

DEPARTMENT OF ATTORNEY GENERAL
CONSUMER PROTECTION AND CHARITABLE TRUSTS DIVISION
PRICING AND ADVERTISING OF CONSUMER ITEMS

(By authority conferred on the attorney general by section 9(6) of Act No. 449 of the Public Acts of 1976, being S445.359(6) of the Michigan Compiled Laws)

R 14.201 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 449 of the Public Acts of 1976, being S445.351 et seq. of the Michigan Compiled Laws.

(b) "Clearance sale" means an offer by a person to sell all offered in-stock consumer items at a price reduced from that person's regular price if the person intends to sell out all such items during the advertised period of sale, but will nevertheless reorder the same or substantially similar items to be again sold by that person not less than 90 days after the reorder.

(c) "Close out sale" means an offer by a person to sell offered in-stock consumer items at a price reduced from the person's regular price if consumer items will not be offered by that person again due to various factors, such as:

- (i) The item is no longer manufactured.
- (ii) The source of supply is out of business.
- (iii) The person unilaterally refuses to carry the item.

(d) "Raincheck" means a written guarantee to deliver a specific consumer item.

(e) "Sale price" means a price offer for a consumer item appearing in advertising by use of the word "sale" or words of similar meaning, which suggest to a reader, listener, or viewer that the consumer item is being offered for purchase at a reduction in price, at a bargain price, or at a savings compared with some other person's or the advertiser's regular or customary higher price.

History: 1979 AC.

R 14.202 Sale or reduced price advertisements; disclosures.

Rule 2. An offer of a consumer item, except baked goods, fresh fruit, and fresh vegetables as provided in section 5(4) of the act, for retail sale at a sale price, special price, or at a price reduced by an amount or proportion, by means of an advertisement disseminated in the trade area served by any of the advertisers' retail outlets covered by the advertisement, shall disclose clearly and conspicuously, in conjunction therewith, either of the following:

(a) The dates the consumer item is available for purchase.

(b) The numerical quantity available for each consumer item, and where there is a limitation on how many of the advertised consumer items may be purchased by any 1 person, a statement in numerical amount of how many a consumer may buy of each advertised consumer item.

R 14.203 Disclosing exceptions, limitations, or restrictions rainchecks and substitutions.

Rule 3. (1) If an advertisement does not state the quantity of a consumer item available, and the consumer item cannot be sold throughout the advertised period of sale, the advertisement shall disclose all the seller's exceptions, limitations, or restrictions with respect to stores, consumer items, or prices otherwise included in the advertisement, and the advertiser shall make available a raincheck which obligates the advertiser to deliver and sell to the consumer in possession of the raincheck the consumer item specified in the raincheck, at the advertised price stated in the raincheck, and at the future date stated in the raincheck, not in excess of 90 days, or at an earlier time upon notification to the consumer by the advertiser. After notification to the consumer is given, the advertiser may dispose of the item upon failure of the consumer to pick up the item in the time specified in section 5(2) of the act.

(2) An advertiser, instead of providing the consumer with a raincheck, may substitute for the unavailable advertised consumer item a similar consumer item of equal or greater monetary value. This rule does not modify a person's obligations under section 5(3) of the act.

(3) If an advertiser elects to substitute a consumer item of equal or greater monetary value because the advertiser is unable to redeem a raincheck due to the unavailability of the advertised consumer item, the advertiser may substitute either a similar item bearing a substantially equivalent regular price at the advertised lower price, or a similar item bearing a higher regular price at a price equal to the regular price of the higher-priced item, less the percentage reduction offered for the unavailable consumer item.

Example: An advertisement indicates a consumer item regularly sells for \$50.00, but is on this week for does not disclose the quantity available. The advertiser runs out of the advertised item during the period of sale and knows that the item cannot be obtained again to redeem a raincheck. The advertiser may then offer to a consumer either of the following substitute similar items:

(a) Another similar \$50.00 item at \$30.00.

(b) Another similar item regularly selling for \$75.00 at a comparable savings or reduction in price; that is, 40% off or \$45.00.

(4) An advertiser shall not limit the obligation to redeem a raincheck by including a date in a raincheck less than 90 days from the date of the raincheck. For example, a raincheck which provides for its redemption on or before a date less than 90 days thereafter is insufficient compliance with the act if the purpose of the earlier date is to evade compliance in the event the guarantee cannot be honored in the shorter time. An advertiser may, however, redeem the raincheck earlier than 90 days upon notification to the consumer.

(5) A raincheck shall contain, but not be limited to, the following:

(a) Space for a description of the unavailable item.

(b) Space for the price to be paid for the unavailable item of the consumer.

(c) Space for the signature or initials of a person authorizing the raincheck.

