

CONSUMER PROTECTION LAW

GENERAL CONSUMER PROTECTION LAW
ADVERTISING
SALES AND DISCOUNTS

GENERAL

CONSUMER PROTECTION LAW

– GENERAL PROVISIONS

New York City Administrative Code: Title 20

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NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
SUBCHAPTER 1: CONSUMER PROTECTION LAW

§ 20-700. Unfair Trade Practices Prohibited.

No person shall engage in any deceptive or unconscionable trade practice in the sale, lease, rental, or loan or in the offering for sale, lease, rental, or loan of any consumer goods or services, or in the collection of consumer debts.

§ 20-701. Definitions.

- a. Deceptive trade practice. Any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind made in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental, or loan of consumer goods or services, or in the extension of consumer credit or in the collection of consumer debts, which has the capacity, tendency or effect of deceiving or misleading consumers. Deceptive trade practices include but are not limited to: (1) representations that goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have; the supplier has a sponsorship, approval, status, affiliation, or connection that he or she does not have; goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, or secondhand; or, goods or services are of a particular standard, quality, grade, style or model, if they are of another; (2) the use, in any oral or written representation, of exaggeration, innuendo or ambiguity as to a material fact or failure to state a material fact if such use deceives or tends to deceive; (3) disparaging the goods, services, or business of another by false or misleading representations of material facts; (4) offering goods or services with intent not to sell them as offered; (5) offering goods or services with intent not to supply reasonable expectable public demand, unless the offer discloses to limitation of quantity; and (6) making false or misleading representations of fact concerning the reasons for, existence of, or amounts of price reductions, or price in comparison to prices of competitors or one's own price at a past or future time; (7) stating that a consumer transaction involves consumer rights, remedies or obligations that it does not involve; (8) stating that services, replacements or repairs are needed if they are not; and (9) falsely stating the reasons for offering or supplying goods or services at scale discount prices.
- b. Unconscionable trade practice. Any act or practice in connection with the sale, lease, rental or loan or in connection with the offering for sale, lease, rental or loan of any consumer goods or services, or in the extension of consumer credit, or in the collection of consumer debts which unfairly takes advantage of the lack of knowledge, ability, experience or capacity of a consumer; or results in a gross disparity between the value received by a consumer and the

price paid, to the consumer's detriment; provided that no act or practice shall be deemed unconscionable under this subchapter unless declared unconscionable and described with reasonable particularity in a local law, or in a rule or regulation promulgated by the commissioner. In promulgating such rules and regulations the commissioner shall consider among other factors: (1) knowledge by merchants engaging in the act or practice of the inability of consumers to receive properly anticipated benefits from the goods or services involved; (2) gross disparity between the price of goods or services and their value measured by the price at which similar goods or services are readily obtained by other consumers; (3) the fact that the acts or practices may enable merchants to take advantage of the inability of consumers reasonably to protect their interests by reason of physical or mental infirmities, illiteracy or inability to understand the language of the agreement, ignorance or lack of education, or similar factors; (4) the degree to which terms of the transaction require consumers to waive legal rights; (5) the degree to which terms of the transaction require consumers to jeopardize money or property beyond the money or property immediately at issue in the transaction; and (6) definitions of unconscionability in statutes, regulations, rulings and decisions of legislative, or judicial bodies in this state or elsewhere.

- c. Consumer goods, services, credit, and debts. As used in [Section 20-700](#) of this subchapter and subdivisions a and b of this section, goods, services, credit and debts which are primarily for personal, household or family purposes.
- d. Consumer. A purchaser or lessee or prospective purchaser or lessee of the consumer goods or services or consumer credit, including a co-obligor or surety.
- e. Merchant. A seller, lessor, or creditor or any other person who makes available either directly or indirectly, goods, services or credit, to consumers. "Merchant" shall include manufacturers, wholesalers and others who are responsible for any act or practice prohibited by this subchapter.

§ 20-702. Regulations.

The commissioner may adopt such rules and regulations as may be necessary to effectuate the purposes of this subchapter, including regulations defining specific deceptive or unconscionable trade practices. Such rules and regulations may supplement but shall not be inconsistent with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of section five (a) (1), the federal trade commission act 15 U.S.C. § 45 (a) (1), or the decisions of the courts interpreting section three hundred fifty of the general business law and section 2-302 of the uniform commercial code.

§ 20-703. Enforcement.

- a. The violation of any provision of this subchapter or of any rule or regulation promulgated thereunder, shall be punishable upon proof thereof, by the payment of a civil penalty in the sum of fifty dollars to three hundred and fifty dollars, to be recovered in a civil action.
- b. The knowing violation of any provision of this subchapter or of any rule or regulation promulgated thereunder, shall be punishable upon conviction thereof, by the payment of a civil penalty in the sum of five hundred dollars, or as a violation for which a fine in the sum of five hundred dollars shall be imposed, or both.
- c. Upon a finding by the commissioner of repeated, multiple or persistent violation of any provision of this subchapter or of any rule or regulation promulgated thereunder, the city may, except as hereinafter provided, bring an action to compel the defendant or defendants in such action to pay in court all monies, property or other things, or proceeds thereof, received as a result of such violations; to direct that the amount of money or the property or other things recovered be paid into an account established pursuant to section two thousand six hundred one

of the civil practice law and rules from which shall be paid over to any and all persons who purchased the goods or services during the period of violation such sum as was paid by them in a transaction involving the prohibited acts or practices, plus any costs incurred by such claimants in making and pursuing their complaints; provided that if such claims exceed the sum recovered into the account, the awards to consumers shall be prorated according to the value of each claim proved; to direct the defendant or defendants, upon conviction, to pay to the city the costs, and disbursements of the action and pay to the city for the use of the commissioner the costs of his or her investigation leading to the judgment; or if not recovered from defendants, such costs are to be deducted by the city from the grand recovery before distribution to the consumers; and to direct that any money, property, or other things in the account and unclaimed by any persons with such claims within one year from creation of the account, be paid to the city, to be used by the commissioner for further consumer law enforcement activities. Consumers making claims against an account established pursuant to this subdivision shall prove their claims to the commissioner in a manner and subject to procedures established by the commissioner for that purpose. The procedures established in each case for proving claims shall not be employed until approved by the court, which shall also establish by order the minimum means by which the commissioner shall notify potential claimants of the creation of the account. Restitution pursuant to a judgment in an action under this subdivision shall bar, pro tanto, the recovery of any damages in any other action against the same defendant or defendants on account of the same acts or practices which were the basis for such judgment, up to the time of the judgment, by any person to whom such restitution is made. Restitution under this subdivision shall not apply to transactions entered into more than five years prior to commencement of an action by the commissioner. Before instituting an action under this subdivision, the commissioner shall give the prospective defendant written notice of the possible action, and an opportunity to demonstrate in writing within five days, that no repeated, multiple, or persistent violations have occurred.

- d. Whenever any person has engaged in any acts or practices which constitute violations of any provision of this subchapter or of any rule or regulation promulgated thereunder, the city may make application to the supreme court for an order enjoining such acts or practices and for an order granting a temporary or permanent injunction, restraining order, or other order enjoining such acts or practices.
- e. To establish a cause of action under this section it need not be shown that consumers are being or were actually injured.

§ 20-704. Settlements.

