

Code Of Advertising

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Foreword

These basic advertising standards are issued for the guidance of advertisers, advertising agencies and advertising media.

It is not possible to cover fully the wide variety of advertising practices by specific standards in a code of this type which is designed to apply to the offering of all goods and services. Where the Better Business Bureau has developed specific industry advertising codes, it is recommended that industry members adhere to them. If specific questions arise which are not covered or involve advertising directed to children, it is recommended that *Do's and Don'ts in Advertising* (a comprehensive two volume loose- leaf compendium published by the Council of Better Business Bureaus) be consulted. Advertisers, agencies and media should also be sure that they are in compliance with local, state and federal laws and regulations governing advertising.

Adherence to the provisions of this Code will be a significant contribution toward effective self-regulation in the public interest.

Basic Principles

1. The primary responsibility for truthful and non-deceptive advertising rests with the advertiser. Advertisers should be prepared to substantiate any claims or offers made before publication or broadcast and, upon request, present such substantiation promptly to the advertising medium or the Better Business Bureau.
2. Advertisements which are untrue, misleading, deceptive, fraudulent, falsely disparaging of competitors, or insincere offers to sell, shall not be used.
3. An advertisement as a whole may be misleading although every sentence separately considered is literally true. Misrepresentation may result not only from direct statements but by omitting or obscuring a material fact.

1. Comparative Price, Value and Savings Claims

Advertisers may offer a price reduction or saving by comparing their selling price with:

- a. their own former selling price,
- b. the current selling price of identical merchandise sold by others in the market area, or
- c. the current selling price of comparable merchandise sold by the advertiser or by others in the market area. When any one of these comparisons is made in advertising, the claim should be based on the following criteria *and* the advertising should make clear to which of the above the comparative price or savings claim relates.
 - a. Comparison with own **former selling price**
 1. The former price should be the actual price at which the advertiser has been currently offering (see below (2) the merchandise immediately preceding the sale, on a regular basis, and for a reasonably substantial period of time.
 2. Offering prices, as distinguished from actual former selling prices, have frequently been used as a comparative to deceptively imply a saving. In the event few or no sales were made at the advertised comparative price, the advertiser should make sure that the higher price does not exceed the advertiser's usual and customary retail markup for similar merchandise, not an inflated or exaggerated price, and is one at which the merchandise was openly and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of business, honestly and in good faith.
 3. Descriptive terminology often used by advertisers includes: "regularly," "was," "you save \$____," and "originally." If the word "originally" is used and the original price is not the last previous price, that fact should be disclosed by stating the last previous price, or that intermediate markdowns have been taken, e.g., "originally \$400, formerly \$300, now \$250"; "originally \$400, intermediate markdowns taken, now \$250."
 - b. Comparison with **current price** of identical merchandise sold by others
 1. The comparative price should not exceed the price at which representative principal retail outlets in the market area have been selling the identical merchandise immediately preceding the advertiser's offer, on a regular basis and for a reasonably substantial period of time. Such comparisons should be substantiated by the advertiser immediately prior to making any advertised comparisons.
 2. Descriptive terminology often used by advertisers includes: "selling elsewhere at \$_____." (Refers to market area cited in (1) above.)
 - c. Comparison with current price of **comparable merchandise** sold by the advertiser or by others
 1. The comparative price should not exceed the price at which the advertiser or representative principal retail outlets in the market area have been selling the comparable merchandise immediately preceding the advertiser's sale, on a regular basis and for a reasonably substantial period of time. Such comparisons should be substantiated by the advertiser immediately prior to making any advertised comparisons.
 2. In all such cases, the advertiser should make certain that comparable merchandise is similar in all respects and of at least like grade and quality.
 3. Descriptive terminology often used by advertisers includes: "comparable value," "compares with merchandise selling at \$, "equal to merchandise selling for \$_____."
 - d. **List prices**
 "List price," "manufacturer's list price," "reference price," "suggested retail price," and similar terms have been used deceptively to state or imply a saving which was not, in fact, the case. A list price may be advertised as a comparative to the advertised sales price only to the extent that it is the actual selling price currently charged by the advertiser or by representative principal

retailers in the market area where the claim is made.

Such a comparison should be substantiated by the advertiser immediately prior to making any advertised comparison.

