Chapter 2 - III

# DIGITAL PLATFORMS AND HEALTH ADVERTISING

## : How Are Users Protected Under French Law?

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The healthcare sector is no exception to the trend towards digital platforms. From mobile phone applications to websites, there is a clear market niche in this field[1]. Given the diversity of these tools, it is useful to draw up several categories. The first category concerns tools designed solely for healthcare professionals to help them make decisions and reduce the risk of error, for example in terms of diagnosis or prescribing. This is the case, for example, with the 'VIDAL Mobile' application, which allows users to consult the list of drug interactions, search for therapeutic alternatives or access a glossary of rare diseases. This is also the case for the 'Ordoclic' application, which offers a secure electronic prescription service, and 'Aidediag', which helps healthcare professionals with difficult diagnoses in adults, such as rare diseases. These tools, which are reserved for professionals, can also play another role by enabling them to exchange and interact with other careers or to share information, as shown, for example, by 'Figure 1', which brings together a community of healthcare professionals to share medical images and give their opinions on patient care. More generally, according to the French National Authority for Health (Haute autorité de santé, HAS), applications dedicated to healthcare professionals can be divided into four categories according to their purpose: management; information; personalisation; decision support[2].

The second category is not aimed at healthcare professionals but at individuals, patients. There is also a wide range of health-related applications and advertising on websites. These tools vary according to their purpose. Some are aimed at prevention and well-being, counting steps taken or calories burned in a day, measuring heart rate or blood pressure, for example. Others focus on making appointments with healthcare professionals and sometimes even offer teleconsultations, such as the famous 'Doctolib'.

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1 Boismery I., "La promotion de la chirurgie et de la médecine esthétiques sur les réseaux sociaux", *CCE* 12/2022, n° 12.

2 Haute autorité de santé, *Classification fonctionnelle selon leur finalité d'usage, des solutions numériques utilisées dans le cadre de soins médicaux ou paramédicaux*, fiche, 2021, 13 p.

According to a study published in June 2021 by the French National Authority for Health, more than 327,000 e-health applications covering more than 240 diseases are available, without it being possible to distinguish the tools according to the categories cited. Among these, it is very important to note that 43 applications account for more than 83% of downloads, but above all that 65% have not been updated for more than 18 months, which raises serious questions about data security in particular[3].

All these tools and messages are offered by private companies, but it is important to realise that the public authorities in France have developed a tool called "Mon espace santé". It allows anyone to store their health documents and data confidentially, free of charge and securely, and to share them with the health professionals with whom they are in contact. Digital platforms are therefore not the monopoly of private players, even if they are in the overwhelming majority.

Beyond the technical aspects, the two categories mentioned are fundamentally different because of the various challenges they present. This is not to say that there are no challenges for tools reserved exclusively for healthcare professionals, but the fact that they do not link healthcare professionals with patients, i.e. with the people they are caring for, makes the issues different, even if they may enable patient information to be shared. On the other hand, the tools used by individuals enable a great deal of health data to be collected, i.e. personal data that is sensitive for the individual, but which represents a major commercial challenge for private players. A number of cases and scandals have highlighted the major problems that the use of these tools can cause. In March 2023, for example, it was revealed that the telemedicine start-up 'Cerebral' had shared the health data of 3.1 million Americans with advertisers and social networks such as Facebook, Google and TikTok, in breach of numerous rules. Similarly, a low-cost drug app called 'GoodRx' was fined 1.5 million dollars by the Federal Trade Commission for sharing information with Meta and Google. These scandals also exist in France, of course, and on 15 April 2022, the National Commission information technology and civil liberties (Commission Nationale Informatique et Libertés, CNIL) fined a biology company €1.5 million, in particular for security flaws that led to the leakage of the medical data of almost 500,000 people. Beyond this, there is also the question of the famous "cookies", i.e. the small files stored by a server on a user's terminal (computer, telephone, etc.) and associated with a web domain (i.e. in most cases with all the pages of a single website). These files make it possible to track the user's browsing habits for statistical and, above all, advertising purposes. This also, and perhaps above all, refers to health-related advertising messages that can be disseminated on all types of digital platforms.