(6) The raincheck shall be executed in duplicate, 1 copy to be given to the consumer, the other to be retained by the merchant.

History: 1979 AC.

R 14.204 Successive advertisements.

Rule 4. Where an advertiser disseminates successive advertisements, either to the same or different consumer groups, and each advertisement contains the disclosures required by section 5 of the act and these rules, the advertiser is not obligated to recount or redetermine the quantity of consumer items then remaining available for each successive advertisement if the advertiser clearly and conspicuously discloses that the consumer items advertised and available in the quantities stated are subject to prior sale due to previous advertising during prior periods of time, and states the date the advertising first appeared.

History: 1979 AC.

R 14.205 Determination of violation.

Rule 5. In determining whether a violation of the act has occurred, the following shall be considered:

(a) All circumstances surrounding nondelivery of advertised consumer items which were actually ordered in quantities sufficient to meet, or are reasonably related to the intended response to, the advertisement, but were not delivered due to circumstances beyond the advertiser's control.

(b) All circumstances surrounding failure to make advertised consumer items conspicuously and readily available for sale at or below the advertised prices if the consumer items were not made available at those prices due to circumstances beyond the control of the advertiser. In such cases, the making available of a raincheck shall be considered; however, the mere existence of a "policy" to provide a raincheck, in and of itself, does not constitute compliance.

(c) Whether the advertiser instructed each of the advertiser's employees, agents, or servants of the existence of a raincheck; whether the advertiser required those persons to inform consumers of its availability; whether, upon learning of the unavailability of a particular consumer item, the advertiser posted a notice, proximate to the location of the unavailable item, stating the procedure for obtaining a raincheck; and whether the advertiser posted, in a clear and conspicuous central location in the advertiser's store, a notice respecting the store's obligations to deliver a raincheck or substitute.

History: 1979 AC.

R 14.206 Catalogs, media commercials, circulars, or newspaper inserts prepared prior to dissemination.

Rule 6. (1) When an advertiser prepares, or causes to be prepared, an advertisement in the form of a catalog, television or radio commercial, circular, or an insert to a newspaper, which advertisement must be printed or submitted not less than 10 days prior to its dissemination to the public, and the advertisement offers to sell consumer items at a sale price, a special price, or at a price reduced by an amount or proportion, and the consumer items are readily and conspicuously made available for sale at a price other than the

advertised sale price, special price, or reduced price during the interim period between the time of printing and the dissemination of the advertisement to the public, the advertiser is not required to disclose in the advertisement the numeric quantity available if the advertiser:

(a) Clearly and conspicuously discloses the period of time the consumer items are available for sale.

(b) Makes available a raincheck to any person who seeks to purchase the consumer item during the advertised period of sale, or substitutes an equal or greater monetary value for the advertised item, if the consumer items are not intended to be liquidated as part of a clearance or close out sale, or a sale of similar import or meaning.

(2) Where the consumer items are not made readily and conspicuously available for sale during the interim period, the advertiser may, instead of subrule(1)(a) and (b) above, disclose the numeric quantity available at time of sale.

History: 1979 AC.

R 14.207 Clearance and close out sales.

Rule 7. (1) In connection with advertising offering consumer items pursuant to either a clearance or close out sale, where the advertiser is, or will be, unable to either give a raincheck or substitute an item of equal or greater monetary value, the advertiser shall disclose the quantity on hand and available during a disclosed period of sale. However, where the sale is announced in an advertisement required to be produced not less than 10 days prior to publication, the numeric quantity to be disclosed is that amount on hand at the time of preparation of the advertisement if the sale items are in fact made readily and conspicuously available for sale during the interim period between preparation and publication and the advertisement discloses as of what date that numeric quantity was determined; but if the sale items are not made readily and conspicuously available during the interim period, then the numeric quantity stated in the advertisement shall be equal to the greater of those actually on hand at time of preparation of the advertisement or actually on hand at time of publication.

(2) In connection with a "clearance" or "close out" sale, an advertiser with more than 1 store, branch, or outlet participating in the sale shall make readily and conspicuously available in each store, branch, or outlet a reasonable number of each consumer item subject to the sale, unless a disclaimer, as provided in R 14.208(2)(a) or (b), is set forth.

History: 1979 AC.

R 14.208 General and specific disclaimers; evasions of act or rules.

Rule 8. (1) General disclaimers in advertising relating to product availability shall not constitute compliance with the disclosure provisions of the act or these rules where the disclaimers, when used, are relied upon by a participating dealer or store to evade the obligations imposed by the act or these rules. Examples of such "general disclaimers" include the following:

(a) "Not all items available at all stores."

(b) "Available at most stores."

(c) "Available at participating stores."