- a. In lieu of instituting or continuing an action pursuant to this subchapter, the commissioner may accept written assurance of discontinuance of any act or practice in violation of this subchapter from the person or persons who have engaged in such acts or practices. Such assurance may include a stipulation for voluntary payment by the violator of the costs of investigation by the commissioner and may also include a stipulation for the restitution by the violator to consumers, of money, property or other things received from them in connection with a violation of this subchapter, including money necessarily expended in the course of making and pursuing a complaint to the commissioner. All settlements shall be made a matter of public record. If such stipulation applies to consumers who have been affected by the violator's practices but have not yet complained to the commissioner, the assurance must be approved by the court, which shall direct the minimum means by which potential claimants shall be notified of the stipulation. A consumer need not accept restitution pursuant to such a stipulation; his or her acceptance shall bar recovery of any other damages in any action by him or her against the defendant or defendants on account of the same acts or practices.

- b. Violation of an assurance entered into pursuant to this section shall be treated as a violation of this subchapter and shall be subject to all the penalties provided therefor.

§ 20-705. Persons Excluded From This Subchapter.

Nothing in this subchapter shall apply to any television or radio broadcasting station or to any publisher or printer of a newspaper, magazine, or other form of printed advertising, who broadcasts, publishes, or prints such advertisement, except insofar as said station or publisher or printer is guilty of deception on the sale or offering for sale of its own services. This subchapter shall not apply to advertising agencies, provided they are acting on information provided by their clients.

§ 20-706. Permitted Practices.

The provisions of this subchapter shall be construed so as to supplement the rules, regulations, and decisions of the federal trade commission and the courts interpreting 15 U.S.C. Sec 45 (a) (1), but the provisions of this subchapter shall in no instance be interpreted in a manner inconsistent with the rules, regulations and decisions of the federal trade commission and the courts interpreting 15 U.S.C. § 45 (a) (1).

ADVERTISING

ADVERTISING

New York City Administrative Code: Title 20

- § 20-723. Representations in Advertising.
- § 20-723.1. Advertising Disclosure Requirements for Lenders Promoting Payday Loan Services.
- § 20-723.2. Disclosure Requirements for Businesses Promoting Credit Counseling Services.
- § 20-724. Requirements of Records.
- § 20-725. Rules and Regulations.
- § 20-726. Violations.

Rules of the City Of New York: Title 6

- § 5-01. Definitions.
- § 5-06. The Word “Free” and Similar Representations.
- § 5-07. Number Size in Advertised Prices.
- § 5-08. Sales Promotions.
- § 5-09. Limitations on Offers.
- § 5-10. Deceptive Classified Ads.
- § 5-11. Limited Editions.
- § 5-12. Prices in Multi-Product and Multi-Service Advertisements.
- § 5-65. Out-of-Context Quotes.

New York General Business Law

- § 369-ee. Prize Award Schemes.

RAIN CHECKS

New York City Administrative Code: Title 20

- § 20-727. Rain Check Issuance Disclosure.
- § 20-728. Penalties.
- § 20-729. Regulations.

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**NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
SUBCHAPTER 5: REPRESENTATIONS IN ADVERTISING**

§ 20-723. Representations in Advertising.

No person, firm, corporation or association, or agent or employee thereof, doing business in New York city, who with intent to sell or in any way dispose of merchandise to the public through the media of a newspaper, magazine, circular, pamphlet, catalogue, store display, letter or handbill shall advertise, state, set forth, print, publish or cause directly or indirectly or permit directly or indirectly, so to be done in any of the aforesaid media, any of the following or anything approximating any of the following:

- (a) That the merchandise offered as aforesaid is being offered at “wholesale price” or at “manufacturers' cost” or “less than cost” or any similar language, unless such representations are true in fact; nor shall any such person, firm or corporation or association, or agent or employee thereof, doing business in New York city, offer for sale any product at a price purported to be reduced from what is a fictitious “list” or “selling” or “retailer's suggested” price, or at a purported reduction in any such price when such purported reduction is in fact fictitious.
- (b) That the merchandise offered as aforesaid is being offered on the basis of comparative prices or percentage savings, or similar or analogous claims by the use of such terms as “comparable value” or “comparable retail value,” without denoting, defining or describing the standard of comparison.
- (c) That the merchandise offered as aforesaid is being offered as “made to sell for”, or being “worth” or “valued at,” a certain price greater or more than the price sought, or by the use of similar or analogous statements unless such claim or representation is true in fact.

§ 20-723.1. Advertising Disclosure Requirements for Lenders Promoting Payday Loan Services.

a. Definitions. For purposes of this section:

- i. “Payday loan”, also known as, among other terms, “deferred deposit advances,” “cash on demand” or “cash advance,” shall mean any transaction in which funds are provided to a consumer for a limited time period in exchange for (i) a consumer's personal check or share draft, in the amount of the funds provided to the consumer plus a fee, where presentment or negotiation of such check or share draft is deferred by agreement of the parties until a designated future date; or (ii) a consumer's authorization to debit the consumer's transaction account, in the amount of the funds provided to the consumer plus a fee, where such account will be debited on or after a designated future date.

- ii. “Unit of advertising space” shall mean any real property, space, facility or instrumentality, or any portion thereof, owned or operated by the city of New York, or which is located or operates on real property owned or operated by the city of New York, and which is the subject of the same contract, lease, rental agreement, franchise, revocable consent, concession or other similar written agreement with the city of New York which allows the placement or display of advertisements, but not including any real property, space or facility leased from the city of New York for a term of thirty years or more during the entire term of the lease or any real property, space or facility leased from or to the industrial development agency.
- b. Any lender, bank or other financial institution that provides payday loan or grant services and which promotes its payday loan or grant services, however described or designated, via a unit or units of advertising space, and which, because of the application of other state or federal law, is exempt from the fee limitations of New York state, and charge interest, fees and other charges greater than those authorized in New York state, shall comply with the following disclosure requirements with respect to a unit or units of advertising space:

Advertisements shall disclose, in clear and prominent letter type, in a print color that contrasts with the background against which it appears, of at least a 20-point type size:

 - i. the maximum annual percentage rates (APR) of the institution's payday loans, computed in accordance with regulations adopted pursuant to the federal Truth-in-Lending Act; and
 - ii. any membership fees, finance charges, annual fees, transaction fees, rollover costs, lender's fees or any other possible charges that may be incurred by a consumer in relation to the institution's payday loans, including any interest, fees and other charges due at the time of any loan renewal;
 - iii. the state in which the lender/financial institution is chartered;
 - iv. the fact that the consumer will be required to supply personal information to receive the institution's payday loan, including information regarding his or her personal financial history;
 - v. the fact that a fee schedule for all charges related to the institution's payday loans will be available upon request;
 - vi. a contact number, such as the New York state banking department's Consumer Hotline, where a consumer/applicant can direct complaints against the lender/financial institution;
 - vii. the name of the lender/financial institution offering the payday loan.
- c. Any person who is a party to an otherwise valid agreement with the city of New York in effect on the date of enactment of the local law that added this section shall not be subject to the requirements of this section for the term of such agreement. However, where such agreement provides for a right or rights of renewal for one or more periods upon the same terms and conditions or terms and conditions set forth in such agreement, the holder who is a party to such agreement or any agreements entered into pursuant to such right or rights of renewal shall be subject to the requirements of this section at the commencement of the first renewal period.
- d.(1) Notwithstanding any other provision of law, the department shall be authorized upon due notice and
hearing, to impose civil penalties for the violation of any provision of this section. The department shall have the power to render decisions and orders and to impose civil penalties not to exceed the amounts specified in [section 20-726 of this subchapter](#) for each such violation. All proceedings authorized pursuant to this paragraph shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided

for in this paragraph shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.

