

Safeway's Tempest Over Wine Discounts Survives Motion to Dismiss

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In Shakespeare's *The Tempest*, Prospero creates illusions that induce other characters to act in ways they otherwise would not have. Wine also serves as a catalyst in the play, clouding the judgment of some characters, with the notable exception of the noble counselor Gonzalo. (We'll get to him later.)

In *Tempest v. Safeway*, the plaintiffs accuse Safeway of creating illusions about prices that induce some shoppers to make purchases they otherwise would not have. Wine again serves as a central catalyst, this time in a dispute over whether price advertisements misled consumers about the duration of discounts.

The plaintiffs allege that Safeway advertised discounted "Member Prices" for wines that were available "thru" a specified date. According to the complaint, consumers understand those dates to mean that the discounts would disappear after the specified date. The problem, plaintiffs say, is that the discounts didn't really end in any meaningful way. Instead, Safeway allegedly renewed or replaced the promotions, allowing Rewards members to continue receiving substantially similar discounted prices month after month.

Safeway argued that no reasonable consumer would be misled because the tags never expressly promised what would happen after the "thru" date. The court wasn't persuaded. At the pleading stage, the court held that a reasonable consumer could plausibly interpret a sale advertised as lasting "thru" a particular date to mean that the sale would not continue beyond that date. Whether consumers were actually deceived remains a question for later stages of the case.

What makes the decision interesting is that the plaintiffs' theory doesn't focus primarily on the reference price itself. Many pricing cases challenge whether a higher "regular" or "compare at" price is genuine. Here, by contrast, the court focused on the allegedly temporary nature of the promotion. Put differently, the case is less about whether the discount was real and more about whether the expiration date was real.

We're just watching the first few scenes of this play, and it's too early to tell how it will turn out. For now, remember that plaintiffs across the country are focused on how retailers advertise discounts, and many lawsuits accuse retailers of creating an illusion that shoppers are getting a bargain. As for Gonzalo, Shakespeare's clear-eyed counselor, remember what Antonio said in *The Tempest*, Act 2, Scene 1, [Line 186](#).