

Federal Trade Commission

§ 250.1

and regardless of whether the discrimination has been caused by a decrease or an increase in the payments or services offered. A seller must reasonably believe that its offers are necessary to meet a competitor's offer.

§ 240.15 Cost justification.

It is no defense to a charge of unlawful discrimination in the payment of an allowance or the furnishing of a service for a seller to show that such payment or service could be justified through savings in the cost of manufacture, sale or delivery.

PART 250—GUIDES FOR THE HOUSEHOLD FURNITURE INDUSTRY

Sec.

250.0 Definitions.

250.1 Avoiding deception and making disclosures.

250.2 Describing wood and wood imitations.

250.3 Identity of woods.

250.4 Leather and leather imitations.

250.5 Outer coverings.

250.6 Stuffing (including filling, padding, etc.).

250.7 Origin and style of furniture.

250.8 Deception as to being "new".

250.9 Misuse of the terms "floor sample", "discontinued model", etc.

250.10 Passing off through imitation or simulation of trademarks, trade names, etc.

250.11 Misrepresentation as to character of business.

250.12 Commercial bribery.

250.13 Other parts in this title 16 applicable to this industry.

AUTHORITY: 38 Stat. 717, as amended (15 U.S.C. 41-58).

SOURCE: 38 FR 34992, Dec. 21, 1973, unless otherwise noted.

§ 250.0 Definitions.

(a) *Industry member.* Any person, firm, corporation or organization engaged in the manufacture, offering for sale, sale or distribution of industry products as such products are hereinafter defined.

(b) *Industry products.* Articles of utility, convenience or decoration which are suitable for use as furniture in a house, apartment, or other dwelling place. Such articles include, but are not limited to, all kinds and types of chairs, tables, cabinets, desks, sofas, bedsteads, chests and mirror frames. The following products, covered by sets of trade practice rules heretofore pro-

mulgated, are not to be considered as coming within the purview of this definition: bed mattresses, bedsprings, metal cots, cedar chests, mirror glass, musical instruments, radio and television receiving sets and venetian blinds. Also excluded from the purview of this part are pictures, lamps, clocks, rugs, draperies as well as appliances and fixtures such as refrigerators and air conditioners.

(c) *Exposed surfaces.* Those parts and surfaces exposed to view when furniture is placed in the generally accepted position for use. Included in this definition are visible backs of such items of furniture as open bookcases, hutches, etc.

§ 250.1 Avoiding deception and making disclosures.

(a) *In general.* Industry members should not sell, offer for sale, or distribute any industry product under any representation or circumstance, including failure to disclose material facts, that has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to its utility, construction, composition, durability, design, style, quality, quantity or number of items, model, origin, manufacture, price, grade, or in any other material respect.

(b) *Affirmative disclosures.* Material facts concerning merchandise which, if known to prospective purchasers, would influence their decision of whether or not to purchase should be disclosed. This includes situations where deception may result from the appearance alone which in the absence of affirmative disclosures, could have the capacity and tendency or effect of misleading or deceiving. For example, veneered construction, use of plastic with simulated wood appearance, use of materials or products that simulate other materials or products used in the manufacture of furniture, or use of simulated finish or grain design, are considered to be material facts and a failure to disclose such information may be an unfair trade practice violative of section 5 of the Federal Trade Commission Act.

§ 250.1

16 CFR Ch. I (1-1-01 Edition)

(1) *Where disclosures should be made.* Unless otherwise provided, any affirmative disclosure which should be made under this part, should be on the industry product, or on a tag or label prominently attached thereto, and should be of such permanency as to remain on or attached to the product until consummation of sale to the consumer. Also, affirmative disclosures should appear in all advertising relating to industry products, irrespective of the media used, whenever statements, representations or depictions are used which could create an impression that the furniture is of a certain construction or composition and which, in the absence of such disclosures, could have the capacity to mislead purchasers or prospective purchasers.

(2) *The manner of disclosure.* In all cases in which the disclosure is necessary, it should be made in *close conjunction* with the representation or depiction to be qualified and should be of sufficient clarity, conspicuousness, and audibility (when spoken), as to be noted by prospective purchasers. The number of times a disclosure should be made will depend entirely upon the format and context in which it appears. As a general proposition, in catalogs and brochures advertising a suite or line of furniture it will be sufficient to make appropriately conspicuous disclosures once at the outset; however, additional disclosures should be made on any page where additional descriptive words are used which should be qualified under this part.