These different examples show just how diverse the issues can be. On this basis, it is necessary to determine how it is possible to reconcile the requirements of confidentiality and protection of digital data, which come under the right to privacy, with the expectations of businesses in terms of freedom of expression, freedom of enterprise and freedom of trade and industry. Faced with all this, the question is which set of rules is best suited to protecting individuals against problematic tools, especially advertising. Since it is the field of

3 Haute autorité de santé, *Évaluation des Applications dans le champ de la santé mobile (mHealth) - État des lieux et critères de qualité du contenu médical pour le référencement des services numériques dans l'espace numérique de santé et le bouquet de services des professionnels*, referential, 2021, 95 p.

health that is at the heart of the question, is it health law that can provide effective protection, based specifically on the deontology of the health professions? Or is consumer law more appropriate, given that the use of these platforms frequently goes beyond the care relationship, moving more towards a consumer relationship? Are rules derived from soft law preferable? We will attempt to answer these questions by looking at the fact that professional deontology in the healthcare professions provide an essential but inadequate framework (I), while consumer law provides an important framework that is unsuitable in spirit (II). Attention will focus on the question of advertising, as this mechanism reveals the areas of interaction between health law and consumer law.

## 1 Deontology in the healthcare professions: an essential but insufficient framework for regulating digital platforms in the healthcare sector

The notion of information is naturally ambiguous. It covers different concepts whose spirit and legal regime are fundamentally different. Depending on the intention behind it, information may be promotional if its purpose is to encourage its recipients to perform the acts that are the subject of the communication (in which case it is advertising), or non-promotional if its purpose is to give its recipients access to technical or financial information with the disinterested aim of enlightening them[4]. In the field of health, this opposition takes on a particular meaning, since there is a natural reluctance to use advertising mechanisms, whereas the possibilities of non-promotional information for the health professions must not be restricted in application of their freedom of communication. The content of this challenge could be summarised as follows: "*Communicating without succumbing to the siren calls of advertising. This is the dilemma facing healthcare professionals*"[5].

To address this dilemma, an analysis of deontological rules is of fundamental importance. Defined as "*the science of professional duties*"[6], deontology is intended to govern the rights and duties of professions in general, and healthcare professions in particular, since they are very receptive to this type of internal regulation. The study of doctors' deontology is an interesting example in that it reveals precisely how advertising is approached[7], an approach that has varied widely, ranging from a strong suspicion that protects platform users from advertising (A) to an authorisation regime that weakens their protection (B).

4 On this question, see more generally Laude A., Tabuteau D. (ed.), *Information et produits de santé, quelles perspectives*, PUF, coll. Droit et santé, 2006, 188 p.

5 Laude A., Mouralis J.-L, Pontier J.-M, (dir.), *Droit de la santé*, Lamy, édition permanente. For an approach focused on this same issue, see Alméras J.-P., "Déontologie et communication : la profession médicale", *in* Dubouis L. (ed.), *Déontologie et santé*, Sirey, 1997, 104 p., p. 25 et seq.

6 According to Beignier B., "Déontologie" *in* "Dictionnaire de la culture juridique", Alland D., Rials S. (ed.), PUF/Lamy, 2003, 1649 p., p. 361.

7 Tome F., "Médecins et expression médiatique vus à travers un panorama de jurisprudence du Conseil d'État, juge de cassation des décisions disciplinaires des juridictions ordinales", *Trib. Santé*, 2023/1, No. 75, p. 25.

### (1) A historic suspicion in favor of protecting platforms users

In medical deontology, there has historically been a strong suspicion of advertising[8], which makes this body of rules highly appropriate for protecting platform users. This suspicion is reflected in a number of provisions. One key provision lays down the general principle in this area; it comes from art. R. 4127-19 of the French Public Health Code, which states: "*Medicine must not be practiced as a business. All direct or indirect advertising processes are prohibited, in particular any layout or signage giving the premises a commercial appearance*". In addition to its clarity, the wording of this article is of major interest, since the ban on advertising is presented as the expression of an essential general principle of medical practice, according to which medical practice is, by definition, incompatible with any mercantile or commercial spirit. The code of deontology does not stop at this article to deal with the phenomenon of advertising, since, having laid down this general principle, it goes on to regulate very precisely the practices that are authorised or prohibited through a series of miscellaneous provisions.