(2) All such proceedings shall be commenced by the service of a notice of violation returnable to the

administrative tribunal of the department. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof when filled in and served shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.

§ 20-723.2. Disclosure Requirements for Businesses Promoting Credit Counseling Services.

a. Definitions. For purposes of this section:

(1) "Credit counselor" shall mean any person, partnership, firm, corporation or business entity advertising, promoting, or offering the type or category of credit counseling services required to be received as a pre-condition for filing a petition for bankruptcy under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, including, but not limited to, consideration of alternatives to resolve a client's credit problems and an analysis of the client's budget, current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt.

(2) "Approved credit counselor" shall mean a credit counselor listed in the directory of authorized nonprofit budget and credit counseling service providers promulgated pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

b. (1) Any person, partnership, firm, corporation or business entity promoting or offering the services

of a credit counselor, notwithstanding whether such person, partnership, firm, corporation or business entity accepts a fee for such services, shall provide written notice to any potential or actual consumer when such person, partnership, corporation, firm or business is not an approved credit counselor.

(2) Such notice, to be signed by any potential or actual consumer, shall include, but not be limited to,

the following provisions:

i. that the federal Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 created an approval process for nonprofit budget and credit counseling agencies that provide an evaluation of your current financial situation, a discussion on alternatives to bankruptcy and a personal budget plan;

ii. that to be approved by the United States Trustee and added to the directory of approved credit counselors, a credit counselor must satisfactorily demonstrate compliance with the requirements of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

iii. that such credit counselor is not approved to offer bankruptcy counseling services pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005;

iv. that a consumer of a credit counselor may contact the United States department of justice or the clerk of the United States bankruptcy court for the southern and eastern districts of New York for a list of credit counselors approved pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, if such consumer is considering filing a bankruptcy petition;

- v. that a consumer of a credit counselor is not required to obtain a loan or enter into a contract for debt repayment with any specific credit counselor; and
 - vi. such other provisions as the department may deem appropriate.
- c. Any person, partnership, firm, corporation or business entity that holds itself out to the public in printed, televised, or radio media as providing the services of a credit counselor but is not an approved credit counselor shall disclose in such media that it is not an approved credit counselor pursuant to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- d. (1) Notwithstanding any other provision of law, the department shall be authorized upon due notice and hearing, to impose civil penalties for the violation of any provision of this section. The department shall have the power to render decisions and orders and to impose civil penalties of not less than two thousand five hundred dollars nor more than five thousand dollars for each violation. All proceedings authorized pursuant to this paragraph shall be conducted in accordance with rules promulgated by the commissioner. The remedies and penalties provided for in this paragraph shall be in addition to any other remedies or penalties provided for the enforcement of such provisions under any other law including, but not limited to, civil or criminal actions or proceedings.
- (2) All such proceedings shall be commenced by the service of a notice of violation returnable to the administrative tribunal of the department. The commissioner shall prescribe the form and wording of notices of violation. The notice of violation or copy thereof shall constitute notice of the violation charged, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained therein.
- (3) The commissioner shall conspicuously disclose on its web site all persons, partnerships, firms, corporations or business entities that have been found to have violated any provisions of this section, or rules and regulations promulgated hereunder, within the preceding twelve months. Such disclosure shall, at minimum, list the name of each person, partnership, firm, corporation or business entity found to have violated any provisions of this section, or rules and regulations promulgated hereunder, as well as the nature of each violation.

§ 20-724. Requirements of Records.

Any such person, firm, corporation or association or agent, or employee thereof, doing business in New York city, making any one or more of the aforesaid statements, claims, offers, or representations of the types described in [subdivisions \(a\), \(b\) and \(c\) of section 20-723](#) shall maintain full and adequate records disclosing the facts upon which any such statements, offers, claims or representations are based.

- (a) All such records shall be open and available for inspection to the commissioner or to his or her duly designated representatives for a period of ninety days from the date of the offer.
- (b) The failure of any such person, firm, corporation or association, or agent or employee thereof doing business in New York city to produce such records in substantiation of its claims shall be presumptive of the falsity of the advertisement.

§ 20-725. Rules and Regulations.

The commissioner may make and promulgate such rules and regulations as may be necessary to carry out the purposes of this subchapter.

§ 20-726. Violations.

Any person, firm, corporation or association or agent or employee thereof, who shall violate any of the provisions of this subchapter upon conviction thereof, shall be punished by a fine of not more than five hundred dollars (\$500) or by imprisonment not exceeding thirty (30) days, or by both.

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RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
SUBCHAPTER A: CONSUMER PROTECTION LAW
PART 2: ADVERTISING AND PROMOTION

§ 5-01. Definitions.

Consumer. “Consumer” means an individual who buys or leases consumer goods or services, and that individual's co-obligor or surety.

Consumer goods and services. “Consumer goods and services” means goods or services (including credit) that are primarily for personal, household, or family purposes.

Item. “Item” means goods and services.

Legal name. “Legal name” means:

- (1) the true corporate name of a corporation; or
- (2) the name of at least one partner of a partnership; or
- (3) the name of at least one owner of a business that is not a corporation or a partnership.

Seller. “Seller” means any individual or business that offers to sell or lease consumer goods or services. “Seller” includes manufacturers, wholesalers, and others who are responsible for any act or practice regulated by this code.

§ 5-06. The Word “Free” and Similar Representations.

- (a) *Scope.* This section governs the use of the words “free,” “gift,” “given without charge,” “bonus,” “1¢ additional,” and any other terms which imply that an item, as defined in § 5-01, is free or offered at a nominal cost in the sale or offering for sale of any consumer goods or services. It governs signs inside stores, storefront advertising, handbills and all other types of written advertisement, but not advertising on packages placed thereon by a person or entity other than the retailer. In this section, the word “free” refers to any word or phrase of similar meaning. A “free offer” is an offer involving the use of any such word or phrase.
- (b) *Disclosure of conditions on free offers.* A seller who imposes a condition on a free offer must describe the condition clearly and conspicuously. The description of every condition on a free offer must be placed near the word “free.” An asterisk or other symbol near the word “free,” which refers the customer to a footnote containing conditions, does not satisfy this section. This condition must be in print at least half as large as the print used for the word “free.”
- (c) *Free offers conditioned upon another purchase.*
 - (1) The “regular price” is the price at which an item has been actively and openly sold by the seller for a substantial period of time in the recent past.
 - (2) A seller who makes a free offer contingent upon another purchase may not:

- (i) charge more than the regular price for the item; or
 - (ii) reduce the item's quantity or quality; or
 - (iii) continuously make such offer or repeat it so frequently that the two items are being sold in combination at one price; or
 - (iv) make such offer in connection with the sale of an item that is usually sold at a price negotiated with consumers.
- (d) *Combination offers.* This section permits non-deceptive “combination” offers, in which two or more items (for example, toothpaste and a toothbrush) are offered for sale as a single unit at a single stated price.

§ 5-07. Number Size in Advertised Prices.

- (a) Sellers who advertise a price over one dollar must state the number of cents in figures at least one-half as tall and broad as the figures used to state the number of dollars.
- (b) This section does not apply when the advertised price is stated in whole dollar amounts. For example, if the price is \$6.00, the zeros may be less than half the size of the six.

§ 5-08. Sales Promotions.

Sellers must comply with the provisions of [§ 369-ee of the New York State General Business Law](#) (“Prize award schemes”).

§ 5-09. Limitations on Offers.