- e. **"Imperfects," "irregulars," "seconds"**
 No comparative price should be used in connection with an imperfect, irregular or second article unless it is accompanied by a clear and conspicuous disclosure that such comparative price applies to the price of the article, if perfect. The comparative price advertised should be based on (1) the price currently charged by the advertiser for the article without defects, or (2) the price currently charged by representative principal retailers in the trade area for the article without defects, and the advertisement should disclose which basis of comparison is being used.
- f. **"Factory to you," "factory direct," "wholesaler," "wholesale prices"**
 The terms "factory to you," "factory direct," "wholesaler," "wholesale prices" and others of similar import have been the subject of great abuse in advertising. They imply a significant saving from the actual price at which identical merchandise is currently being offered by representative principal retailers in the market area, or where identical merchandise is not being offered, from comparable values in the market area. Such terms should not be used unless the implied savings can be substantiated and the terms meet all of the requirements below.
1. The terms "factory to you," "direct from maker," "factory outlet" and the like should not be used unless all advertised merchandise is actually manufactured by the advertiser or in factories owned or controlled by the advertiser.
 2. The terms "wholesaler," "wholesale outlet," "distributor" and the like should not be used unless the advertiser actually owns and operates or directly and absolutely controls a wholesale or distribution facility which primarily sells products to retailers for resale.
 3. The terms "wholesale price," "at cost" and the like should not be used unless they are the current prices which retailers usually and customarily pay when they buy such merchandise for resale.
- g. **Sales**
1. The unqualified term "sale" may be used in advertising only if there is a significant reduction from the advertiser's usual and customary price of the merchandise offered and the sale is for a limited period of time. If the sale exceeds thirty days advertisers should be prepared to substantiate that the offering is indeed a valid reduction and has not become their regular price.
 2. Time limit sales should be rigidly observed. For example, merchandise offered in a "one-day sale," "three-day sale," "this week only," sale should be taken off "sale" and revert to the regular price immediately following expiration of the stated time.
 3. Introductory sales should be limited to a stated time period, and the selling price should be increased to the advertised regular price immediately following termination of the stated period.
 4. Price predictions advertisers may currently advertise future increases in their own prices on a subsequent date provided that they do, in fact, increase the price to the stated amount on that date and maintain it for a reasonably substantial period of time thereafter.
- h. **"Emergency" or "distress" sales**
 Emergency or distress sales, including but not limited to bankruptcy, liquidation and going out of business sales, should not be advertised unless the stated or implied reason is a fact, should be limited to a stated period of time, and should offer only such merchandise as is affected by the emergency. "Selling out," "closing out sale," and similar terms should not be used unless the concern so advertising is actually going out of business. The unqualified term "liquidation sale" means that the advertiser's entire business is in the process of actually being liquidated prior to actual closing. Advertisers should conform with the requirements of applicable local, state and federal laws.
- i. **"Up to" savings claims**
 Savings or price reduction claims covering a group of items with a range of savings should state both the minimum and maximum savings without undue or misleading display of the maximum. The number of items available at the maximum savings should comprise a significant percentage, typically 10%, of all the items in the offering, unless local or state law requires otherwise.
- j. **Lowest price, underselling claims**
 Despite an advertiser's best efforts to ascertain competitive prices, the rapidity with which prices fluctuate and the difficulty of determining prices of all sellers at all times preclude an absolute knowledge of the truth of generalized underselling/lowest price claims. Advertisers should have

proper substantiation for all claims prior to dissemination; unverifiable underselling claims should be avoided.

k. **Price equaling**, meeting competitors' prices

Advertisements which set out company policy of matching or bettering competitors' prices may be used, provided the terms of the offer are specific and in good faith and provided the terms of the offer are not unrealistic or unreasonable. Advertisers should be aware that such claims can create an implicit obligation to adjust prices generally for specific merchandise upon a showing that the advertiser's price for that merchandise is not as low as or lower than a competitor's, in order to preserve the accuracy of the advertised claims.

An advertisement which expresses a policy of matching or bettering competitors' prices should conspicuously and fully disclose any material and significant conditions which apply and specify what evidence a consumer must present to take advantage of the offer. Such evidence should not place an unrealistic or unreasonable burden on the consumer.

