

that the article be purchased in order for the purchaser to be entitled to the “free” or “1¢” additional merchandise) to the offer, the consumer may be deceived.

(c) Accordingly, whenever a “free,” “2-for-1,” “half price sale,” “1¢ sale,” “50% off” or similar type of offer is made, all the terms and conditions of the offer should be made clear at the outset. [Guide IV]

#### **§ 233.5 Miscellaneous price comparisons.**

The practices covered in the provisions set forth above represent the most frequently employed forms of bargain advertising. However, there are many variations which appear from time to time and which are, in the main, controlled by the same general principles. For example, retailers should not advertise a retail price as a “wholesale” price. They should not represent that they are selling at “factory” prices when they are not selling at the prices paid by those purchasing directly from the manufacturer. They should not offer seconds or imperfect or irregular merchandise at a reduced price without disclosing that the higher comparative price refers to the price of the merchandise if perfect. They should not offer an advance sale under circumstances where they do not in good faith expect to increase the price at a later date, or make a “limited” offer which, in fact, is not limited. In all of these situations, as well as in others too numerous to mention, advertisers should make certain that the bargain offer is genuine and truthful. Doing so will serve their own interest as well as that of the public. [Guide V]

### **PART 238—GUIDES AGAINST BAIT ADVERTISING**

Sec.

238.0 Bait advertising defined.

238.1 Bait advertisement.

238.2 Initial offer.

238.3 Discouragement of purchase of advertised merchandise.

238.4 Switch after sale.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 32 FR 15540, Nov. 8, 1967, unless otherwise noted.

#### **§ 238.0 Bait advertising defined.<sup>1</sup>**

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

#### **§ 238.1 Bait advertisement.**

No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. [Guide 1]

#### **§ 238.2 Initial offer.**

(a) No statement or illustration should be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised product to another.

(b) Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception. [Guide 2]

#### **§ 238.3 Discouragement of purchase of advertised merchandise.**

No act or practice should be engaged in by an advertiser to discourage the purchase of the advertised merchandise as part of a bait scheme to sell other merchandise. Among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:

(a) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer.

(b) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, availability of service, repairs

<sup>1</sup>For the purpose of this part “advertising” includes any form of public notice however disseminated or utilized.

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or parts, or in any other respect, in connection with it,

(c) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the merchandise is available only at designated outlets,

(d) The refusal to take orders for the advertised merchandise to be delivered within a reasonable period of time,

(e) The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement,

(f) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product. [Guide 3]

#### § 238.4 Switch after sale.

No practice should be pursued by an advertiser, in the event of sale of the advertised product, of "unselling" with the intent and purpose of selling other merchandise in its stead. Among acts or practices which will be considered in determining if the initial sale was in good faith, and not a stratagem to sell other merchandise, are:

(a) Accepting a deposit for the advertised product, then switching the purchaser to a higher-priced product,

(b) Failure to make delivery of the advertised product within a reasonable time or to make a refund,

(c) Disparagement by acts or words of the advertised product, or the disparagement of the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it,

(d) The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. [Guide 4]

NOTE: *Sales of advertised merchandise.* Sales of the advertised merchandise do not preclude the existence of a bait and switch scheme. It has been determined that, on occasions, this is a mere incidental byproduct of the fundamental plan and is intended to

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provide an aura of legitimacy to the overall operation.

### PART 239—GUIDES FOR THE ADVERTISING OF WARRANTIES AND GUARANTEES

#### Sec.

239.1 Purpose and scope of the guides.

239.2 Disclosures in warranty or guarantee advertising.

239.3 "Satisfaction Guarantees" and similar representations in advertising; disclosure in advertising that mentions "satisfaction guarantees" or similar representations.

239.4 "Lifetime" and similar representations.

239.5 Performance of warranties or guarantees.

AUTHORITY: Secs. 5, 6, 38 Stat. 719 as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 50 FR 18470, May 1, 1985, unless otherwise noted.

#### § 239.1 Purpose and scope of the guides.

The Guides for the Advertising of Warranties and Guarantees are intended to help advertisers avoid unfair or deceptive practices in the advertising of warranties or guarantees. The Guides are based upon Commission cases, and reflect changes in circumstances brought about by the Magnuson-Moss Warranty Act (15 U.S.C. 2301 *et seq.*) and the FTC Rules promulgated pursuant to the Act (16 CFR parts 701 and 702). The Guides do not purport to anticipate all possible unfair or deceptive acts or practices in the advertising of warranties or guarantees and the Guides should not be interpreted to limit the Commission's authority to proceed against such acts or practices under section 5 of the Federal Trade Commission Act. The Commission may bring an action under section 5 against any advertiser who misrepresents the product or service offered, who misrepresents the terms or conditions of the warranty offered, or who employs other deceptive or unfair means.

Section 239.2 of the Guides applies only to advertisements for written warranties on consumer products, as "written warranty" and "consumer product" are defined in the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, that