(3) *The form of disclosure with respect to composition.* Whenever an affirmative disclosure regarding composition should be made under this part, it may be accomplished by either describing the true composition of the product or parts thereof ("plastic", "vinyl", "marble particles with binder") or by stating that the material is not what it appears to be ("simulated wood", "imitation leather", "simulated marble"). Terms such as "molded components", "walnut plastic" or "carved effect" will not suffice to disclose that exposed surfaces are plastic, or that they are not wood.

(4)(i) *Trade names, coined names, trademarks, etc. suggestive of composition.* Any trade name, coined name, trademark,

depiction, symbol or other word or term which is susceptible of more than one interpretation, one or more of which could be misleading, should be immediately qualified to remove clearly and conspicuously the misleading implication(s). For instance, a trade name such as "Durahyde", if used to describe a fabric-backed vinyl upholstery covering which simulates leather, should be immediately qualified to disclose (A) the true composition of the product (e.g., "fabric-backed vinyl") or (B) that the product is not leather (e.g., "simulated leather", "not leather" or "imitation leather").

(ii) Trade designations or other representations which cannot be qualified without the qualification amounting to a contradiction should not be used. A trade designation consisting in whole or in part of a word which denotes a kind or type of material of which the product is not in fact composed should not be used. For example, the words "hide", "skin" and "leather" should not be used in trade names denoting nonleather products, although homophones of those words such as "hyde" may be used if qualified as provided above. Similarly, the word "wood" should not be used in a trade name of a product which does not contain wood.

(iii) Also, ambiguous or imprecise trade designations will not be sufficient to satisfy the disclosure provisions of this part. For example, the coined name "Hardiclad" used to describe molded plastic drawer fronts having the appearance of wood, is not sufficient to disclose that such parts are plastic or that they are not wood.

(c) *Illustrative examples of affirmative disclosure of composition or appearance.* The following examples are among those which, if factually correct, will meet the provisions of this section with respect to affirmative disclosures:

(1) *Disclosure of veneered construction.* "Veneered construction", "[wood name] solids and veneers", "[wood name] veneered tops, fronts and end panels" or "[wood name] veneered 5-ply construction with solid parts of [wood name]";

(2) *Disclosure of the use of plastics or other materials having the appearance of wood.* "High impact polystyrene",

Federal Trade Commission**§ 250.2**

“door panels of polystyrene”, “legs of rigid polyurethane”, “walnut grained plastic tops”, “parts of the exposed surfaces are of simulated wood” (to describe minor parts of the exposed surfaces of furniture), “imitation wood”, “carved effects of simulated wood”, “simulated wood components”, “wood grained vinyl veneer”, “walnut grained hardboard” or “simulated wood effect on plastic”;

(3) *Simulated leather, slate, or marble.* “Vinyl”, “leather look on vinyl”, “simulated leather”, “slate effect on plastic tops”, “simulated slate”, “simulated marble” or “marble dust and polyester binder”;

(4) *Simulated wood grain design.* “Simulated wood grain design”, “cherry grained maple”, “simulated mahogany crotch on mahogany veneer”, “Simulated Carpathian Elm burl” or “engraved cathedral walnut grain on hardboard”;

(5) *Simulated carvings.* “Carved effect in plastic”, “simulated wood carvings” or “molded polystyrene with carved look”;

(6) *Hang tags or labels disclosing the use of veneers, plastic simulating wood, or simulated wood grain.* “Veneered construction, heat and stain resistant plastic tops, drawer fronts and decorative parts of rigid polyurethane”, or “This furniture is made of selected hardwoods and veneers with matching plastic tops and decorative carved effects of polystyrene in dark oak finish”, or “This suite is constructed of selected walnut veneers and solid pecan, and has simulated wood panels on drawers, doors, and headboards”, or “Walnut veneer end panels and tops, polystyrene drawer and door fronts, and selected solid hardwood”, or “This furniture is constructed of selected hardwood solids and veneers, with certain veneered surfaces having simulated grain finish to enhance their appearance” or “Solid and Veneered hardwoods with carved effects in simulated wood and simulated grain design on veneered tops in matching pecan finish”.

(d) *Removal of tags or labels.* Members of the industry should not:

(1) Remove, obliterate, deface, change, alter, conceal, or make illegible any information this part provides

be disclosed on industry products, such as on tags or labels attached thereto, without replacing the same with a proper disclosure meeting the provisions of this part before offering for sale, sale, or distribution; or

(2) Sell, resell, distribute, or offer for sale an industry product without it being marked, tagged, or labeled and described in accordance with the provisions of this part. [Guide 1]

§ 250.2 Describing wood and wood imitations.

