

109:4-3-03 Bait advertising/unavailability of goods.

(A) Definitions: For the purposes of this rule, the following definitions shall apply:

- (1) "Raincheck" means a written document evidencing a consumer's entitlement to purchase advertised items at an advertised price within the time limits set forth in paragraph (C) of this rule. Rainchecks shall be executed in duplicate, one copy being given to the consumer and one copy being kept by the issuing supplier, and shall contain at least the following information:
 - (a) The name and address of the supplier;
 - (b) The name, address and phone number of the consumer;
 - (c) A description of the item to be purchased, including the model, make and year, if relevant;
 - (d) The quantity entitled to be purchased by the consumer;
 - (e) The advertised price of the item;
 - (f) The date of issuance.
- (2) "Salesperson" means the supplier or **THE SUPPLIER'S** agent or employee who interacts personally or directly with a consumer in negotiating or effecting a consumer transaction.
- (3) "Special purchase items" means items which are not currently or normally carried by a supplier in its regular stock of goods and that will not be re-offered for sale as a special-purchase item by the supplier for at least six months after the advertised promotion.
- (4) "Clearance items" means items which have been carried by a supplier in its regular stock of goods, which have been discontinued as regular stock, and which will not be re-offered for sale for at least six months after the advertised promotion.
- (5) "Seasonal items" means items which are carried by a supplier as regular stock only at certain periods during a calendar year, and which will not be re-offered for sale until the beginning of the next season in which the supplier regularly carries such items.

(B) Bait advertising

It shall be a deceptive and unfair act or practice for a supplier to make an offer of sale of any goods or services when such offer is not a bona fide effort to sell such goods or services. An offer is not bona fide if:

- (1) A supplier uses a statement or illustration or makes a representation in any advertisement which would create in the mind of a reasonable consumer, a false impression as to the grade, quality, quantity, make, model, year, price, value, size, color, utility, origin or any other material aspect of the offered goods or services in such a manner that, upon subsequent disclosure or discovery of the facts, the consumer may be induced to purchase goods or services other than those offered;
- (2) The first contact or interview with the consumer is secured by the supplier through deception, even if the relevant facts of the offer are disclosed to the consumer before **the consumer** views the offered goods or services;
- (3) A supplier discourages the purchase or sale of the offered goods or services by any means, including but not limited to the following:
 - (a) The refusal to show, demonstrate or sell the offered goods or services in accordance with the terms of the offer;
 - (b) Disparagement by the supplier of the offered goods or services;
 - (c) The showing or demonstrating of offered goods or services which are unusable or impractical for the purposes represented, or materially different from the offered goods or services;
 - (d) The use of a sales plan or method of compensation of sales personnel which is designed to penalize or prevent a **salesperson** from selling the advertised goods or services;
 - (e) The failure of a supplier to have on hand at each of its outlets or available for immediate delivery a sufficient quantity of the offered goods or services to meet reasonably anticipated consumer demand, unless the supplier complies with the provisions of paragraph (C)(1)(b) or (C)(1)(c) of this rule concerning unavailability of goods.
- (4) A supplier, in the event of a sale to the consumer of the offered goods or services, attempts to persuade a consumer to repudiate the purchase of the offered goods or services and purchase other goods or services in their stead, by any means, including but not limited to the following:
 - (a) Accepting a consideration for the offered goods or services, then switching the consumer to other goods or services;

- (b) Failing to make delivery of the offered goods or services (or, with the consent of the consumer, substituting goods or services of equal or greater value) within a reasonable time, or to make a refund;
- (c) Delivering offered goods or services which are unusable or impractical for the purposes represented or materially different from the offered goods or services.

The purchase on the part of some consumers of the offered goods or services is not in itself prima facie evidence that the offer is bona fide.

