

Chapter Ag 124

PRICE COMPARISON ADVERTISING

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History:

September 19, 1972. Ch. Ag 124, Price Comparison Advertising, was adopted. Publication in the WIS. ADM. REGISTER was withheld by department action.

December 29, 1972. Ch. Ag 124 was repealed by emergency procedure.

February 13, 1973. Ch. Ag 124 was permanently repealed by the department, effective March 1, 1973 upon publication in the notice section.

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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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 sub-

mission 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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisement in catalogs it shall take effect July 1, 1974.

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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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 subsection (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 subsection (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 subsections (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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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

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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 subsection (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 subsection (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 subsections (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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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.

History: Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974.

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