2. **"Free"**

- a. The word "free" may be used in advertising whenever the advertiser is offering an unconditional gift. If receipt of the "free" merchandise or service is conditional on a purchase:

the advertiser must disclose this condition clearly and conspicuously together with the "free" offer (not by placing an asterisk or symbol next to "free" and referring to the condition(s) in a footnote);

the normal price of the merchandise or service to be purchased must not have been increased nor its quantity or quality reduced; and

the "free" offer must be temporary; otherwise, it would become a continuous combination offer, no part of which is free.

- b. In a negotiated sale no "free" offer of another product or service should be made where:

1. the product or service to be purchased usually is sold at a price arrived at through bargaining, rather than at a regular price; or
2. there may be a regular price but other material factors such as quantity, quality or size are arrived at through bargaining.

3. **"Cents-off" Sales**

The principles stated in the standard dealing with "free" should be followed in the advertising of "cents-off" sales.

4. **Trade-in Allowances**

Any advertised trade-in allowance should be an amount deducted from the advertiser's current selling price without a trade-in. That selling price must be clearly disclosed in the advertisement. It is misleading to offer a fixed and arbitrary allowance regardless of the size, type, age, condition, or value of the article traded in, for the purpose of disguising the true retail price or creating the false impression that a reduced price or a special price is obtainable only by such trade-in.

5. **Credit**

Whenever a specific credit term is advertised, it should be available to all respondents unless qualified as to respondents' credit acceptability. All credit terms must be clearly and conspicuously disclosed in the advertisement, as required by the federal Truth in Lending Act and applicable state laws.

The Truth in Lending Act and Regulation Z which implements the Act, as well as Regulation M which covers consumer leasing, contain important provisions that affect any advertising to aid or promote the extension of consumer credit and should be carefully reviewed by every advertiser.

a. **Open-end credit**

The requirements for advertising open-end credit under Regulation Z are complex. Therefore, advertisers are advised to consult Section 226.16 of the Regulation for details on terms triggering disclosure, prescribed terminology and information that must be disclosed.

b. **Closed-end credit**

Advertisers are advised to consult Section 226.24 of Regulation Z for details of closed-end credit advertising. If an advertisement of closed-end credit contains any of the following triggering terms, three specific disclosures must also be stated, clearly and conspicuously. The *triggering* terms are:

1. the amount or percentage of any down payment;
2. the number of payments or period of repayment; (3) the amount of any payment, expressed either as a percentage or as a dollar amount; or
3. the amount of any finance charge. The three *disclosures* are:
 1. the amount or percentage of the down payment;

2. the terms of repayment; and
 3. the "annual percentage rate," using that term spelled out in full. If the rate may be increased after consummation of the credit transaction, that fact must be disclosed.
- c. "Easy credit," "liberal terms"
- The terms "easy credit," "easy credit terms," "liberal terms," "easy pay plan" and other similar phrases relate to credit worthiness as well as to the terms of sale and credit repayment, and should be used only when:
1. consumer credit is extended to persons whose ability to pay or credit rating is below typical standards of credit worthiness;
 2. the finance charges and annual percentage rate do not exceed those charged to persons whose credit rating has been determined and who meet generally accepted standards of credit worthiness;
 3. the down payment is as low and the period of repayment of the same duration as in consumer credit extensions to those of previously determined credit worthiness; and
 4. the debtor is dealt with fairly on all conditions of the transaction including the consequences of a delayed or missed payment.
- d. "No credit **rejected**"
- The words "no credit rejected" or words of similar import should not be used unless true, since they imply that consumer credit will be extended to anyone regardless of the person's credit worthiness or financial ability to pay.

6. Extra Charges

Whenever a price is mentioned in advertising, any extra charges should also be disclosed in immediate conjunction with the price (e.g., delivery, installation, assembly, excise tax, postage and handling).