- (a) Sellers offering consumer goods or services in print advertising and promotional literature must disclose clearly and conspicuously all material exclusions, reservations, limitations, modifications or conditions. A disclosure made in print at least one-third as large as the largest print used in the advertisement or promotional literature satisfies this section.

Examples: If the following facts are true, they must be disclosed:

- (1) In an advertisement for an item sold from more than one location:
 - (i) locations which do not have certain items mentioned and
 - (ii) locations which charge rates higher than those mentioned in the advertisement.Where such locations are not known and cannot be reasonably ascertained, a seller must include the following statement in the advertisement: “Not available at all locations.” The seller shall also include a statement in the advertisement that indicates how a consumer may obtain information about the availability of an item at a specific location such as: “Check with your local store for availability.”
 - (2) That advertised prices are available only during certain days or times.
 - (3) That advertised prices are available only if complete sets are purchased.
 - (4) That minimum or maximum amounts must be purchased for advertised prices to apply.
 - (5) That there are trade-in requirements.
 - (6) That there are additional charges for delivery or for mail orders.
- (b) Offers in radio or television advertising must include oral statements of any material exclusions, limitations, modifications or conditions.
 - (c) This section does not apply when another law or regulation specifically provides a different rule for the disclosure of exclusions, reservations, limitations, modifications or conditions.

§ 5-10. Deceptive Classified Ads.

- (a) Dealers, brokers, or business entities advertising in the classified section of a newspaper, magazine or other printed media must disclose that they are businesses.

- (b) An advertiser can disclose that it is a business by use of the word “dealer,” “broker,” or other similar terms.
- (c) *Examples:* A dealer's classified ad which reads: “Dodge '68 \$795, Call OF7-1452”. would not satisfy the requirements of this Regulation because it does not disclose that the advertiser is a business. A classified ad which reads: “3 room apt., \$160, call Acme Rental, Inc.” sufficiently discloses that the advertiser is a business.

§ 5-11. Limited Editions.

- (a) Items offered for sale to consumers may not be described as limited unless their edition, printing, minting, crafting, or production is restricted to either:
 - (1) A predetermined maximum quantity; or
 - (2) The actual quantity ordered or subscribed to within a specified, reasonably short time.
- (b) All terms that indicate that production of a product is limited are covered by this section.
- (c) Any claim that a product is limited must state the maximum quantity or the specific time period or date by which the product must be ordered. This statement must be made clearly and conspicuously and close to the claim or limitation.

§ 5-12. Prices in Multi-Product and Multi-Service Advertisements.

- (a) In any advertisement for two or more similar items or services, when a range of prices is stated, or the existence of a range is implied, the highest price must be stated in figures at least as tall and broad as the figures in the lowest price stated. The existence of a range is implied where words such as, but not limited to, “from,” “as low as,” “beginning at,” “starting at,” or “_____ and up” are used in an advertisement. This subdivision (a) applies even where an advertisement discloses the price of all items and services.
- (b) Any prices stated must relate to specific items or services.
- (c) If the price of items or services is unascertainable, any price or prices stated must include the average price for which the goods or services were sold by the advertiser during the previous year or selling season. Such a price must be described as the “average price.”

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RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
SUBCHAPTER A: CONSUMER PROTECTION LAW
PART 5: SPECIFIC BUSINESS AND INDUSTRY REGULATIONS
SECTION 5-65: OUT-OF-CONTEXT QUOTES

§ 5-01. Definitions.

Consumer. “Consumer” means an individual who buys or leases consumer goods or services, and that individual's co-obligor or surety.

Consumer goods and services. “Consumer goods and services” means goods or services (including credit) that are primarily for personal, household, or family purposes.

Item. “Item” means goods and services.

Legal name. “Legal name” means:

- (1) the true corporate name of a corporation; or
- (2) the name of at least one partner of a partnership; or
- (3) the name of at least one owner of a business that is not a corporation or a partnership.

Seller. “Seller” means any individual or business that offers to sell or lease consumer goods or services. “Seller” includes manufacturers, wholesalers, and others who are responsible for any act or practice regulated by this code.

§ 5-65. Out-of-Context Quotes.

- (a) This section applies to all consumer goods and services which are reviewed or commented upon, such as movies, books, and theater performances.
- (b) A seller who uses language from the review or comments of a critic in an advertisement, including those on theater marquees and billboards, may not rearrange or abstract the quoted language in a way that alters the critic's meaning. The seller must disclose that the word or phrase refers only to a limited aspect of the work, if such is the case.

Examples: “Beautiful scenery” or “John Jones performs outstandingly” comply with this section as these statements indicate clearly that they refer to limited aspects of the reviews. The word “beautiful” taken from a review which says “the scenery is beautiful” would not comply with this section.

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**MCKINNEY'S CONSOLIDATED LAWS OF NEW YORK ANNOTATED
GENERAL BUSINESS LAW
CHAPTER 20: OF THE CONSOLIDATED LAWS
ARTICLE 24-A: FAIR TRADE LAW**

§ 369-ee. Prize Award Schemes.

1. Written disclosure.
 - (a) Unless written disclosure is made as provided in paragraph (c) of this subdivision, it shall be unlawful for any person, firm, or corporation to offer a consumer a prize as part of any prize award scheme.
 - (b) For purposes of this section, “prize award scheme” shall mean a promotion, solicitation, or advertisement either oral, written, or otherwise for the purchase or lease of a product, real estate, an investment, services, a membership, or any other item: (i) in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill or performance of the consumer may also be a factor therein; (ii) where the consumer is told that he has won or may win a prize or award, or is told that he or she is or may be the winner of a contest, or where similar language is used which would lead a consumer to believe that he or she has won or may win a prize or award; and (iii) which requires the consumer to do something (including, but not limited to, traveling to a location to accept the prize, listening to a sales presentation, submitting one's credit card account number, allowing a sales person into one's home or responding orally or in writing) .
 - (c) Such written disclosure must be furnished to the consumer at the time he is notified of the prize and must be written or printed in a size equal to at least that type used for the standard text on the front of the first page of the offer. The written disclosure must clearly and conspicuously disclose all of the following: (i) a full description of the exact prize won by the consumer including a list price which does not appreciably exceed the highest price at which substantial sales are made in the offering area; (ii) all material terms and conditions attached to the prize; (iii) a statement, where applicable, that the consumer must submit to a sales presentation; (iv) a full description of the product, real estate, investment, services, membership or any other item to be offered for sale, including the price of the least expensive and the most expensive item or parcel; (v) a notice that if the consumer decides to purchase any item offered for sale he has three business days in which to cancel such sale; and (vi) the odds of winning each prize must be conspicuously disclosed in the same type face, size and boldness and adjacent to the most prominent listing of the prizes on the front of the first page of the offer, with the

odds stated in Arabic numbers and identify the total number of prizes to be given away and the total number of offerings to be distributed.