Firstly, there are provisions relating to the content of the prescription form (R. 4127-79 of the Public Health Code), public directories (R. 4127-80 of the Public Health Code), the nameplate (R. 4127-81 of the French Public Health Code), information on on-call and emergency duty (R. 4127-78 of the French Public Health Code) or the announcement that it is possible to make in the event of setting up or changing the practice of the profession (R. 4127-82 of the French Public Health Code). Even if, at first glance, this question does not seem to be directly linked to the subject of advertising, it is clear from the analysis that it makes a real contribution to it, since the practitioner uses these means to provide a range of information enabling the public to find out about him and to consult him. In this spirit, a lack of regulation of the content of this information could give free rein to the use of advertising methods that go beyond the strict information required of the general public.

Secondly, article R. 4127-13 of the Public Health Code is one of the other provisions that specifically govern this issue of advertising. According to this article, "*when a doctor takes part in a public information campaign of an educational or health nature, whatever the means of dissemination, he must only report confirmed data, show caution and be concerned about the repercussions of his comments on the public. They must refrain from any form of advertising, either personal or on behalf of the organisations in which they work or to which they provide assistance, or on behalf of a cause that is not of general interest*". This is a special provision, since the issue of advertising is regulated here in a very specific case, which is not one of the most common practices. However, the rationale behind this provision is easy to understand. It would be totally unnatural for a practitioner to take advantage of a general public information campaign on educational or health issues, i.e. a campaign in the public interest, to advertise his practices. In addition to being an obvious violation of the non-mercantile and non-commercial nature of the medical profession, such an attitude would also have the effect of diverting the action of public interest from its initial function, thus constituting a serious breach of professional honor and probity.

8 Moret-Bailly J., "Publicité et déontologie", *Trib. Santé* 2014, No. 45, p. 31.

Finally, article R. 4127-20 of the Public Health Code should be cited. According to these provisions, "*the doctor must take care as to the use made of his name, his capacity or his declarations. He must not allow the public or private organisations where he practises or to which he lends his assistance to use his name and professional activity for advertising purposes*". Here the rule laid down is very specific in relation to the other provisions, since the question of advertising is not addressed in terms of the benefits that the doctor might derive from it, but, on the contrary, in terms of the eventuality that he or she might be subjected to it indirectly and involuntarily. This is therefore another aspect of the question, totally different in spirit and implementation, since the doctor is not the author of advertising that he would have wished to carry out for his own benefit, but the involuntary victim of such advertising for the benefit of the organisation to which he lends his assistance or within which he practices. In this respect, it is a most interesting provision, since it emphasizes the diversity and nuance of the concept of advertising in medical practice, which can occur in a multitude of cases.

Having considered these provisions, let us now analyse the general spirit behind them. It is essential to specify why the regulation of these advertising issues is of particular importance. Within the Code of deontology, these provisions are linked to a broader concept of professional probity and honor. Given the fundamental nature of these two issues for the medical profession, they have a direct legal effect: while traditional breaches of professional deontology recognised by the disciplinary courts may be subject to the amnesty law, breaches relating to professional probity and honor are generally excluded from this possibility. This exception is indicative of the fundamental importance that medical deontology may attach to regulating the issue of advertising and any breaches[9]. Not only does medical deontology exclude all advertising practices, but it also prohibits them in an exceptionally strong manner compared with other existing misconduct[10].

