

Sec. 42-110b-18. Misleading advertising

It shall be an unfair or deceptive act or practice to:

(a) Misrepresent the owner, manufacturer, distributor, source or geographical origin of merchandise or services; provided, however, that nothing contained herein shall prohibit a supplier from labeling merchandise received from others and sold by him with his own brand, tradename, trademark, or other designation customarily used by him;

(b) Misrepresent the age, model, grade, style or standard of merchandise or services;

(c) Misrepresent the sponsorship, endorsement, approval, or certification of merchandise or services;

(d) Misrepresent the affiliation, connection or association of any merchandise, services, or business establishment;

(e) Misrepresent the nature, characteristics, standard ingredients, uses, benefits, quantities or qualities of merchandise or services;

(f) Misrepresent that merchandise is new or original when it is used, altered, deteriorated or repossessed; provided, however, that nothing contained herein shall prohibit a retailer from reselling merchandise which is returned by a customer within a reasonable time and is in original, undamaged condition;

(g) Disparage the merchandise, services, or business of another by false or misleading representation of fact;

(h) Offer merchandise for sale at a stated price, by means of any advertisement disseminated in an area served by any stores which are covered by the advertisement which do not have such products in stock, and readily available to customers during the effective period of the advertisement.

(1) If not readily available, clear and adequate notice shall be provided in the store that the items are not in stock and that a raincheck may be obtained upon request: provided, however, that if the advertised merchandise is that which is not customarily available for immediate delivery, e.g., furniture, major appliances or automobiles, it shall be considered that the taking of orders for the advertised merchandise to be delivered within a reasonable time at the advertised price shall be in compliance with these regulations. Provided, further, that it shall constitute a defense to a charge under this subsection if the retailer can demonstrate that the advertised products were ordered in adequate time for delivery and delivered to the stores in quantities sufficient to meet reasonably anticipated demands.

(2) If such advertised merchandise is unavailable during the effective period of the advertisement, the retailer shall offer a "raincheck" to customers who are unable to purchase such merchandise because of its unavailability. For purposes of this regulation, "raincheck" means a written statement issued by a retailer allowing the purchase of designated merchandise at a previously advertised price.

(A) The holder of a raincheck shall be notified by the retailer when the advertised merchandise is in stock; and he shall have a minimum of ten days after such notification is received from the retailer to purchase the merchandise at the sale price, except that retail food stores will not be required to notify the holder when such advertised merchandise is in stock.

(B) If a raincheck cannot be honored or satisfied by the retailer within sixty days of the issuance, then the retailer shall offer the holder similar or comparable merchandise at the

advertised price of the merchandise, or at a lower price. Should the holder wish to purchase such similar or comparable merchandise, he must do so within ten days of the retailer's offer to substitute such comparable merchandise.

(C) The provisions of this section shall not apply to: (i) sales where the advertised discount is offered storewide or department wide; (ii) clothing and footwear merchandise which is seasonal in nature and the stock of which cannot be replenished; (iii) clothing and footwear merchandise which is sized to fit; (iv) "clearance," "closeout," or "permanent markdown" sales; (v) motor vehicles; (vi) alcoholic beverages; or (vii) situations in which the customer accepts a comparable discount on a comparable item. Also, retailers shall not be required to offer rainchecks when a disclaimer as to the actual quantity of the advertised merchandise available, together with the statement, "no rainchecks," is stated in the advertisement, e.g., "only ten items, no rainchecks."

(i) Fail to make the advertised items conspicuously and readily available for sale at or below the advertised prices. For compliance with this subsection and subsection (h) above, there must be clear and conspicuous disclosure in all such advertisements as to all exceptions and/or limitations or restrictions with respect to stores, products, or prices otherwise included within the advertisements.

(1) General disclaimers in advertising relating to product availability will not be in compliance with these regulations. Examples of such general disclaimers are: (a) "Not all items available at all stores." (b) "Available at most stores."

(2) Specific, clear and conspicuous disclaimers in advertising relating to product availability in particular stores will be considered to be in compliance with these regulations. An example of such a disclaimer would be "Available only in the West Hartford and Manchester stores."

(3) Disclaimers as to quantities of merchandise available must be specific as to the actual number available at each store if there is not a sufficient quantity available to meet reasonably anticipated demands. "Quantities limited" is not specific enough to satisfy the requirements of this section. "Only ten items available at each store" would be in compliance with these regulations.

(Effective June 25, 1989)