7. Bait Advertising and Selling

- A. "bait" offer is an alluring but insincere offer to sell a product or service which the advertiser does not intend to sell. Its purpose is to switch consumers from buying the advertised merchandise or service, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser.
- B. No advertisement should be published unless it is a bona fide offer to sell the advertised merchandise or service.
- C. The advertising should not create a false impression about the product or service being offered in order to lay the foundation for a later "switch" to other, more expensive products or services, or products of a lesser quality at the same price.
- D. Subsequent full disclosure by the advertiser of all other facts about the advertised article does not preclude the existence of a bait scheme.
- E. An advertiser should not use nor permit the use of the following bait scheme practices: refusing to show or demonstrate the advertised merchandise or service;
 - disparaging the advertised merchandise or service, its warranty, availability, services and parts, credit terms, etc.;
 - selling the advertised merchandise or service and thereafter "unselling" the customer to make a switch to other merchandise or service; refusing to take orders for the advertised merchandise or service or to deliver it within a reasonable time; demonstrating or showing a defective sample of the advertised merchandise; or, having a sales compensation plan designed to penalize salespersons who sell the advertised merchandise or service.
- F. An advertiser should have on hand a sufficient quantity of advertised merchandise to meet reasonably anticipated demands, unless the advertisement discloses the number of items available or states "while supplies last." If items are available only at certain branches, their specific locations should be disclosed. The use of "rainchecks" is no justification for inadequate estimates of reasonably anticipated demand.
- G. Actual sales of the advertised merchandise or service may not preclude the existence of a bait scheme since this may be merely an attempt to create an aura of legitimacy. A key factor in determining the existence of "bait" is the number of times the merchandise or service was advertised compared to the number of actual sales of the merchandise or service.

8. Warranties (or Guarantees)

- A. When the term "warranty" (or "guarantee") is used in product advertising, the following disclosure should be made clearly and prominently: a statement that the complete details of the warranty can be seen at the advertiser's store prior to sale, or in the case of mail or telephone order sales, are available free on written request.
- B. (1) "satisfaction guarantee," "money back guarantee," "free trial offer," or similar representations should be used in advertising only if the seller or manufacturer refunds the full purchase price of the advertised product at the purchaser's request.

(2) When "satisfaction guarantee" or similar representations are used in advertising, any material limitations or conditions that apply to the guarantee should be clearly and prominently disclosed.

- C. When the term "lifetime," "life" or similar representations are used in advertising to describe the duration of the warranty or guarantee, the advertisement should clearly and prominently disclose the life to which the representation refers.
- D. Sellers or manufacturers should advertise that a product is warranted or guaranteed only if the seller or manufacturer promptly and fully performs its obligations under the warranty or guarantee.
- E. Advertisers should make certain that any advertising of warranties complies with the Consumer Products Warranty Act, effective July 4, 1975, relevant Federal Trade Commission requirements and any applicable state and local laws.

9. **Layout** and Illustrations

The composition and layout of advertisements should be such as to minimize the possibility of misunderstanding by the reader. For example, prices, illustrations, or descriptions should not be so placed in an advertisement as to give the impression that the price or terms of featured merchandise apply to other merchandise in the advertisement when such is not the fact. An advertisement should not be used which features merchandise at a price or terms boldly displayed, together with illustrations of higher-priced merchandise, so arranged as to give the impression that the lower price or more favorable terms apply to the other merchandise, when such is not the fact.

10. **Asterisks**

An asterisk may be used to impart additional information about a word or term which is not in itself inherently deceptive. The asterisk or other reference symbol should not be used as a means of contradicting or substantially changing the meaning of any advertising statement. Information referenced by asterisks should be clearly and prominently disclosed.

11. **Abbreviations**

Commonly known abbreviations may be used in advertising. However, abbreviations not generally known to or understood by the general public should be avoided.

For example, "deliv. extra" is understood to mean that there is an extra charge for delivery of the merchandise. "New Battery, \$25 W.T.," is not generally understood to mean "with trade-in."

12. Use or **Condition Disclosures**

A. **Used, secondhand, etc.**

A product previously used by a consumer should be clearly and conspicuously described as such, e.g., "used," "secondhand," "pre-owned," "repossessed," "rebuilt," "reconditioned."

B. **Rebuilt, reconditioned**

1. The term "rebuilt" should be used only to describe products that have been completely disassembled, reconstructed, repaired and refinished, including replacement of parts.
2. The term "reconditioned" should be used only to describe products that have received such repairs, adjustments or finishing as were necessary to put the product in satisfactory condition without rebuilding.

C. **"As is"**

When merchandise is offered on an "as is" basis, i.e., in the condition in which it is displayed at the place of sale, the words "as is" should be indicated in any advertising and on the bill of sale. An advertiser also may describe the condition of the merchandise if so desired.