(a) *Solid wood construction.* Industry members should not use unqualified wood names to describe furniture unless all of the exposed surfaces are constructed of solid wood of the type named. If more than one type of solid wood is used and one of the woods is named, then all of the principal woods should be disclosed, or the extent of the use of the wood named should be indicated. In lieu of naming the specific woods, a general designation of the type of wood, such as “hardwood” or “softwood” may be used. For example, the following representations, if factually correct, will be acceptable: “solid maple”, “solid African mahogany”, “walnut and pecan”, “solid oak fronts”, “walnut”, “maple and other selected hardwoods”, “fine hardwoods” and “selected hardwoods”.

(b) *Wood veneers.* (1) When the exposed surfaces of furniture are of veneered and solid construction, and wood names are used to describe such furniture, the wood names should be qualified to disclose the fact of veneered construction. For example, “walnut solids and veneers” or “mahogany veneered construction” may be used when all the exposed surfaces of furniture are constructed of solid and veneered wood of the type named. When such terms as “walnut veneered construction” or “oak veneered construction” are used, it is understood that the exposed solid parts are composed of the same wood.

(2) When solid parts of furniture are of woods other than those used in veneered surfaces, either the use of such other woods should be disclosed or the location of the veneers stated. Examples: “walnut veneers and pecan solids”, “mahogany veneers and African

§ 250.3

16 CFR Ch. I (1-1-01 Edition)

mahogany solids", "walnut veneered tops, fronts and end panels", "table tops of mahogany veneers" or "cherry veneers and selected solid hardwoods".

(c) *Wood products.* Wood names or names suggesting wood should not be used to refer to materials which, while produced from wood particles or fibers, do not possess a natural wood growth structure. Such materials, however, may be referred to by their generally accepted names, if otherwise nondeceptive, such as "hardboard", "particleboard", "chipcore" or "fiberboard", or may be referred to as "wood products".

(d) *Color or grain design finish.* When wood names are used merely to describe a color of a stain finish and/or grain design or other simulated finish applied to the exposed surfaces of furniture that is composed of something other than solid wood of the types named, *it must be made clear* that the wood names are merely descriptive of the color and/or grain design or other simulated finish. Terms such as "walnut finish" or "fruitwood finish" will not suffice. However, terms such as "walnut color", "fruitwood stain finish", "maple finish on birch solids and veneers", "walnut finish on walnut veneers and selected solid hardwoods", "cherry grained maple drawer fronts", "walnut finish plastic top" or "maple stained hardwoods" will be considered acceptable when factually correct and in contexts otherwise nondeceptive.

(e) *Materials simulating wood.* No wood names should be used to describe any materials simulating wood without disclosures making it clear that the wood names used are merely descriptive of the color and/or grain design or other simulated finish; nor should any trade names or coined names be employed which may suggest that such materials are some kind of wood. [Guide 2]

§ 250.3 Identity of woods.

Industry members should not use any direct or indirect representation concerning the identity of the wood in industry products that is false or likely to mislead purchasers as to the actual wood composition.

(a) *Walnut.* The unqualified term *walnut* should not be used to describe wood other than genuine solid walnut (genus

Juglans). The term *black walnut* should be applied only to the species *Juglans nigra*.

(b) *Mahogany.* (1) The unqualified term *mahogany* should not be used to describe wood other than genuine solid mahogany (genus *Swietenia* of the Meliaceae family). The woods of genus *Swietenia* may be described by the term "mahogany" with or without a prefix designating the country or region of its origin, such as "Honduras mahogany", "Costa Rican mahogany", "Brazilian mahogany" or "Mexican mahogany".

(2) The term "mahogany" may be used to describe solid wood of the genus *Khaya* of the Meliaceae family, *but only* when prefixed by the word "African" (e.g., "African mahogany desk").

(3) In naming or designating the seven non-mahogany Philippine woods Tanguile, Red Lauan, White Lauan, Tiaong, Almon, Mayapis, and Bagtikan, the term "mahogany" may be used *but only* when prefixed by the word "Philippine" (e.g., "Philippine mahogany table"), due to the long standing usage of that term. Examples of improper use of the term "mahogany" include reference to Red Lauan as "Lauan mahogany" or to White Lauan as "Blond Lauan mahogany". Such woods, however, may be described as "Red Lauan" or "Lauan" or "White Lauan", respectively. The term "Philippine mahogany" will be accepted as a name or designation of the seven woods named above. Such term shall not be applied to any other wood, whether or not grown on the Philippine Islands.

