

Fact Sheet on special offers and advertising with reduced prices

1. Special offers

Special offers are uniquely advertised goods or services. It doesn't have to be a whole category of goods or large parts of the range of goods on offer.

The prohibitions are contained in the Annex ("black list") to Section 3 (3) of the Act Against Unfair Competition (Gesetz gegen den unlauteren Wettbewerb, UWG). Unauthorised commercial practices are:

- An invitation to purchase goods or services at a specified price when the entrepreneur does not disclose that he has reasonable grounds for believing that he will not be able to supply these, or equivalent, **goods or services**, or procure such supply, **at such a specified price for a period that is, and in quantities that are, reasonable (bait advertising;** "Only while stocks last", German Federal Court of Justice, judgment of 17.09.2016, case number: I ZR 92/14).
Where stocks are available for less than two days, it shall be incumbent on the entrepreneur to furnish proof of reasonableness; (no. 5)
 - An invitation to purchase goods or services at a specified price in a situation where the entrepreneur, **with the intention of promoting different goods or services instead,**
 - then demonstrates a defective example of the goods or services, or
 - refuses to show the consumer the goods or services advertised, or
 - refuses to take orders for the goods or services or to perform the advertised service within a reasonable time; (no. 6)
 - The false **statement that certain goods or services will only be available** generally or on particular terms **for a very limited time**, in order to elicit an immediate transactional decision from the consumer without the latter having the time and the opportunity to make an information-based decision; (no. 7)
- ✓ It is not mandatory to set a time-limit on promotions. Because there is no general obligation to specify a promotional period from a legal point of view and the **trader**, who wants to empty his stocks for whatever reason, **must not define a time frame from the outset** (German Federal Court of Justice, judgment of 30.04.2009, case number: I ZR 66/07).

Exceptions:

- The promotion is in the future and the trader announces the promotion:

If the measure is in the future, then the starting date of the promotion has to be determined by calendar date. However, a final date does not need to be indicated (German Federal Court of Justice, judgment of 30.04.2009, case number: I ZR 68/07) if such a date does not exist and/or cannot be predicted (e.g. in the case of a clearance sale).

- It is an introductory offer.

If it is an **introductory offer**, its start and end dates must be stated. Following the expiry of the promotion, the previously crossed-out purchase price in the full amount must actually be charged. Furthermore, the crossed-out price must be clearly defined as the subsequent normal price (German Federal Court of Justice, judgment of 17.03.2011, case number: I ZR 81/09).

- Prior to the promotion, the trader has specified a period:

However, if the trader has created conditions for the price concessions such as a certain period, then he has to indicate it (German Federal Court of Justice, judgment of 11.09.2008, case number: I ZR 120/06).

The price reduction may **not be extended** beyond the initially announced period. For example, the information is misleading if the seller had the intention of extending the discount action from the outset or if the seller extends the promotion without valid reason (German Federal Court of Justice, judgment of 07.07.2011, case number: I ZR 173/09; also “permanent low price” – German Federal Court of Justice, judgment of 11.12.2003, case number: I ZR 50/01).

2. Advertising with reduced prices

Original prices are admissible without any further explanation if

- The crossed-out price is actually the price seriously demanded by the seller in recent times over a longer period of time (now: Section 5 (4) UWG) and the previous, higher price has not been overestimated (German Federal Court of Justice, judgment of 15.12.1999, case number: I ZR 159/97)
- The reduced price is not promoted for longer than four weeks.

According to recent rulings of the German Federal Court of Justice (judgment of 05.11.2015, case number: I ZR 182/14), when advertising with an **original price** which is facing a lower price, it is clear that it is the price previously demanded by the seller. This is because a trader can only declare their own prices invalid and therefore, this kind of advertising is no longer ambiguous to the consumer.

This also applies to **“new prices”** because the German Federal Court of Justice has clarified in its above-mentioned judgment that a crossed-out “new price” is only misleading if it could be unclear which price it is (according to the judgement of the Oberlandesgericht (Higher Regional Court) Hamm of 24.01.2013, case number: 4 U 186/12).

However, if the comparison of prices shall be made with a price other than the one previously demanded by the seller, for example with a manufacturer's recommended retail price, an original price without any further explanation is misleading and thus inadmissible. In these cases, the crossed-out recommended retail price must be explained in more detail. The advertising with a **“manufacturer's recommended retail price”** and/or **“RRP”** is generally admissible provided that the recommended retail price mentioned **actually exists at the current date**. The advertising with the RRP has to be formulated **clearly, precisely, correctly** and **not ambiguously**.

For reasons of transparency it is still not wrong and, in our view, it is still recommended to **clearly indicate that it is the original price** which you demanded yourself previously, for example, using this display:

***“Our previous price ~~EUR19.94~~
now only EUR16.00”***

Please note:

In the case of a price reduction, the previous, higher price must have been seriously demanded, i.e. especially over a long period of time. If an actual price reduction is only pretence, it is an unlawful advertising with a so-called **“astronomical price”**.

The following comparisons of prices are inadmissible:

- ***“Retail price €15.00”***
- ***“Normal price €15.00”***
- ***“Otherwise the sales price is €15.00”***
- ***“List price €900.00”*** (e.g. Landgericht (Regional Court) Kiel, judgment of 30.09.2011, case number: 14 O 56/11)

According to the jurisdiction, it is **not** sufficiently transparent for consumers to which previous price the comparison of prices refers in such cases. For example, a “normal price” could be the price of a competitor, a manufacturer's recommended retail price (RRP) or a price which you demanded yourself previously.