- (d) It shall be unlawful to (i) represent that a person is a “winner” or has been “selected”, or words of similar import when all or a substantial number of those solicited receive the same “prize” or “opportunity” or (ii) deliver, or cause to be delivered, a prize notice or offering, which simulates or falsely represents that it is a document authorized, issued or approved by any court, official, or agency of the United States or any state, lawyer, law firm, or insurance or brokerage company, or which creates a false impression as to its source, authorization, or approval; or (iii) deliver, or cause to be delivered, a prize notice or offering which is in the form of, or a prize notice or offering which includes, a document which simulates a bond, check or other negotiable instrument, whether or not that document contains a statement or some other indication which suggests that it is non-negotiable.
2. Right of cancellation. In addition to any other right to revoke an offer, the consumer may cancel a sale made as a result of a prize award solicitation until midnight of the third business day after the day on which he signed a sales agreement. Cancellation occurs when written notice of cancellation is given to the seller. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage pre-paid.
 3. Form of notice.
 - (a) In a sale consummated as a result of or made in association with a prize award scheme, the seller shall furnish to the buyer
 - (i) a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g. Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in not less than ten-point bold face type, a statement in substantially the following form:

“YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.”; and

- (ii) at the time the buyer signs the contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned “NOTICE OF CANCELLATION”, which shall be attached to the contract or receipt and easily detachable, and which shall contain in not less than ten-point bold face type the following information and statements in the same language, e.g. Spanish, as that used in the contract:

NOTICE OF CANCELLATION

(enter date of transaction)

(Date)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.

IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.

IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN TWENTY DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.

TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO

(Name of Seller), _____ AT _____ (Address of Seller)

(Place of Business) _____ NOT LATER THAN MIDNIGHT OF

(Date)

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)

and the seller shall complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

- (a-1) In a sale or lease to be consummated as a result of or made in association with a prize award scheme, the seller shall not employ a courier to pick up and deliver or a courier pick-up and delivery service to retrieve a buyer's deposit or payment unless the seller is otherwise authorized to do business in this state in accordance with the requirements of the business corporation law or the not-for-profit corporation law. If the seller fails to comply with this section, the buyer or any other person obligated for any part of the purchase price may cancel the contract or lease at any time by notifying the seller in any manner and by any means of his or her intention to cancel.
 - (b) In a sale consummated as a result of or made in association with a prize award scheme, the seller shall inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel. Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price may cancel the contract by notifying the seller in any manner and by any means of his intention to cancel. The period prescribed by this subdivision shall begin to run from the time the seller complies with this section.
 - (c) A prize award scheme contract or receipt shall not include any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically his right to cancel the sale in accordance with the provisions of this article.
 - (d) This section shall not apply to the use of promotional materials, gifts, or prizes distributed without charge or expense to any person, firm, or corporation.
 - (e) This section shall not apply to the use of promotional materials, gifts, or prizes by a retail store primarily engaged in the retail sale of goods or services for which this type of promotion is incidental and which requires the customer only to travel to the merchant's regular place of business to receive the gift, prize, or award.
 - (f) This section shall not apply to the solicitation or representations offering a consumer a prize in connection with: (i) The sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the federal trade commission pursuant to Code of Federal Regulations, title 16, part 425.1 concerning use of negative option plans by sellers in commerce; (ii) the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and after receipt of the goods is given a reasonable opportunity to examine the goods and to receive a full refund of charges for the goods, upon return of the goods undamaged; or (iii) sales by a catalog seller. For purposes of this section, "catalog seller" shall mean any entity (and its subsidiaries) or person at least fifty percent of whose annual revenues are derived from the sale of products sold in connection with the distribution of catalogs of at least twenty-four pages, which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand.
4. Violations. Upon any violation of this section, an application may be made by the attorney general in the name of the people of the state to a court or justice having jurisdiction to issue

an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may be issued by the court or justice, enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine a violation of this section has occurred, it may impose a civil penalty of not more than one thousand dollars for each violation. In connection with an application made under this subdivision, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

5. Effect of other laws. The obligations imposed by this section shall be in addition to and not in derogation of the requirements of any other law.
6. Applicability. The provisions of subdivisions two and three of this section shall not apply to membership campground operators as defined in section six hundred fifty-one of this chapter.

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NEW YORK CITY ADMINISTRATIVE CODE
TITLE 20: CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
SUBCHAPTER 6: AVAILABILITY FOR SALE OF ADVERTISED MERCHANDISE

§ 20-727. Rain Check Issuance Disclosure.

A retailer, who has adopted as policy the issuance of rain checks to consumers for the sale of advertised merchandise not available throughout the advertised period, shall clearly and conspicuously post such fact, along with a designation of where a rain check can be obtained, within the retail establishment.

§ 20-728. Penalties.

Violation of this subchapter or any rule or regulation promulgated there under, shall be punishable by payment of a civil penalty in the sum of not less than twenty-five nor more than one hundred dollars for each violation.

§ 20-729. Regulations.

The commissioner may adopt such rules and regulations as may be necessary to effectuate the purposes of this subchapter.

SALES AND DISCOUNTS

“SALES” AND “DISCOUNTS”

Rules of the City of New York: Title 6

- § 5-01. Definitions.
- § 5-86. Definitions.
- § 5-87. Prohibited Conduct.
- § 5-88. Identification of Merchandise and Services (Out-of-Store Representations).
- § 5-89. “Wholesale Price,” “Manufacturer’s Price,” “Factory Price,” and Similar Terms.
- § 5-90. “Less Than Cost,” “At a Loss,” and Similar Terms.
- § 5-91. Reductions Based on Advertiser’s Own Price; “Formerly,” “Regularly,” “Reduced,” “Percent Off,” “Save,” and Similar Terms.
- § 5-92. Comparisons Based on Price of Identical Merchandise or Services Sold Elsewhere: “Value,” “Nationally Advertised at,” “Usually,” “List,” and Similar Terms.
- § 5-93. Claims Based on Price of Comparable Merchandise or Services: “Comparable Value” and Similar Terms.
- § 5-94. Range Discounts: “% to % Off,” “Up to % Off Selected” and Similar Terms.
- § 5-95. “Advance Sale” or “Introductory Offer.”
- § 5-96. Combination Offers.
- § 5-97. “Discount,” “Outlet,” “Bargain” and “Warehouse” Operations.
- § 5-98. Discount Departments.
- § 5-99. Meaningful Reductions.
- § 5-100. Sufficient Quantities.
- § 5-101. Inherently Misleading Terms.
- § 5-102. Adequacy of Disclosure.
- § 5-103. Records Required.
- § 5-105. Exemptions.

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**RULES OF THE CITY OF NEW YORK
TITLE 6: DEPARTMENT OF CONSUMER AFFAIRS
CHAPTER 5: UNFAIR TRADE PRACTICES
SUBCHAPTER A: CONSUMER PROTECTION LAW
PART 7: “SALES” AND “DISCOUNTS”**

§ 5-01. Definitions.

Consumer. “Consumer” means an individual who buys or leases consumer goods or services, and that individual's co-obligor or surety.

Consumer goods and services. “Consumer goods and services” means goods or services (including credit) that are primarily for personal, household, or family purposes.

Item. “Item” means goods and services.

Legal name. “Legal name” means:

- (1) the true corporate name of a corporation; or
- (2) the name of at least one partner of a partnership; or
- (3) the name of at least one owner of a business that is not a corporation or a partnership.

Seller. “Seller” means any individual or business that offers to sell or lease consumer goods or services. “Seller” includes manufacturers, wholesalers, and others who are responsible for any act or practice regulated by this code.

§ 5-86. Definitions.

Advertiser. Where the “advertiser” is a chain store, the requirements of this part shall apply to each branch as if it were a separate store.

Advertiser's bona fide selling price. “Advertiser's bona fide selling price” shall mean the immediately preceding price at which the same item or service was actually offered for sale to the public by the advertiser for a reasonably substantial period of time in the recent regular course of the advertiser's business, unless an earlier time period is clearly specified, and not a price charged for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based.

