

Ag 124

Filed June 18, 1973
11:45 am

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Wilkinson, Secretary of Agriculture, and custodian of the official records of the State of Wisconsin Department of Agriculture, do hereby certify that the annexed order adopting rules relating to price comparison advertising, Wis. Adm. Code Chapter Ag 124, was duly adopted by this department on June 18, 1973.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand at Madison, Wisconsin, this 18th day of June, 1973.


Secretary of Agriculture

Ag 124

Filed September 20, 1972
9:35 am


STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I, F. J. Griffith, Deputy Secretary of Agriculture, and custodian of the official records of the State of Wisconsin Department of Agriculture, do hereby certify that the annexed rules relating to price comparison advertising trade practices, Wisconsin Administrative Code chapter Ag 124, were duly adopted by this department on September 19, 1972.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand at Madison, Wisconsin, this 19th day of September, 1972.


Deputy Secretary of Agriculture

Docket No. 960.

ORDER OF THE DEPARTMENT OF AGRICULTURE
ADOPTING RULES

Pursuant to authority vested in the Department of Agriculture by section 100.20, Wis. Stats., the Department of Agriculture hereby adopts rules as follows:

Chapter Ag 124 of the Wisconsin administrative code is adopted to read:

Chapter Ag 124

PRICE COMPARISON ADVERTISING

Ag 124.01 Declaration of policy. Price comparison advertising is a form of advertising commonly used in the sale of consumer property or services whereby current selling prices are compared with former or future prices or other stated values to demonstrate price reductions or cost savings. While price comparisons accurately reflecting true market values based on actual sales in the trade area provide consumers with useful information in making value comparisons and market buying decisions, price comparisons based on inflated prices or values, not established in the market place through actual sales, can only serve to deceive or mislead. Further abuse occurs where no actual reductions or increases in selling prices are made as represented in the advertisement. The use of false, deceptive or misleading price comparisons as an inducement to the sale of consumer property or services is injurious to both the consuming public and competitors, and is an unfair trade practice and unfair method of competition under section 100.20, Wis. Stats.

Ag 124.02 Definitions. (1) "Price comparison" means the direct comparison, in any advertisement, of the current selling price of consumer property or services with a former or future price or the price of a competitor, or the making of other price reduction or savings claims with respect to such consumer property or services expressed in dollars, cents, fractions or percentages.

(2) "Advertisement" is any oral, written, or graphic statement or representation made in connection with the solicitation of business in any manner by a person selling consumer property or services and includes, without limitation because of enumeration, statements and representations contained on any label, tag or sign attached to, printed on, or accompanying consumer property, or printed in a catalog or any other sales literature or brochure. The term includes oral representations of an employee, but no employer shall be held responsible for oral representations made by an employee contrary to specific instructions or directions of the employer and without the employer's knowledge, approval or consent.

(3) "Consumer property or services" means any personal property or services sold primarily for personal, family, or household use and not for resale or for use or consumption in a trade or business.

(4) "Identical consumer property or services" means consumer property or services originating from the same source and which are identical in all material respects, including name, brand, make, style, model, grade, quality, service, and performance characteristics.

(5) The terms "sell" or "sale" include a lease.

(6) "Person" includes corporations, partnerships, associations and any other form of business organization or entity, but does not

include banks, savings and loan associations, insurance companies and public utilities to the extent exempt from department regulations under section 93.01(13), Wis. Stats.

(7) "Former price" means the price at which the largest number of sales of identical consumer property or services were made to the general public in the same trade area in the regular course of business during the 90-day period immediately preceding the date on which a price comparison is first stated in any advertisement, provided such consumer property or services were continuously offered and actively promoted for sale to the general public for at least 30 days during such 90-day period. The term does not include an offered price at which no sales were actually made.

Ag 124.03 Price comparisons; general prohibition. No person shall in any advertisement, relating to consumer property or services he sells, state any price other than his own current selling price, except that a person may state a price comparison as provided in Ag 124.04 for a period not to exceed 90 days from the date on which the price comparison is first stated in any advertisement.

Ag 124.04 Authorized price comparisons. A person may state in his advertisement:

(1) The former price at which identical consumer property or services were sold by him, or a reduction from such former price expressed in dollars, cents, fractions or percentages.

(2) The last price at which identical consumer property or services were sold by him in the same trade area in the regular course of business where no former price was established as a basis for the making of a price comparison, provided the date or seasonal period on or in which a sale was made at such price is disclosed in the advertisement in connection with the price comparison.

(3) The price at which a major competitor doing business at a sales site in the same trade area sold or offered to sell identical consumer property or services to the general public at such sales site in the regular course of business at any time during the 90-day period immediately preceding the date on which a reduction from such price is first stated in any advertisement, provided the date of the competitor's sale or offer and the fact that it was a competitor's sale or offer is disclosed in the advertisement in connection with the price comparison.