(4) The term "mahogany", with or without qualifications, should not be used to describe any other wood except as provided above. This applies also to any of the woods belonging to the Meliaceae family, other than genera *Swietenia* and *Khaya*.

(c) *Maple.* The terms "hard maple", "rock maple", "bird's-eye maple", "Northern maple" or other terms of similar nature should not be used to describe woods other than those known under the lumber trade names of Black Maple (*Acer nigrum*) and Sugar Maple (*Acer saccharum*).

NOTE: Nothing in this section should be construed as prohibiting the nondeceptive

Federal Trade Commission**§ 250.5**

use of wood names to describe the color, stain, simulated finish or appearance of industry products, provided that appropriate qualifications are made in accordance with provisions in § 250.2(d).

[Guide 3]

§ 250.4 Leather and leather imitations.

(a) Members of the industry should not make any direct or indirect representation concerning furniture or parts thereof covered with leather, or other material which simulates leather, which is false or misleading.

(b) Practices which should not be used under this section include, but are not limited to, the use of any trade name, coined name, trademark,¹ or other word or term, or any depiction or device, which could have the capacity and tendency or effect of misleading prospective purchasers into believing that furniture is covered in whole or in part with the skin or hide of an animal, or that the covering of furniture is leather, top grain leather, or split leather, when such is not the case. When a furniture covering is made from ground, shredded, pulverized or powdered leather, industry members should affirmatively disclose, in a manner provided for under § 250.1 of this part, either the true composition thereof, or the fact that it is not leather.

(c) In the case of non-leather material having the appearance of leather, industry members should conspicuously disclose facts concerning the composition thereof either by identifying the composition of the product (e.g., "vinyl covering", "fabric-backed vinyl", "upholstered in plastic") or by a disclosure that the product is not leather (e.g., "imitation leather", "not leather"), as provided for under § 250.1 of this part. [Guide 4]

§ 250.5 Outer coverings.²

(a) In connection with the sale of furniture, members of the industry should

not use any direct or indirect representation concerning the outer covering thereof which:

(1) Is false (e.g., using the term *Mohair* to describe a fabric not produced from fibers derived from the angora goat); or

(2) Has the capacity and tendency or effect of deceiving furniture purchasers (e.g., by telling a half-truth, such as using the unqualified word "Nylon" to describe a blend of nylon and other fibers).

(b) When (if) any identifying reference is made in *advertising* to an outer covering made of a mixture of different kinds of fibers, each constituent fiber present in substantial quantity (at least 5 percent) should be designated in the order of its predominance by weight (e.g., "cotton and nylon") in a manner provided for in § 250.1 of this part. If a fiber so designated is not present in a substantial quantity (less than 5 percent) the percentage thereof should be stated (e.g., "cotton, rayon, 3 percent nylon").

(c) When (if) any identifying reference is made on a tag or label to an outer covering made of a mixture of different kinds of fibers; each and every kind of fiber present in such outer covering should be identified by showing the fiber content with percentages of the respective fibers in order of their predominance by weight (e.g., "55 percent Cotton, 45 percent Rayon"). In the case of pile fabrics, identification of the fiber content should be made on a tag or label by stating:

(1) The fiber content of the face or pile and of the back or base, with percentages of the respective fibers in order of their predominance by weight and the respective percentages of the face and back showing the ratio between face and back (e.g., "Face 60 percent Rayon, 40 percent Nylon—Back 100 percent Cotton; Back constitutes 80

¹See § 250.1(b)(4).

²Section 12(a)(2) of the Textile Fiber Products Identification Act (72 Stat. 1717; 15 U.S.C. 70) specifically exempts "outer coverings of furniture" from the application of the Act. Section 14 of the same Act provides that the Act "shall be held to be in addition to, and not in substitution for or limitation

of, the provisions of any other Act of the United States." Therefore, corrective action involving deceptive practices in the sale of furniture would be initiated under the authority of Section 5 of the Federal Trade Commission Act which prohibits "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce."

§ 250.6

percent of fabric and face 20 percent"); or

(2) The percentages of the fibers of the face or pile and the back or base in relation to the total weight of the fabric (e.g., "40 percent Cotton, 40 percent Rayon, 20 percent Nylon" to describe a fabric having an all nylon pile constituting 20 percent of the total weight backed by a 50 percent—50 percent blend of cotton and rayon).