- (1) “Recent regular course of business” shall mean the current selling season on seasonal goods; or, on services or non-seasonal goods, the period of the current model or twelve months, whichever is shorter.
- (2) It is prima facie evidence that a selling price for a service or an item is bona fide if:
 - (i) the item was offered for a reasonably substantial period of time and a substantial quantity of sales were made at that price, or

- (ii) if a substantial number of sales was not made at such price, that the item was openly offered for sale to the public for a reasonably substantial period of time and that such offering price was reasonable based upon the manner in which such items were displayed or offered for sale, and such other factors as the mark-up reflected in such price and the price of comparable items.

Genuine. “Genuine,” when used in this part with such phrases as “open stock price,” “list price,” “suggested retail price,” and “catalog price” shall mean that the price is one at which substantial quantities of the identical merchandise have actually been sold to the public within the recent regular course of business, by the advertiser or principal retail outlets within the New York City trading area, or, if identical merchandise is not available in the New York City trading area, in principal retail outlets in other similar trading areas provided that the fact is disclosed. During the first two weeks after a new model or item has been introduced, a “list price,” “suggested retail price” or “catalog price” may be considered “genuine” only if:

- (1) the list price, suggested retail price or catalog price for the last previous model was genuine, or,
- (2) where no previous model existed, the list price, suggested retail price or catalog price for other similar goods, produced by the same manufacturer and sold in the preceding selling season or twelve month period, was genuine.

Where no previous model or similar goods existed or where the manufacturer has not previously made use of list price or suggested retail price, the list price, suggested retail price or catalog price may be used for up to thirty days after introduction of the new model or item after which time, the advertiser must be able to demonstrate that the price is genuine.

In-store. “In-store” representation shall mean any written statement, visual description, advertisement, or other written representation of any kind, or any oral statement by a demonstrator, which is made inside the interior premises of the merchant.

Models and types. “Models” and “types” refer to models and types exclusive of differentiations attributable only to sizes or colors except where sizes or colors are material, e.g. mattresses, paint.

Out-of-store. “Out-of-store” representations shall mean any oral or written statement, visual description, advertisement or other representation of any kind made outside the interior premises of the advertiser, including representations made in newspapers, magazines, handbills, billboards, direct mailings, on radio and television and in store windows, storefronts, and other similar places where the representations can be perceived by the public not yet inside the premises of the merchant.

Retail market price. “Retail market price” shall mean:

- (1) the price at which substantial sales of the same article or service are presently being made in principal retail outlets in the New York City trading area, or
- (2) where no substantial sales have been made, the bona fide, usual and customary selling price of the item or service as offered in principal retail outlets in the New York City trading area.

§ 5-87. Prohibited Conduct.

It is a deceptive practice in the sale or offering for sale of consumer goods or services for a person (including any business entity) having a store, place of business for sales or mailing address for sales in the City of New York, or otherwise selling in the City of New York to advertise or represent in connection with sales made in the City of New York or offerings for

sales to be made in the City of New York that such goods or services are being or will be offered or sold to New York City consumers at a reduction, discount, or savings in a manner in violation of this part.

§ 5-88. Identification of Merchandise and Services (Out-of-Store Representations).

An out-of-store representation or advertisement containing words or numbers indicating a savings, reduction, discount or sale price, must include limiting language, which permits the consumer to identify the merchandise or services being offered at savings, reductions, discounts, or sale price. Identification simply by former price is not sufficient unless the items so identified constitute a percentage of the advertised brands, styles, types, models, classes, or categories of merchandise or services sufficiently large to meet reasonable consumer expectations created by the advertisement.

- (a) Such limiting language should be sufficiently precise to permit consumers to distinguish the applicable merchandise or services. This can be accomplished only by setting forth the brand, price, style, type, model, class or category, as appropriate in the context of the out-of-store representation or advertisement. Vague language such as “percentage off some merchandise” does not comply with this requirement. An advertisement shall be construed to apply to every piece of merchandise (or every service) within that category, type, make, model, (etc.).

Examples:

- (1) “Brand X aluminum tennis rackets.” Acceptable.
 - (2) “Steel belted radial tires.” Acceptable if all steel belted radial tires are now on sale.
 - (3) “Famous manufacturer’s single lens reflex cameras.” Acceptable if all of the particular manufacturer’s single lens reflex cameras are on sale.
 - (4) “Men’s cashmere sweaters, formerly \$40, now \$30.” This is acceptable if all men’s cashmere sweaters that were formerly \$40 are now on sale, and these sweaters constitute a percentage of the store’s total supply of cashmere sweaters sufficiently large to meet reasonable consumer expectations created by the advertisement.
- (b) (1) If the merchandise or services referred to in the out-of-store representation or advertisement as being offered at a savings, reduction, discount or sale price cannot be specified with precision because the sale involves:
- (i) less than all of the brands, styles, types, models, classes or categories of merchandise or services identified;
 - (ii) a storewide sale in a broad cross-section of departments; or
 - (iii) one or more established departments, but less than all of the merchandise or services in such departments, the terms “selected,” “many,” “representative,” “assorted,” or terms of similar import, may be used as limiting language to comply with identification requirement of this section, provided that a meaningful percentage of such merchandise or services is so offered. “Meaningful percentage” shall mean an amount of merchandise that will meet reasonable consumer expectations created by the advertisement. For § 5-88(b)(1)(i), it shall be prima facie evidence of a violation of the meaningful percentage requirement if at least 15 percent of such brands, styles, types,

models, classes or categories identified are not on sale, provided however, that the advertiser shall be permitted to show that under the particular circumstances involved the amount on sale was not deceptive.

- (2) In the absence of words of limitation, an advertisement shall be construed to apply to every piece of merchandise or every service within that category, type, make, model, etc.

Examples:

- (i) "Numerous pottery cases" complies if at least 15 percent of the pottery vases are on sale, unless the advertiser can demonstrate that under the particular circumstances involved the amount on sale, in light of the advertisement itself, is not deceptive.
 - (ii) "Assistant Managers' birthday sale – storewide savings on selected merchandise" complies if the amount of merchandise on sale meets reasonable consumer expectations created by the advertisement.
 - (iii) "Representative low-cut tennis sneakers" complies provided 15 percent of the types of brands, makes or etc., are on sale, unless the advertiser can demonstrate that under the particular circumstances involved the amount on sale in light of the advertisement itself was not deceptive.
 - (iv) "Special grouping of Misses' slacks, regularly \$20 now \$15." Complies if at least 15 percent of all Misses' slacks regularly \$20 are now \$15 unless the advertiser can demonstrate that under the particular circumstances involved the amount on sale, in light of the advertisement itself, was not deceptive.
 - (v) "Reduction on many items in the Sporting Goods and Luggage Department" complies if the amount of merchandise on sale in each department meets reasonable consumer expectations created by the advertisement.
- (c) An out-of-store representation or advertisement concerning a storewide sale or a sale in a broad cross-section of departments, which displays, pictures, or mentions specific items which are on sale must also disclose whether the items displayed, pictured, or mentioned are the only ones on sale. If they are not the only ones on sale, the advertisement must disclose the extent to which items not displayed, pictured or mentioned are on sale.

Example: "Semi-annual White Sale--These and many other savings" complies if the complete supply of all pictured items is on sale and a meaningful percentage of the other sale items is offered at a savings.

§ 5-89. "Wholesale Price," "Manufacturer's Price," "Factory Price," and Similar Terms.

