted prices for certain goods and services on social media, causing their followers to make purchases. However, the discounts are often fake; thus, the intervention of legislature at international and national levels is required to control such fake advertisements. The UAE government must arrange awareness campaigns to

enable consumers to understand their rights and duties to ensure consumer protection and preserve their rights, which can be considered one of the most effective methods. By activating communication through which information about goods, services, and ideas is transmitted to citizens to familiarise them with products and convince them to accept or reject what has been announced in terms of components, they will receive certain benefits. Further, the penalty should match the crime's importance, and a freedom-restricting sanction of up to three years should be added and left to the judge's discretion. Finally, a fine proportional to the value of the profits obtained from the crime should be imposed. Future research should focus on the role of social media on consumer behaviour to establish legislation to protect consumers from fake discounts promoted online.

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