(2) Specific disclaimers in advertising relating to consumer item availability only in certain stores are in compliance with the disclosure requirements of the act and these rules. Examples of a specific disclaimer include the following:

(a) "Available only at stores featuring delicatessen departments."

(b) "Available at the following participating stores: (name and address of each)."

(3) In determining whether a clearance or close out sale is used as a device to evade the act or these rules, the following criteria shall be considered:

(a) Whether the advertiser regularly or repeatedly uses the terms "clearance sale" or "close out sale" in connection with advertising of consumer items.

(b) Whether the advertiser has in fact made readily and conspicuously available for sale all of the consumer items offered as part of the clearance or close out sale.

(c) Whether the clearance or close out sale is merely a temporary reduction in prices, and there is an increase in prices on the same consumer items after the sale.

(d) Whether the advertiser has, prior to or during the sale, ordered or acquired all or part of the advertised consumer items, other than from existing inventory, for the purposes of the sale.

(e) Whether the advertiser has reordered the consumer items which are the subject of the sale for the purposes of replacing the inventory of sold items so as to make them available for sale within 90 days of the advertised clearance or close out sale.

(4) In order to avoid leading a consumer to believe, in connection with an advertisement disclosing numerical quantities where more than 1 store, outlet, or dealership is participating, that each store, outlet or dealership has in fact the numerical quantity listed for the consumer item, and in fact there is a variance in quantity among such store, outlets, or dealerships, the advertiser may do either of the following:

(a) Have readily and conspicuously available in each store, outlet, or dealership a reasonable number of each consumer item subject to the sale advertising.

(b) Provide to each store, outlet, or dealership a quantity of consumer items equal to the quantity disclosed for each item.

History: 1979 AC.

R 14.209 Enforcement and administration of act and rules.

Rule 9. (1) The act and rules shall be enforced and administered by the department of attorney general, consumer protection division, or such other division of the department as from time to time is designated by the attorney general.

(2) The consumer protection division is located at the Law Building, Lansing, Michigan 48913.

History: 1979 AC.

R 14.210 Assurance of discontinuance.

Rule 10. (1) When the attorney general or prosecuting attorney has information indicating that a person may have engaged, is engaging, or is about to engage in a method, act, or practice which may involve violation of the act, and if he deems the public interest shall

be fully safeguarded thereby, the attorney general or prosecuting attorney may afford the person the opportunity to negotiate informally an assurance of discontinuance.

(2) In determining whether the public interest is safeguarded by an assurance of discontinuance, the attorney general shall consider:

(a) The nature and gravity of the alleged violation.

(b) The prior record and good faith of the parties involved.

(c) Other factors, including, where appropriate, adequate assurance of voluntary compliance.

(3) An assurance of discontinuance is accepted and final upon signing by the attorney general or prosecuting attorney.

(4) An assurance of discontinuance shall include:

(a) A description of the methods, acts, and practices which a person agrees to permanently discontinue.

(b) A reference to applicable provisions of the act or these rules.

(c) A statement that the person does not admit an issue of law or fact.

(5) An assurance of discontinuance may include:

(a) An agreement to pay the costs of investigation.

(b) An agreement to hold in escrow an amount pending the outcome of litigation.

(c) An agreement for an amount of restitution to an aggrieved person.

(6) An assurance of discontinuance shall not be introduced in a proceeding by a person other than a party to the assurance, who may introduce it in the proceeding to modify its terms or to enforce its terms in whole or in part.

History: 1979 AC.

R 14.211 Declaratory ruling.

Rule 11. (1) A person may request a declaratory ruling from the attorney general as specified in section 63 of Act No. 306 of the Public Acts of 1969, being S24.263 of the Michigan Compiled Laws, with respect to determining whether a course of action is in compliance with the act or these rules. The attorney general shall consider the requests and, where practical, make a declaratory ruling. A request for a declaratory ruling is inappropriate where:

(a) The same, or substantially the same, course of action is under investigation, or is, or has been, the subject of a current action, order, judgment, or decree initiated or obtained by the attorney general.

(b) The course of action, or its effects, may be such that an informed decision thereon cannot be made, or can be made only after extensive investigation, clinical study, testing, or collateral inquiry.

(2) A request for declaratory ruling shall be submitted in writing to the attorney general, and shall include full and complete information regarding the course of action. Citations of legal authority supporting the theory or position of the requester may accompany the request.

(3) A declaratory ruling given by the attorney general is without prejudice to the right of the attorney general to reconsider the questions involved, and, where the public interest requires, to prospectively change the ruling. Sixty days' notice of a prospective change in

a declaratory ruling shall be given to the requester so that a person may discontinue a course of action taken in reliance upon the ruling.

History: 1979 AC.