### (2) A current openness against protecting platforms users?

This principle of prohibiting advertising has been called into question on several occasions[11], which could have the effect of drastically reducing the system of protection for platform users with regard to advertising. The first stage of this challenge is based on the decision of the Court of Justice of the European Union of 4 May 2017[12] which "precludes national legislation [...] which prohibits generally and absolutely all advertising

9 Alméras J.-P, Péquignot H., "Déontologie médicale", Litec, 1996, 306 p., n° 15, p. 24 and n° 52, p. 89 citing in particular the example of the presidential amnesty law of 3 August 1995 excluding from its scope all acts constituting breaches of probity and honour (Law n° 95-884 of 3 August 1995 *on amnesty*, art. 14 from Chapter III relating to the amnesty of disciplinary or professional sanctions; J.O n° 182 of 6 August 1995, p. 11 804).

10 For example, Conseil d'Etat, 05 July 1972, *Sieur Ouahnon,* Rec. p. 511. In this case, a doctor gave permission for a beauty clinic to be set up in a room next to the flat in which he practised. He then consented to the distribution of an advertising card entitled "*Medicine and beauty - modern beauty treatments*", offering various beauty treatments with medical follow-up and monitoring. This situation was deemed to be the source of confusion between the commercial operation of the aesthetic care practice and the doctor's professional activity, constituting a breach of professional honor. The judge deduced from this last qualification that the doctor could not benefit from the amnesty law of 30 June 1969.

11 Gras R., "Fin de l'interdiction absolue de la publicité chez les professionnels de santé et instauration d'une liberté de communication encadrée", *JDSAM* 2021, n° 29, p. 92.

12 CJEU 4 May 2017, *Vanderborght, aff.* C-339/15 CJEU 4 May 2017, No C-339/15, pt 49: AJDA 2017. 1709, chron. P. Bonneville, E. Broussy, H. Cassagnabère and C. Gänser; D. 2018. 583, obs. H. Aubry, E. Poillot and N. Sauphanor- Brouillaud.

relating to oral and dental care services, in so far as it prohibits all forms of commercial communication by electronic means, including by means of a website created by a dentist".

The second step was the report by the Conseil d'Etat on 3 May 2018[13], in which European Union law and developments in communication techniques are highlighted in order to advocate a principle of free communication aimed at informing patients. This report also proposes a distinction between acts that are subject to a profession's monopoly and those that are not, in order to introduce a differentiated communication regime.

The third step is the decision of the French Competition Authority on 15 January 2019[14]. Ruling on a complaint from a company offering discounted healthcare activities such as Botox injections, this authority first recalled the 2017 European case law already cited to conclude that "*mutatis mutandis*, Article R. 4127-19 of the Public Health Code, insofar as it provides for a general and absolute ban on all advertising, direct or indirect, for doctors, is not compatible with Article 56 TFEU and Directive 2000/31 on electronic commerce" (§ 55) and proposed that this provision should be left unapplied.

The fourth and final stage is the coup de grâce delivered by the Conseil d'Etat to this general ban on advertising methods, stating that the professional bodies may no longer decide or rule on the application of the provisions of their code of deontology prohibiting all advertising methods, on pain of judicial censure[15].

This was followed by a series of decrees amending the Code of deontology for the healthcare professions[16]. Henceforth, free communication about their professional activity becomes the principle. However, this remains firmly governed by deontological rules designed to protect patients and, more generally, public health, particularly when using digital platforms. Focusing on doctors, eleven articles of the Code of medical deontology have been amended, maintaining the distinction between public information and advertising.

At the heart of the reform is article R. 4127-19 of the Public Health Code, the first paragraph of which, which has been retained, states that medicine must not be practiced as a business. The second paragraph, which lays down a general and absolute ban on advertising, has been deleted in its entirety and replaced by two new articles: R. 4127-19-1 and R. 4127-19-2 of the Public Health Code. These articles set out in detail the procedures by which advertising and communication may be carried out. Practitioners may now communicate to the public, freely and by any means, information likely to enlighten patients in their choice of doctor. This information includes, in particular, that relating to his "professional skills and practices, his career path and the conditions under which he practices". This information must comply with the deontological rules and dignity of the profession, be "loyal and honest", not rely on the testimony of a third party and not be comparative. In addition, it must not be used as a means of encouraging patients to seek care unnecessarily or of misleading the public.

13 Conseil d'Etat, Règles applicables aux professionnels de santé en matière d'information et de publicité, study, 3 May 2018.