If an advertiser states or implies that goods are offered at or below "list," "wholesale," "wholesale price," "original wholesale," or other similar terms, these terms must pertain to the price currently and generally paid for such goods by retailers in the New York City trading area. If the advertiser states or implies that goods are offered at or below "manufacturer's wholesale," "manufacturer's price," "factory price," or other similar terms indicating purchase directly from a manufacturer, these terms must pertain to the price currently and generally paid for such goods by retailers in the New York City trading area who purchase the category of merchandise

directly from the manufacturer. It is presumptive evidence of compliance with this section if the advertiser can show that the goods are offered below the price paid by the advertiser.

§ 5-90. “Less Than Cost,” “At a Loss,” and Similar Terms.

If the advertiser uses the words:

“less than cost”
“at a loss”
“below retailer’s cost”

or other similar terms implying that the purchaser is paying a lower price than the advertiser, the price to the consumer must actually be less than the price paid by the advertiser.

§ 5-91. Reductions Based on Advertiser's Own Price; “Formerly,” “Regularly,” “Reduced,” “Percent Off,” “Save,” and Similar Terms.

(a) *Immediately preceding price.* If an advertiser uses the words:

“percent off”
“formerly..., now...”
“reduced”
“reduced to”
“regularly..., now...”
“now only”
“save \$...”
“was ..., now...”
“item now \$...”

or any similar terms implying a reduction from a prior price charged by the advertiser, the price to which the reduced offering price is being compared must be the advertiser’s bona fide selling price for that item or service unless the advertiser clearly discloses another basis of comparison or qualification.

(b) *Intermediate reductions.* If the term “originally,” or any similar term, is used in any advertisement, the price stated as the “original” price must be the advertiser's bona fide selling price for the same article or service prior to intermediate reductions, and the price immediately prior to the current reduction must be disclosed, unless intermediate reductions are clearly indicated by the language used.

Example: “Originally \$75; then \$68; now \$65”; “Earlier this year \$75; now \$65”;
“Further reduced to \$50.”

(c) *Comparison not recent.* If a claim is based on a past bona fide selling price of the advertiser prior to the recent, regular course of business, the advertiser must clearly disclose that fact.

Example: “Last year \$40, now \$20.”

§ 5-92. Comparisons Based on Price of Identical Merchandise or Services Sold Elsewhere: “Value,” “Nationally Advertised at,” “Usually,” “List,” and Similar Terms.

(a) “Value,” “nationally advertised at,” “sold nationally at,” “made to sell for,” “woven to sell for,” “usually.”

If the terms:

“value”
“nationally advertised at”
“sold nationally at”
“made to sell for”
“woven to sell for”
“elsewhere”

or other similar terms implying a generally accepted value or price are used with regard to any item or service, then the price to which the reduced offering price is being compared must be the retail market price of the item or service. Furthermore, the terms “value,” “nationally advertised at,” or “sold nationally at” or any similar terms implying a generally accepted value or price in a national market may be used only

- (1) in relation to articles or services whose prices have been nationally advertised to the consuming public and
 - (2) (i) in relation to prices which are retail market prices, or,
(ii) if the advertised item or service is not available elsewhere in the New York City trading area, the prices for which the article or service is currently selling in principal retail outlets in a substantial number of other representative communities in the United States.
- (j) If the term “usually” is used with regard to any item or service, then the price to which the reduced offering price is being compared must be either
- (1) the advertiser's own bona fide price for the item or service, or
 - (2) the retail market price.
- (k) “list,” “catalog,” “suggested,” “manufacturer's suggested,” prices.

Any “list” price, “catalog” price, “suggested” price, “manufacturer's suggested” price, “retailer's suggested” price or a preticketed price displayed by the advertiser must be genuine, unless, in the case of a price printed by a supplier of the advertiser, the advertiser has made every reasonable effort to remove or obliterate totally the printed price, or if removal or obliteration is impracticable taking into account the cost thereof, has conspicuously disclaimed that it is genuine.

The display of any list price or printed price accompanied by a lower price constitutes a representation that such price is genuine and that the merchandise is being offered at a discount from such genuine price unless in the case of a price printed by a supplier of the advertiser, the advertiser has made every reasonable effort to remove or obliterate totally the printed price, or if removal or obliteration is impracticable taking into account the cost thereof, has conspicuously disclaimed that it is genuine.

§ 5-93. Claims Based on Price of Comparable Merchandise or Services:” Comparable Value” and Similar Terms.

If the term:

“comparable value”
“compare with”
“equal to”

or other similar term implying comparison with non-identical merchandise is used

- (a) the advertisement must not imply that the comparison is with the former or usual price of the advertised merchandise or service itself; and

- (b) the compared merchandise or service must be of essentially similar quality in those material respects which affect consumer preferences and marketability; and\
- (c) the price to which the advertiser's price is compared must be the retail market price or the genuine list, suggested or catalog price of the comparable article or service; and
- (d) the comparable article or service must be generally available in New York City at the price stated; and
- (e) the advertisement must clearly and conspicuously disclose that "comparable value" pertains to similar but not identical merchandise or services.

If an aggregate "open stock" price is used as a comparative price for an advertised set, the advertisement must disclose this fact and indicate that the advertised saving is based upon the difference between the price for the set and the total open stock price for items comprising the set.

§ 5-94. Range Discounts: "% to % Off," "Up to % Off Selected" and Similar Terms.

- (a) If an advertiser uses terms such as:

"Savings of _____ % to _____ %"
 "____% to ____% off"

or other similar terms to indicate a price range, then:

- (1) the minimum percentage reduction must be stated as conspicuously as the maximum percentage reduction; and
- (2) the price from which the discount or reduction is taken must be either a genuine list, suggested or catalog price, the retail market price or the advertiser's bona fide selling price, for the same articles or services, unless another basis is clearly stated; and
- (3) "out-of-store" advertisements must disclose which of the above standards was or were used (if a single advertisement relates to merchandise or services offered at reductions according to different standards, it must disclose which standards apply to which types of merchandise or services);

Example:

"_____ % to _____ % off the manufacturer's price"
 "_____ % to _____ % last year's price"

- (4) at least 15 percent of all types, models, or categories of items or services on sale in the advertised category must in fact be reduced by the maximum percentage reduction and a representative number of other models or types or services must be offered at various points in the range significantly separated and representatively scattered.

Example:

"PORTABLE RADIOS AND TELEVISIONS
 10%-50% off our former prices"

Complies if at least 15 percent of all models of portable radios and televisions available are selling at 50 percent off, and a representative number of the remaining models are offered at various points between 10 and 50 percent representatively scattered throughout that range.

(b) If the terms:

“discounts from %”

“up to % off”

“as high as”

“save up to %”

or other similar terms are used to advertise a range of reductions with no specified minimum reduction,

- (1) the prices used for comparison must be the advertiser's bona fide selling price, the retail market price, or a genuine list, suggested price for the same articles or services, unless another basis or a qualification is clearly stated;
- (2) “out-of-store” advertisements must disclose which of the above standards was or were used;
- (3) at least 15 percent of all the types, models, or services on sale in the advertised categories must be offered for sale at the stated maximum percentage reduction; and
- (4) a representative number of the remaining models or types or services must be offered at various points representatively scattered throughout the range from the stated maximum percentage reduction to the bottom of the range, or the majority of such other models or types or services must be offered at points in the higher portion of the range.