(C) Unavailability of goods

It shall be a deceptive and unfair act or practice for a supplier, in connection with an advertised offer for sale of goods or services, to:

- (1) Fail to give a raincheck to any consumer after the original quantity of goods or services represented for sale by an out-of-store advertisement is exhausted unless:
 - (a) For any item whose advertised price exceeds one hundred dollars the supplier at the time of the advertised offer had a sufficient supply of the advertised goods or services to meet the reasonably expected consumer demand, and the supplier shall document upon request that **the supplier's** estimate of reasonably expected consumer demand was based upon the following factors:
 - (i) Previous recent offers of same or similar goods or services on sale by such supplier at similar savings or prices;
 - (ii) Scope, manner and frequency of advertising employed to promote the sale of such item;
 - (iii) The existence of any significant current circumstances or events which causes or could be expected to cause an increased or decreased consumer response for the offered items of goods and services, or;
 - (b) The minimum quantity of the advertised goods or services available to each of the supplier's outlets is clearly and conspicuously disclosed in the advertisement, i.e., "at least ten in stock," or;
 - (c) The advertisement clearly and conspicuously discloses that the offered goods or services are "special purchase," "seasonal" or "clearance" items and that no rainchecks will be given, or;

- (d) The supplier permits the consumer, in lieu of a raincheck, at the consumer's option, to purchase another similar or comparable item of equal or greater value in stock at a savings equal to the greater of the net difference in dollars between the former and advertised prices of the item, or the percentage of savings on the advertised price of the item compared to its former price.
- (2) Fail to honor a raincheck within sixty days of the day of its issuance to a consumer or within the specific time extension agreed to by the consumer pursuant to paragraph (C)(5).
- (3) Fail to notify the consumer holding a raincheck pursuant to paragraph (C)(1) of the availability of the out-of-stock item within fourteen days of its re-availability by the method most reasonably designed to inform the consumer of the availability, except a supplier may be exempt from such notification if a specific availability date is clearly and conspicuously disclosed on the raincheck and such date of availability does not exceed twenty-one days from the date of issuance of the raincheck. In the event that such raincheck item does not in fact become available to the consumer within twenty-one days, the supplier shall permit the consumer, at **the consumer's** option, to substitute another similar or comparable in-stock item.
- (4) Re-advertise the out-of-stock item prior to notification to consumers holding rainchecks for the item, pursuant to paragraph (C)(3) above. However, after the advertisement has been placed with the media by the supplier and is no longer within the control of the supplier, repetition of the previously placed advertisement by the media shall not constitute re-advertisement within the meaning of this rule.
- (5) Fail, in the event an out-of-stock item is not available within sixty days of issuance of a raincheck, to notify the consumer holding the raincheck and permit the consumer, at the option of the consumer, to either purchase another similar or comparable in-stock item pursuant to paragraph (A)(3) above or consent to a specific time extension within which the raincheck item will be provided.
- (6) Fail, in the event a supplier notifies a consumer of the re-availability of an item, and the consumer attempts to redeem **their** raincheck within the period prescribed by this rule, but the item is again unavailable at the time of the attempted redemption, to permit the consumer, at **the consumer's** option, to purchase another similar or comparable in-stock item pursuant to paragraph (A)(3) above.
- (7) Fail to document upon request the specific factors relied upon to arrive at a sufficient supply of the advertised goods or service to meet the reasonably expected consumer demand when a raincheck is not given to a consumer for such item of goods or service.

- (8) Fail to redeem or otherwise honor a raincheck presented by a consumer within fourteen days of either notification of availability or the specific availability date pursuant to paragraph (C)(3).

- (D) The provisions of this rule shall have no application to consumer transactions involving the advertisement or sale of a motor vehicle as that term is defined in division (B) of section 4501.01 of the Revised Code and to any advertisement which solicits orders of goods or services through a catalogue or similar device for subsequent consumer delivery from a catalogue merchandise distribution center or similar facility which is not utilized primarily as a retail store.

Effective:

R.C. 119.032 Review Dates: 11/10/99, 11/10/04

Promulgated under: R.C. Chapter 119

Statutory authority: R.C. § 1345.05

Rule amplifies: R.C. § 1345.02

Prior effective dates: 6/5/73; 8/17/81