D. **Second, irregular, imperfect**

If merchandise is defective or rejected by the manufacturer because it falls below specifications, it should be advertised by terms such as "second," "irregular," or "imperfect."

E. **"Discontinued"**

Merchandise should not be described as "discontinued," "discontinued model," or by words of similar import unless the manufacturer has, in fact, discontinued its manufacture, or the retail advertiser will discontinue offering it entirely after clearance of existing inventories. If discontinuance is only by the retailer, the advertising should indicate that fact, e.g., "we are discontinuing stocking these items."

13. **Superiority Claims**-Comparatives-Disparagement

A. Truthful comparisons using factual information may help consumers make informed buying decisions, provided:

1. all representations are consistent with the general rules and prohibitions against false and deceptive advertising;
2. all comparisons that claim or imply, unqualifiedly, superiority to competitive products or

services are not based on a selected or limited list of characteristics in which the advertiser excels while ignoring those in which the competitors excel;

3. the advertisement clearly discloses any material or significant limitations of the comparison; and
4. the advertiser can substantiate all claims made.

B. Advertising which deceptively or falsely disparages a competitor or competing products or services should not be used.

14. Superlative Claims-**Puffery**

Superlative statements, like other advertising claims, are objective (factual) or subjective (puffery):

objective claims relate to tangible qualities and performance values of a product or service which can be measured against accepted standards or tests. As statements of fact, such claims can be proved or disproved and the advertiser should possess substantiation.

subjective claims are expressions of opinion or personal evaluation of the intangible qualities of a product or service. Individual opinions, statements of corporate pride and promises may sometimes be considered puffery and not subject to test of their truth and accuracy. Subjective superlatives which tend to mislead should be avoided.

15. Testimonials and **Endorsements**

In general, advertising which uses testimonials or endorsements is likely to mislead or confuse if:

- it is not genuine and does not actually represent the current opinion of the endorser;
- it is not quoted in its entirety, thereby altering its overall meaning and impact;
- it contains representations or statements which would be misleading if otherwise used in advertising; while literally true, it creates deceptive implications;
- the endorser is not competent or sufficiently qualified to express an opinion concerning the quality of the product or service being advertised or the results likely to be achieved by its use;
- it is not clearly stated that the endorser, associated with some well-known and highly-regarded institution, is speaking only in a personal capacity, and not on behalf of such an institution, if such be the fact;
- broad claims are made as to endorsements or approval by indefinitely large or vague groups, e.g., "the homeowners of America," "the doctors of America";
- an endorser has a pecuniary interest in the company whose product or service is endorsed and this is not made known in the advertisement.

Advertisers should consult Federal Trade Commission Guides on Testimonials and Endorsements for detailed guidance.

16. **Rebate**

"The terms "rebate," "cash rebate," or similar terms may be used only when payment of money will be made by the retailer or manufacturer to a purchaser after the sale, and the advertising should make clear who is making the payment.

17. Company Name or **Trade Style**

No words should be used in a company name or trade style which would mislead the public either directly or by implication. For example, the words "factory" or "manufacturer" should not be used in a company name unless the advertiser actually owns and operates or directly and absolutely controls the manufacturing facility that produces the advertised products. Similarly, the term "wholesale" or "wholesaler" should not be used in a company name unless the advertiser actually owns and operates or directly and absolutely controls a wholesale or distribution facility which primarily sells products to retailers for resale.

18. **Contests and Games** of Chance

- a. If contests are used, the advertiser should publish clear, complete and concise rules and provide competent impartial judges to determine the winners.
- b. No contest, drawing or other game of chance that involves the three elements of prize, chance and consideration should be conducted since it constitutes a lottery and is in violation of federal statutes.
- c. The Federal Trade Commission has rendered various decisions on contests and games of chance relating to disclosure of the number of prizes to be awarded and the odds of winning each prize, and issued a trade regulation rule for games of chance in the food retailing and gasoline industries. Advertisers should make certain any contest conforms to FTC requirements as well as any applicable local and state laws.

19. **Claimed Results**

Claims as to energy savings, performance, safety, efficacy, results, etc. which will be obtained by or

realized from a particular product or service should be based on recent and competent scientific, engineering or other objective data.

20. **Unassembled Merchandise**

When advertised merchandise requires partial or complete assembly by the purchaser, the advertising should disclose that fact, e.g., "unassembled," "partial assembly required."