(4)(a) A future increase in the price of identical consumer property or services, subject to paragraph 4(b):

1. Which have been regularly and continuously sold or offered for sale by him in the same trade area during a 90-day period in the 12 months preceding the first date on which the price comparison is stated in any advertisement. A future price increase may also be stated in conjunction with model or style changes or other material changes or improvements in consumer property or services which have been sold or offered for sale by him as provided in this paragraph.

2. In connection with the entry into a new and distinct business activity or the opening of a business at a new location if the future price increase is stated within 90 days from the date of such entry into a new business or the opening of a new business.

3. In connection with the introduction or test marketing of new consumer property or services by the manufacturer or supplier.

(b) The effective date of a future price increase shall be stated in each advertisement. It shall take effect as announced in the advertisement and the consumer property or services shall be continuously offered and actively promoted for sale at the increased price for a period of at least 90 days from the effective date of

the price increase, except where compliance becomes impossible because of circumstances beyond his control.

(5) Any statement of price required by a law of the United States.

Ag 124.05 Record-keeping requirements. (1) No person shall make price comparisons in any advertisement unless he has in his possession documentation or other written records of sales or competitors' offers of sale used as the basis for the making of such price comparisons and other evidence necessary to demonstrate compliance with this chapter. Such documentation or evidence shall be retained for a period of two years from the date of the first advertisement of the price comparison and be submitted to the department, the department of justice, or any district attorney within 14 days after receipt of written demand, and shall include the dates on which such sales or offers for sale were made, the actual selling or offering price, and, if applicable, the name and business address of any major competitor whose offer or selling price is used as the basis for the price comparison.

(2) The failure to possess or submit documentation or other written evidence as required in subsection (1) is also prima facie evidence of a violation of section 124.03.

This chapter shall take effect on January 1, 1973, except for advertisement in catalogs in general distribution or in the process of preparation and distribution on that date. This chapter shall apply to all catalog advertisement on and after January 1, 1974.

Dated: September 19, 1972.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE

By V. J. Guffey
Deputy Secretary of Agriculture

ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE
ADOPTING RULES

Pursuant to authority vested in the State of Wisconsin Department of Agriculture by sections 100.20 and 93.15, Wis. Stats., the State of Wisconsin Department of Agriculture hereby adopts rules as follows:

Chapter Ag 124 of the Wis. Adm. Code is adopted to read:

Chapter Ag 124

PRICE COMPARISON ADVERTISING

Ag 124.01 Declaration of policy. Price comparison advertising is a form of advertising commonly used in the sale or offering for sale of consumer property or services whereby current prices are compared with former or future prices or other stated values to demonstrate price reductions or cost savings. While price comparisons accurately reflecting market values in the trade area provide consumers with useful information in making value comparisons and market buying decisions, price comparisons based on arbitrary or inflated prices or values can only serve to deceive or mislead. Further abuse occurs when sellers fail to disclose material information essential to consumer understanding of the comparisons made. The use of arbitrary or inflated price comparisons in violation of this rule as an inducement to the sale of consumer property or services is injurious to both the consuming public and competitors, and is an unfair trade practice and unfair method of competition under section 100.20, Wis. Stats.

Ag 124.02 Definitions. (1) "Advertisement" is any oral, written or graphic statement or representation made in connection

with the solicitation of business in any manner by a seller and includes, without limitation because of enumeration, statements and representations contained on any label, tag or sign attached to, printed on, or accompanying consumer property, or printed in a catalog or any other sales literature or brochure.

(2) "Consumer property or services" means any personal property or services sold primarily for personal, family, or household use and not for resale or for use or consumption in a trade or business.

(3) "Date" as applied to "date on which a price comparison is stated in the advertisement" in newspapers, catalogs, or other printed publications means either the date of publication or distribution or the date on which the completed advertising copy is submitted to the printer for final printing and publication, provided such submission date does not exceed 30 days from date of actual publication or distribution.

(4) "Seller" means a person engaged in the sale of consumer property or services and includes corporations, partnerships, associations and any other form of business organization or entity. The term does not include banks, savings and loan associations, insurance companies and public utilities to the extent exempt from department regulation under section 93.01(13), Wis. Stats.

(5) "Price comparison" means the direct comparison, in any advertisement, of a seller's current price for consumer property or services with any other price or statement of value for such property or services expressed in dollars, cents, fractions or percentages.

(6) The terms "sell" or "sale" include a lease.