(d) No representation should be made, directly or by implication, that an upholstery fabric has been tested unless:

(1) Actual tests have been conducted by persons qualified to perform and evaluate tests on upholstery fabrics; and

(2) Such tests were devised and conducted so as to constitute a reasonable basis for evaluating the fabric for use as a furniture covering; and

(3) Such representation is accompanied by a conspicuous and accurate statement, in layman's language, of the actual test results. (See Note following paragraph (e) of this section.)

(e) No direct or indirect representation should be made concerning any performance characteristic of any upholstery fabric unless at the time such representation is made the advertiser has in his possession a reasonable basis therefor, which may consist of competent scientific tests and/or other appropriate substantiating materials.

NOTE: On demand by the Commission, any advertiser who makes representations concerning tests or performance characteristics of fabrics should submit documentation of such tests, studies, and other data (as he had in his possession prior to the time the claims were made), which purport to substantiate the truth of such representations. Accurate records of all such documentation should be maintained for three years from the date such representations were last disseminated.

[Guide 5]

[38 FR 34992, Dec. 21, 1973; 39 FR 1833, Jan. 15, 1974]

§ 250.6 Stuffing (including filling, padding, etc.).

Members of the industry should not make any direct or indirect representation relating to the stuffing of furniture which:

16 CFR Ch. I (1-1-01 Edition)

(a) Is false (e.g., describing cotton stuffing as "wool", or urethane foam as "latex foam rubber"); or

(b) Has the capacity and tendency or effect of deceiving or misleading (e.g., by telling a half-truth, such as describing shredded or flaked foam rubber stuffing as "foam rubber" without disclosing, in a manner provided for under § 250.1 of this part, that it is shredded or flaked, or describing any non-latex foam cushion as "foam" without disclosing the kind of foam used, such as "urethane foam").

(1) The unqualified terms "Foam", "Latex" or "Latex Foam Rubber" or other terms of similar import, should not be used as descriptive of any part of the filling of an upholstery which does not consist of one or more homogeneous pads of latex foam rubber.

(2) When an upholstered industry product contains filling material consisting of a top layer of homogeneous latex foam rubber, or of other type of stuffing which is of substantial thickness, and another layer or layers of other material, terms such as "latex foam rubber", "polyurethane foam" or other terms which accurately describe the composition of such top layer may be used as descriptive thereof, *provided, however*, That in immediate conjunction therewith, nondeceptive disclosure is made of the fact that only a part of such filling material is of latex foam rubber or such other type of designated stuffing.

(3) When the filling is composed, in whole or in part, of latex foam rubber, polyurethane foam, or other type of stuffing which has been shredded, flaked, or ground, full and nondeceptive disclosure should be made of such fact in immediate conjunction with any such term irrespective of whether the pieces or shreds of latex foam rubber, polyurethane foam, or other type of stuffing are in loose form or are held together by glue or some other adhesive agent.

NOTE: This section is promulgated under the Federal Trade Commission Act for the purposes of interpreting requirements of such Act and to assist in the general enforcement of the Act. The section is not to be construed as relieving industry members from full compliance with applicable State and local legal requirements.

Federal Trade Commission**§ 250.10**

[Guide 6]

§ 250.7 Origin and style of furniture.

(a) Industry members should not make any direct or indirect representation which is false or likely to deceive prospective purchasers of furniture as to its origin, either domestic or foreign. For example:

(1) Furniture manufactured in the United States should not be unqualifiedly described as "Danish", "Spanish", "Italian", "English", or by any other unqualified terms suggesting foreign origin, unless the fact that such furniture was manufactured in the United States is clearly and conspicuously disclosed in advertising and on the furniture by means of such statements as "Made in U.S.A." or "manufactured by" followed by the name and address of the domestic manufacturer.

(2) When appropriate, furniture may be described by such terms as "Danish Style", "Italian Design", "Spanish Influence", "English Tradition" or by any other terms accurately descriptive of a generally recognized furniture style.

(3) Because of general understanding by the furniture buying public, terms such as "French Provincial", "Italian Provincial", "Chinese Chippendale" and "Mediterranean" are considered to have acquired a secondary meaning as descriptive of the styles of furniture so described. Thus, unqualified use of such terminology, when appropriate, would not be considered deceptive.

(4) Furniture should not be represented by trade name or otherwise as being manufactured in the Grand Rapids (Michigan) area, or in any other furniture producing area, when such is not the fact.