Example:

“BRAND Y CASSETTE TAPE RECORDERS”

“Up to 30% off”

Complies if at least 15 percent of all models of Brand Y Cassette tape recorders available are selling at 30 percent off and the remaining models are offered at various points representatively scattered throughout the range below 30 percent or the majority of the remaining models are offered at points in the higher portion of the range. If the range is 0-30 percent, the majority of the remaining models would have to be offered above 15 percent; if the range is 10-30 percent, the majority would have to be offered above 20 percent.

(c) If terms such as “formerly \$ to \$; now \$” are used, the maximum price in the range of advertised former prices must represent the advertiser's bona fide selling price for at least 15 percent of all the types, models or services advertised. Bona fide selling prices for the other items or services must have been at levels representatively scattered through the range of advertised former prices.

§ 5-95. “Advance Sale” or “Introductory Offer.”

- (a) If an advertiser uses the words “advance sale” or “introductory offer” or statements such as “if there are any left they will be marked \$,” or any other words or statements implying that the goods or services are offered for sale at a reduced price in relation to a future mark-up, he must also
- (1) have, in fact, in the case of goods, either a reasonable quantity of merchandise in stock, or an order to be marked up; or demonstrate his intention to order such merchandise for future mark-up; and

- (2) mark up the goods or services within a reasonable period of time and maintain the mark-up for a reasonable period of time not less than 30 days, unless he can show that competitive circumstances occurring subsequent to the advertisement required him to maintain or lower the price in order to maintain a competitive position.
- (b) If the words “introductory offer” or words of similar meaning are used, they must pertain only to merchandise or services not previously sold by the advertiser nor sold by him for more than six weeks prior to the advertisement.

§ 5-96. Combination Offers.

- (a) If the advertiser uses “combination offers,” in which he offers his product in combination with one or more additional articles or services at a stated price, and claims that the combined articles or services have a “value” greater than the total advertised selling price of the individual items, the total “value” claimed must not be greater than the total of the retail market prices of the articles and services as sold separately.
- (b) If none of the combination articles is being sold in the New York City trading area and the comparison is based on comparable merchandise, the phrase “comparable value” may be used only if it complies with § 5-93.
- (c) If one or more of the articles offered in combination is in general retail distribution, but one or more is not, comparative prices for the articles may be stated separately, according to the facts.

§ 5-97. “Discount,” “Outlet,” “Bargain” and “Warehouse” Operations.

If a retailer includes in the name of his store, or in any other “out-of-store” manner represents the regular retail operation of his entire store by use of the words “discount,” “outlet,” “bargain,” “warehouse,” or any other term implying that all goods and services are regularly sold at less than genuine list, catalog, suggested or retail market prices, then 75 percent of the retailer's dollar volume in the last selling season exclusive of fair-traded items must have been from items which were in fact sold for at least 5 percent less than genuine list, catalog, suggested or retail market price.

§ 5-98. Discount Departments.

A retailer may not use the words “discount,” “bargain,” “warehouse,” “bargain basement,” or other similar terms in characterizing a particular department or section within his regular retail operation unless

- (a) a substantial percentage of the dollar volume of the last previous selling season within that department or section was derived from items sold for less than genuine list, catalogue, suggested or retail market prices. It shall be presumptive evidence of violation of this section if the advertiser cannot show that at least 35 percent of the dollar volume in the last previous selling season within that department or section was derived from items selling for less than genuine list, catalog, suggested or retail market prices for such items; or
- (b) all items not presently being sold for at least 5 percent less than genuine catalog, list, suggested or retail market price, are clearly and conspicuously designated as non-discount items. This requirement of designation may be satisfied by segregation of identified non-discount items, shelf labels, or other prominent signs, a listing of non-discount items clearly and conspicuously displayed in the relevant department, or a standardized sticker or tag with

a clear and conspicuous explanation that the item to which it is affixed is a non-discount item.

Example: A shoe department in a retail store sells brands X, Y, and Z shoes. Brand X is sold at less than retail market price, and brands Y and Z are sold at retail market price. In the last previous selling season, 35 percent of all shoe sales came from the sale of brand X shoes. The store is in compliance with this article. But if less than 35 percent of all sales came from sales of brand X shoes, brands Y and Z must be conspicuously designated as nondiscount items in order for the department to be called “discount shoe department.”

§ 5-99. Meaningful Reductions.

All discounts, sales, reductions or savings must be meaningful, and not merely nominal or insignificant. All articles and services so advertised must be offered at a reduction or savings of at least 5 percent from the price to which the advertiser's is being compared, unless [in the case of items retailing for over \$100] the advertisement clearly sets forth the actual percentage of reduction or the dollar amount of the reduction.

§ 5-100. Sufficient Quantities.

The retailer either must have in stock or on order, or be prepared to supply within a reasonable time sufficient quantities of each advertised item or service to fulfill reasonably anticipated public demand, or clearly conspicuously disclose in the advertisement any items or services of genuinely limited availability. A retailer is not “prepared to supply” merchandise unless he has communicated with suppliers and ascertained, prior to advertising, that the merchandise is available to him.

§ 5-101. Inherently Misleading Terms.

The following inherently misleading terms are prohibited in retail advertising:

“our list price”
below “manufacturer's wholesale cost”
“manufacturer's cost”

§ 5-102. Adequacy of Disclosure.

All disclosures and words of limitation or qualification required by this part shall be written or printed in letters at least one third as high and one third as broad as the largest words or numbers appearing in the advertisement which relate to or describe the reduction, discount or savings, but in no event in less than ten point type. In radio announcements, the disclosure or words of limitation or qualification shall be clearly spoken, and in television announcements they shall be part of the radio track and not merely part of the picture.

§ 5-103. Records Required.

- (a) Each person who advertises or represents the existence of a discount, reduction or savings shall for three months maintain records demonstrating compliance with this part at his principal place of business within the City of New York or at a location where such records are normally maintained by such person.

Example: An advertiser who advertises “20 percent off Brand X cameras” must maintain records demonstrating that the reduction is from the bona fide selling price. If the cameras were last sold at such lower price eleven months ago, the advertiser must retain the records indicating the earlier price. These records must be kept for a period of three months after the sale is over.

- (b) Where the Commissioner of Consumer Affairs or her delegate requests a person to produce by mail information or records to demonstrate compliance with this part, and the information, or original, carbon, photographic or electrostatic copies of the records are available in the company's files, the person shall mail a copy of such information to the person requesting it within seven business days after receipt of the request unless such time period is extended by the Chief of the Law Enforcement Division. Where the information is available to the person but not in his possession, or where the record must be reconstructed (e.g., where they have been stored in the memory bank of a computer), the person shall mail a copy of such information to the person requesting it within a reasonable period of time, not to exceed sixty business days, after receipt of the request unless such time period is extended by the Chief of the Law Enforcement Division. In lieu of mailing requested information or records to the Commissioner, a person may grant access to the files for purpose of examination and to copy documentary evidence by advising the Commissioner in writing within 5 business days after receipt of the request that such access will be granted provided the information or records are kept in New York City.
- (c) No action shall be maintained by the Commissioner under Administrative Code, § 20-703(c)* merely for failure to maintain or produce records required by this section. However, all of the other penalties provided by § 20-703* shall apply.

§ 5-105. Exemptions.

- (a) Except as provided in § 5-92, this part does not apply to advertisements printed or packaging material prepared by a manufacturer outside of the City of New York unless such advertisements were requested or ordered by the advertiser located within the City of New York.
- (b) This part does not apply to advertising placed prior to its effective date, nor, until four months after its effective date, to non-periodical advertising displays in existence and used by the advertiser prior to the effective date.

* See the Consumer Protection Law – General Provisions Guide.