Ag 124.03 Price comparison; general. No price comparison may be made by a seller:

(1) Based on a price other than one at which consumer property or services were sold or offered for sale by him or a competitor, or will be sold or offered for sale by him in the future, in the regular course of business in the trade area in which the price comparison is made.

(2) In which the consumer property or services differ in composition, grade or quality, style or design, model, name or brand, kind or variety, or service and performance characteristics, unless the general nature of the material differences is conspicuously disclosed in the advertisement with the price comparison.

Ag 124.04 Seller's actual sale prices. (1) No price comparison may be made by a seller based on a price at which consumer property or services were sold by him other than a price at which such property or services were actually sold by him in the last 90 days immediately preceding the date on which the price comparison is stated in the advertisement.

(2) Notwithstanding sub. (1), a price comparison may be made by a seller based on a price at which consumer property or services were actually sold by him at any time prior to the 90-day period specified in sub. (1), provided the advertisement discloses with the price comparison the date, time or seasonal period of such sale or of a related advertisement.

(3) Notwithstanding sub. (1) and (2), no price comparison under this section may be made by a seller based on a price which exceeds his cost plus normal markup regularly used by him in the sale of such property or services, or consumer property or services of like kind.

Ag 124.05 Seller's offered prices. (1) No price comparison may be made by a seller based on a price at which he has offered for sale but has not sold consumer property or services unless:

(a) The price is a price at which such property or services were actually offered for sale by him in the last 90 days immediately preceding the date on which the price comparison is stated in the advertisement; and

(b) The consumer property or services were offered for sale for at least 4 weeks during such 90-day period.

(2) Notwithstanding sub. (1), a price comparison may be made by a seller based on a price at which consumer property or services were offered for sale by him during any other 90-day period prior to the 90-day period specified in sub. (1)(a), provided:

(a) The consumer property or services were offered for sale for at least 4 weeks during such 90-day period; and

(b) The advertisement discloses with the price comparison the date, time or seasonal period of such offer.

(3) Notwithstanding sub. (1) and (2), no price comparison under this section may be made by a seller based on a price which exceeds his cost plus normal markup regularly used by him in the sale of such property or services, or consumer property or services of like kind.

Ag 124.06 Seller's future prices. No price comparison may be made by a seller based on a future price increase unless:

(1) The effective date of the future price increase, if more than 90 days after the price comparison is stated in the

advertisement, is disclosed with the price comparison;

(2) The future price increase takes effect on the date disclosed in the advertisement, or if not disclosed in the advertisement, within 90 days after the price comparison is stated in the advertisement; and

(3) The consumer property or services are continuously offered for sale by him at a price not less than the future price increase stated in the advertisement for a period of at least 4 weeks after its effective date, except where compliance becomes impossible because of circumstances beyond his control.

Ag 124.07 Competitor's prices. No price comparison may be made by a seller based on a competitor's price unless:

(1) The competitor's price is a price at which the competitor sold or advertised consumer property or services for sale at any time within the 90-day period immediately preceding the date on which the price comparison is stated in the advertisement;

(2) The competitor's price is a price that is representative of prices at which the consumer property or services are sold or advertised for sale in the trade area in which the price comparison is made and is not an isolated price; and

(3) Disclosure is made with the price comparison that the price used as a basis for the comparison was not the seller's own price.

Ag 124.08 Retail price labeling. (1) A price label permanently imprinted on or affixed to consumer property or its container, by the manufacturer or supplier, and not under control

of the retail seller or instigated by him, or which is required to be attached to such property under federal law, need not be covered or obliterated for purposes of compliance with these rules when the retail seller's current offering price is attached to, printed on or placed on a label, tag or sign accompanying such property, provided no other price comparison based thereon is made by the retail seller. This exemption shall not apply to a price label which can be removed by the retail seller without damage to consumer property or its container, except where removal is prohibited by federal law.

(2) Disclosure of the date, time or seasonal period as required under sections Ag 124.04(2) or 124.05(2) (b), need not be made on a label, tag or sign used at the premises of the retail seller in connection with the offer or sale of consumer property of a seasonal nature if the comparison is based on a price used during the immediately preceding selling season.

Ag 124.09 Reporting. Persons making price comparisons shall, within 14 days after receipt of written demand from the department, submit a report in writing setting forth information on which the price comparison was based. The department may require that such reports be submitted under oath or affirmation. Additional time for cause shown may be granted upon request.

This chapter shall take effect on January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

Dated: June 18, 1973.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE

By Donald E. Wilburson
Secretary of Agriculture

Filed Feb 14 - 1973
11:45 am

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Wilkinson, Secretary of Agriculture, and custodian of the official records of the State of Wisconsin Department of Agriculture, do hereby certify that the annexed order repealing rules relating to price comparison advertising, Wis. Adm. Code chapter Ag 124, was duly adopted by this department on February 13, 1973.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand at Madison, Wisconsin, this 13th day of February, 1973.