14 Autorité de la concurrence, 15 janv. 2019, nos 19-D-01 et 19-D-02 : *pratiques mises en œuvre dans le secteur de la promotion par Internet d'actes médicaux, et dans le secteur de la promotion par Internet de soins dentaires, dites "Groupon"*.

15 Conseil d'Etat 6 Nov. 2019, n° 416948 B: *RDSS* 2020. 394, note Curier-Roche; *AJDA* 2019. 2273.

16 Décret n° 2020-1662 du 22 décembre 2020 pour les médecins ; décret n° 2020- 1661 du 22 décembre 2020 pour les sages-femmes ; décret n° 2020- 1658 du 22 décembre 2020 pour les chirurgiens-dentistes ; décret n° 2020-1660 du 22 décembre 2020 pour les infirmiers ; décret n° 2020-1663 du 22 décembre 2020 pour les masseurs-kinésithérapeutes ; décret n° 2020- 1659 du 22 décembre 2020 pour les pédicures-podologues.

In addition, the decree opens up a new possibility for practitioners: to communicate by any means, to the public or to healthcare professionals, information for educational or health purposes, provided that the information is scientifically substantiated and relates to their discipline or to public health issues. The practitioner must, however, be vigilant about the value of the information communicated and formulate it with caution and moderation.

Article R. 4127-53 of the French Public Health Code now states that doctors who communicate with the public about their activities, particularly on a website, must include information about the fees they charge, the methods of payment accepted, and the obligations imposed by law to ensure that everyone has access to prevention and care. Healthcare professionals are also now authorised to display a number of new items of information on their prescriptions and other professional documents, as well as on a plaque at the entrance to their place of practice and in directories, including their titles, diplomas and functions when they are recognised by the Conseil national de l'Ordre, and their honorary distinctions recognised by the French Republic. He may also, on his website, in directories and on his orders and official documents, include any information he deems useful to the public, provided he takes into account the recommendations issued by the Conseil national de l'Ordre. Finally, article R. 4127-82 of the CSP has been amended so that doctors are now allowed, when setting up or changing their activity, to have it published in any medium and not just in the press, as was the case before the reform.

In addition, article R. 4127-13 of the Public Health Code, which required doctors not to adopt an "advertising attitude", either for themselves or in favor of an organisation within which they practice or to which they provide assistance, has been amended. The expression "advertising attitude" has been abandoned by the reform in favor of another formula which states that the doctor "does not aim to profit from his intervention in the context of his professional activity", either for himself or for an organisation to which he is linked.

Despite these relaxations allowing healthcare professionals to use advertising, a number of prohibitions remain or have been added: priority digital referencing (Article R. 4127-80 of the Public Health Code); usurpation of titles, use of titles not authorised by the National Council and all procedures intended to mislead the public about the value of their titles (Article R. 4127-30-1 of the Public Health Code); and prohibiting the organisations with which the doctor is associated from using his name or professional activity for commercial purposes - and no longer for "advertising" purposes as was the case prior to the reform (Article R. 4127-20 of the Public Health Code).

## 2 Consumer law: an important but inadequate framework for regulating digital platforms in the healthcare sector

The supervision of advertising must be linked to consumer law because the function of this type of information is to ensure that consumers' rights are respected when information is provided. The intention is to subject this incentive process to sufficient conditions to ensure that the consumer is not the victim of manipulation, even if the spirit of advertising is above all to create or reveal a need for goods or services. In this

sense, the regulation of advertising is a direct technique for protecting the consumer by controlling access to information. However, it should be noted that this process can also have indirect effects on relations between professionals, since it is also a means for the authors of these promotional messages to present the qualities and advantages of their goods or services, encouraging consumers to choose them. In this way, it is also, albeit indirectly, a means of regulating competition, an instrument for protecting professionals in the course of the incentives that they practice as a result of rivalry. In the context of these developments, the concept of advertising will be considered solely in terms of its direct and primary function of protecting consumers, rather than in terms of its indirect and accessory mission of protecting professionals.