(b) In connection with the sale of furniture of foreign manufacture, members of the industry should clearly and conspicuously disclose the foreign country of origin, when the failure to make such disclosure has the capacity and tendency or effect of deceiving purchasers of such products. The disclosure of foreign origin, when required, should be in the form of a legible marking, stamping, or labeling on the outside of the furniture, and shall be of such size, conspicuously and degree

of permanency, as to be and remain noticeable and legible upon casual inspection until consumer purchase. [Guide 7]

§ 250.8 Deception as to being "new".

(a) Industry members should not make any direct or indirect representation that an industry product is new unless such product has not been used and is composed entirely of unused materials and parts.

(b) In connection with the sale of furniture which has the appearance of being new but which contains used materials or parts, such as springs, latex foam rubber stuffing, or hardware, members of the industry should conspicuously disclose, in a manner provided for in § 250.1 of this part, such fact (e.g., "cushions made from reused shredded latex foam rubber").

(NOTE: See also § 250.9.)

[Guide 8]

§ 250.9 Misuse of the terms "floor sample", "discontinued model", etc.

(a) Representations that furniture is a "floor sample", "demonstration piece", etc., should not be used to describe "trade-in", repossessed, rented, or any furniture except that displayed for inspection by prospective purchasers at the place of sale for the purpose of determining their preference and its suitability for their use.

(b) Furniture should not be described as "discontinued" or "discontinued model" unless the manufacturer has in fact discontinued its manufacture or the industry member offering it for sale will discontinue offering it entirely after clearance of his existing inventories of furniture so described. [Guide 9]

§ 250.10 Passing off through imitation or simulation of trademarks, trade names, etc.

Members of the industry should not mislead or deceive purchasers by passing off the products of one industry member as and for those of another through the imitation or simulation of trademarks, trade names, brands, or labels. [Guide 10]

§ 250.11

16 CFR Ch. I (1-1-01 Edition)

§ 250.11 Misrepresentation as to character of business.

Members of the industry should not represent, directly or by implication, in advertising or otherwise, that they produce or manufacture products of the industry, or that they own or control a factory making such products, when such is not the fact, or that they are a manufacturer, wholesale distributor or a wholesaler when such is not the fact, or in any other manner misrepresent the character, extent, or type of their business. [Guide 11]

§ 250.12 Commercial bribery.

Members of the industry should not give, or offer to give, or permit or cause to be given, directly or indirectly, money or anything of value to agents, employees, or representatives of customers or prospective customers, or to agents, employees, or representatives of competitors' customers or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors. [Guide 12]

§ 250.13 Other parts in this title 16 applicable to this industry.

The Commission has adopted Guides Against Deceptive Pricing, part 233, Guides Against Deceptive Advertising of Guarantees, part 239, and Guides Against Bait Advertising, part 238, all of which have general application and furnish additional guidance for members of the Household Furniture Industry. Members of this industry should comply with those parts.

PART 251—GUIDE CONCERNING USE OF THE WORD “FREE” AND SIMILAR REPRESENTATIONS

§ 251.1 The guide.

(a) *General.* (1) The offer of “Free” merchandise or service is a promotional device frequently used to at-

tract customers. Providing such merchandise or service with the purchase of some other article or service has often been found to be a useful and valuable marketing tool.

(2) Because the purchasing public continually searches for the best buy, and regards the offer of “Free” merchandise or service to be a special bargain, all such offers must be made with extreme care so as to avoid any possibility that consumers will be misled or deceived. Representative of the language frequently used in such offers are “Free”, “Buy 1-Get 1 Free”, “2-for-1 Sale”, “50% off with purchase of Two”, “1¢ Sale”, etc. (Related representations that raise many of the same questions include “____ Cents-Off”, “Half-Price Sale”, “½ Off”, etc. See the Commission’s “Fair Packaging and Labeling Regulation Regarding ‘Cents-Off’ and Guides Against Deceptive Pricing.”)

(b) *Meaning of “Free”.* (1) The public understands that, except in the case of introductory offers in connection with the sale of a product or service (See paragraph (f) of this section), an offer of “Free” merchandise or service is based upon a regular price for the merchandise or service which must be purchased by consumers in order to avail themselves of that which is represented to be “Free”. In other words, when the purchaser is told that an article is “Free” to him if another article is purchased, the word “Free” indicates that he is paying nothing for that article and no more than the regular price for the other. Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise.

(2) The term *regular* when used with the term *price*, means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service in the geographic market or trade area in which he is making a “Free” or similar offer in the most recent and regular course of business, for