Secretary of Agriculture

Docket No. 960

ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE
REPEALING RULES

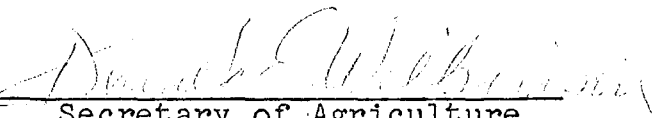
Pursuant to authority vested in the State of Wisconsin Department of Agriculture by section 100.20 and Chapter 227, Wis. Stats., the State of Wisconsin Department of Agriculture hereby repeals rules as follows:

Chapter Ag 124 of the Wis. Adm. Code is repealed.

The repeal of rules contained herein shall take effect as provided in section 227.026(1), Wis. Stats.

Dated: February 13, 1973.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE

By 
Secretary of Agriculture

Filed 12/19/72
Too late for Reg.
Emergency eff. ~~12-27-72~~
12-29-72

STATE OF WISCONSIN)
) SS
DEPARTMENT OF AGRICULTURE)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Donald E. Wilkinson, Secretary of Agriculture, and custodian of the official records of the State of Wisconsin Department of Agriculture, do hereby certify that the annexed order repealing rules relating to price comparison advertising, Wis. Adm. Code chapter Ag 124, was duly adopted by this department on December 18, 1972.

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN WITNESS WHEREOF, I have hereunto set my hand at Madison, Wisconsin, this 18th day of December, 1972.

Donald E. Wilkinson
Secretary of Agriculture

Docket No. 960

ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE
REPEALING RULES

Pursuant to authority vested in the State of Wisconsin Department of Agriculture by sections 100.20 and 227.027, Wis. Stats., the State of Wisconsin Department of Agriculture hereby repeals on an emergency basis Wis. Adm. Code Chapter Ag 124, rules on price comparison advertising.

FINDINGS OF EMERGENCY

The State of Wisconsin Department of Agriculture finds that an emergency exists and that the foregoing repeal of rules is necessary for the immediate preservation of the public peace, health, safety and welfare. A statement of the facts constituting the emergency is:

Price comparison advertising rules, Chapter Ag 124 of the Wis. Adm. Code, as adopted by the department, effective January 1, 1973, would prohibit many forms of price comparison advertising widely used in the advertising and merchandising of goods and services unless prices used as a basis for the comparison are premised on actual sales. Because of the immediate and wide-ranging impact of the rules on the advertising and merchandising of goods and services generally and other concerns as to the workability of the rules and their effect on merchants appearing at a hearing before the Legislative Joint Committee for the Review of Administrative Rules, on September

26, 1972, the Committee requested that the department undertake a thorough re-study and re-evaluation of the rules to eliminate any possible conflicts, uncertainties and undue burdens which may exist under the rules. In view of the existing concerns over the application and effect of the rules, their complexity, and the time required for a thorough re-study, it would be contrary to the best interests both of the affected industry and the consuming public for the rules to take effect until such time as a thorough review and rehearing can be completed.

Dated: December 18, 1972.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE

By Donald E. Wilkerson
Secretary of Agriculture

Docket No. 960

ORDER OF THE STATE OF WISCONSIN DEPARTMENT OF AGRICULTURE
REPEALING RULES

Pursuant to authority vested in the State of Wisconsin Department of Agriculture by sections 100.20 and 227.027, Wis. Stats., the State of Wisconsin Department of Agriculture hereby repeals on an emergency basis Wis. Adm. Code Chapter Ag 124, rules on price comparison advertising.

FINDINGS OF EMERGENCY

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Price comparison advertising rules, Chapter Ag 124 of the Wis. Adm. Code, as adopted by the department, effective January 1, 1973, would prohibit many forms of price comparison advertising widely used in the advertising and merchandising of goods and services unless prices used as a basis for the comparison are premised on actual sales. Because of the immediate and wide-ranging impact of the rules on the advertising and merchandising of goods and services generally and other concerns as to the workability of the rules and their effect on merchants appearing at a hearing before the Legislative Joint Committee for the Review of Administrative Rules, on September

26, 1972, the Committee requested that the department undertake a thorough re-study and re-evaluation of the rules to eliminate any possible conflicts, uncertainties and undue burdens which may exist under the rules. In view of the existing concerns over the application and effect of the rules, their complexity, and the time required for a thorough re-study, it would be contrary to the best interests both of the affected industry and the consuming public for the rules to take effect until such time as a thorough review and rehearing can be completed.

Dated: December 18, 1972.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE

By Donald E. Wilberison
Secretary of Agriculture