### (1) Useful use of consumer law

With regard to digital platforms, consumer law may be of real use in making up for certain shortcomings in health law or professional deontology in the protection of users with regard to health. More specifically, consumer law is necessary when the effect of such regulation, in the short term at any rate, is to provide legal protection for patients that health regulation cannot provide because of the absence of suitable mechanisms. Consumer law thus appears as a palliative to certain shortcomings of health law, the former being motivated by good intentions even if the means used are potentially inappropriate in spirit.

Consumer law therefore provides an interesting framework for protecting consumers and ensuring a level playing field between competitors. The legal framework for advertising is based on a number of fundamental principles that are entirely relevant to our subject. The first principle is fairness. This means that advertising must be truthful, honest and not mislead the consumer. Nor should it denigrate or discredit competitors. Secondly, the principle of transparency means that the identity of the advertiser, the promotional nature and the conditions of the offer must be clearly indicated. Finally, all advertising campaigns must respect human dignity and good morals.

On the basis of these principles, especially the principle of fairness, certain forms of behavior are specifically prohibited. This is the case with the prohibition on misleading advertising, where a message is considered to be misleading when it is based on a false presentation that is likely to mislead as to the essential characteristics of the service, the price, or the identity and abilities of the service provider. Similarly, an advertisement must not create confusion with another service or with the trade name of a competitor (prohibition of confusion) or discredit the products or image of another company (prohibition of denigration).

Other practices are not banned, but they are regulated. This is the case with comparative advertising. Comparative advertising is any advertising that compares goods or services by implicitly or explicitly identifying a competitor or goods or services offered by a competitor. This type of advertising is possible, but subject to certain conditions: it must be fair, clear, respect the distinctive features of competitors and not be disparaging. In view of these requirements, this means that comparative advertising must be objective, comparing one or more essential, relevant, verifiable and representative characteristics of goods or services that meet the same needs or serve the same purpose.

These practices can be identified in the context of the strong powers enjoyed by a public body under consumer law, which is not covered by health law: the Direction Générale de la Concurrence, de la Con-

sommation et de la Répression des Fraudes (DGCCRF), a French government department reporting to the Ministry of the Economy. This department ensures the quality that consumers are entitled to expect from a product or service. To do this, it investigates and finds breaches of consumer protection rules, such as misleading advertising. It has fairly broad investigative powers. These powers may be ordinary, meaning that they do not require the authorisation of a judge. This is the case with the power to enter, between 8am and 8pm, any premises used for business purposes and any premises where services are being provided, as well as access to any means of transport used for business purposes. This is reminiscent of the search provided for in the Code of Criminal Procedure, a measure that is extremely invasive of privacy, which testifies to the extent of the powers granted to DGCCRF agents. They also have the power to obtain documents and gather information. Other investigative powers are extraordinary because they require the authorisation of a judge. This is the case for visits and seizures anywhere.

Once they have made their findings using their ordinary and extraordinary investigative powers, DGCCRF officers must decide what action to take. In some cases, the DGCCRF is directly responsible for deciding what action should be taken and implementing it. In other cases, it can only initiate proceedings, but does not itself have the power of decision. Failure to comply with the legal rules governing advertising may result in various sanctions, depending on the seriousness of the breach. These penalties can range from a simple warning to substantial fines of up to several million euros, depending on the turnover generated by the illegal practice. This is an interesting protection that medical deontology do not provide for users of digital platforms who may use health-related advertising.

### (2) Dangerous use of consumer law

Since the application of consumer law is useful, as a complement to professional deontology, in attempting to protect users of digital platforms, it might be tempting to think that this legal framework constitutes the ideal solution, which should be generalised. However, from our point of view, widespread application seems ill-advised because, despite providing short-term protection, it runs the risk of transforming health-care relationships into consumer relationships, betraying the spirit of the healthcare field. This is problematic for two complementary reasons.

On the one hand, consumer law and health law do not have the same regulatory purpose. As a result, they do not consider health in the same way. For example, consumer regulation views health as an objective to be achieved rather than an object to be regulated. However, this objective is relative in nature, since it competes with the other aims of consumer law, which are to protect consumer safety and defend consumer economic interests. In addition to this secondary nature, health is a conditional element because consumer law only considers it in terms of consumer relations, excluding any protection outside this framework. Conversely, health regulations take account of the notion of health as an object and not as an end in itself. This object is, moreover, the main one and is regulated in an autonomous manner, i.e. it does not depend on specific relationships. Irrespective of these elements, the very conception that each subject may have of the notion of health is profoundly different. Whereas health law considers health in its entirety, consumer law only takes account of its preventive dimension, adopting a partial view. It is in the light of all these remarks that it can

be said that consumer law and health law do in fact have a distinct regulatory object.

On the other hand, a divergence in the spirit of regulation must be observed. When regulating healthcare relationships, healthcare law adopts a mindset centered on trust, a notion that constitutes the main characteristic of this relationship for the patient and for the healthcare professional. Conversely, although trust is a component of consumer law, it is not its central concept. On the contrary, it is the economic dimension that dominates consumer law. As a result, consumer law focuses on guiding consumer relations in such a way as to ensure that the best conditions are met in terms of economic interests, safety and health. In this context, consumer law is based on distrust, which is the antithesis of trust, but also on the protection of a certain balance in contractual relations. This does not mean that consumer law does not take health and trust into account, or that health law does not incorporate the economic dimension or is not subject to a certain degree of mistrust. On the contrary, it means that, although these two sets of regulations incorporate these divergent concepts, they do not attach the same importance to them, and are based on a fundamentally opposed approach. The trust required by healthcare relationships is opposed by the mistrust legitimised by the intrinsic nature of consumer relationships.

However, the mere existence of these differences in approach does not automatically demonstrate the incompatibility that would be created by the widespread use of consumer law in the case of digital health platforms, justifying the need for a concrete and technical analysis as a complement.

The *leitmotiv of* consumer law is the increased protection of consumers, whose situations are not individually distinguished, but also the search for a certain security in contractual relationships. Conversely, health law puts in place protective measures for patients and health professionals, but these are applied entirely at the expense of the security of legal relationships. In the light of these factors, it is clear that the hypothesis of a generalised application of consumer law to healthcare relationships would undoubtedly pose a problem, whatever the hypothesis adopted: either the integration of the specific field of healthcare into the common body of consumer law does not prevent the specific nature of healthcare relationships from being taken into account, and then a situation of considerable inequality will be created within consumer law regulations, since the applicable rules will be disproportionately different depending on whether the situation taken into account is one of traditional consumption or medical consumption. Or, and this is the most likely hypothesis, consumer law is obliged to maintain this common body of rules by making no distinction according to the situation, in which case it will tend to standardise the specific object of regulation that health represents, leading to the end of the particularism of health relationships. This can be seen with certain founding mechanisms of health law, the maintenance of which is more than difficult to imagine in the hypothesis of a generalised application of consumer law. This is the case with the patient's right of withdrawal, which is currently not subject to any time limit, which is a source of great instability (justified) for the healthcare professional, but which it is inconceivable to maintain within consumer law, forcing the removal of this essential particularity. This is also the case with the conscience clause, which allows healthcare professionals to refuse a patient's request under certain conditions, a technique which it is unthinkable to maintain in consumer law, since the latter prohibits any consideration of subjective opinions in refusing a sale or a service.

Both the individuality of the patient and the specificity of the healthcare professional are therefore under

threat, since they are at odds with the guiding principles of consumer law. A general application of consumer law to healthcare relationships in the context of platforms would result in these relationships ultimately conforming to the objectives of consumer law, leading to a standardisation that would be detrimental to the specific nature of healthcare relationships. Moreover, it is certain that most of the ethical provisions governing the healthcare professions would not allow such a development, if only because they prohibit the commercial nature of their practice.

All these elements show that French law has a variety of tools at its disposal to try to protect users of digital platforms on which health-related advertising is disseminated. They are all centered on hard law, to the exclusion of soft law, but need to be reconciled because they complement each other, since it is clear that professional deontology or consumer law are not sufficient to provide this protection on their own.