

## Chapter ATCP 124

### PRICE COMPARISON ADVERTISING

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**Note:** Chapter Ag 124 was renumbered chapter ATCP 124 under s. 13.93 (2m) (b) 1., Stats., Register, April, 1993, No. 448.

**Note:** This chapter is adopted under authority of s. 100.20 (2), Stats., and is administered by the Wisconsin department of agriculture, trade and consumer protection. Violations of this chapter may be prosecuted under s. 100.20 (6), 100.26 (3) or (6), Stats. A person who suffers a monetary loss because of a violation of this chapter may sue the violator directly under s. 100.20 (5), Stats., and may recover twice the amount of the loss, together with costs and reasonable attorneys' fees.

**ATCP 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 s. 100.20, 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.

**ATCP 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 s. 93.01 (1m), Stats.

(5) "Price comparison" means the direct comparison, expressed wholly or in part in dollars, cents, fractions or percentages, 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, whether or not such prices are actually stated in the advertisement. The term includes, but is not limited

to, such comparisons as "50% off," "save  $\frac{1}{3}$ ," "Half price sale," "Was \$20, now half price," "\$10 value, now \$8," or "Was \$7, now \$6."

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

**History:** Cr. Register, July, 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974; am. (5), Register, January, 1978, No. 265, eff. 2-1-78; **CR 08-075: am. (4) Register April 2009 No. 640, eff. 5-1-09.**

**ATCP 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 the seller or a competitor, or will be sold or offered for sale by the seller 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; am. Register, January, 1978, No. 265, eff. 2-1-78.

**ATCP 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 the seller unless:

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

(b) The price is a price at which such property or services were actually sold by the seller during any other period, and the advertisement discloses with the price comparison the date, time or seasonal period when such sales were made.

(2) Notwithstanding sub. (1), no price comparison under this section may be made by a seller based on a price which exceeds the seller's cost plus the percentage markup regularly used by the seller in the actual sale of such property or services, or consumer property or services of similar class or kind, in the seller's recent and regular course of business.

**History:** Cr. Register, July, 1973, No. 211, effective January 1, 1974; except that for advertisements in catalogs it shall take effect July 1, 1974; am. Register, January, 1978, No. 265, eff. 2-1-78.

**ATCP 124.05 Seller's offered prices.** (1) No price comparison may be made by a seller based on a price at which the seller 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 the seller for at least 4 weeks during the last 90 days immediately preceding the date on which the price comparison is stated in the advertisement; or

(b) The price is a price at which such property or services were actually offered for sale by the seller for at least 4 weeks during any other 90-day period, and the advertisement clearly discloses the date, time, or seasonal period of such offer.

(2) Notwithstanding sub. (1), no price comparison may be made by a seller based on a price which exceeds the seller's cost plus the percentage markup regularly used by the seller in the actual sale of such property or services, or consumer property or services of similar class or kind, in the seller's recent and regular course of business.

**History:** Cr. Register, July 1973, No. 211, effective January 1, 1974, except that for advertisements in catalogs it shall take effect July 1, 1974; am. Register, January, 1978, No. 265, eff. 2-1-78.

**ATCP 124.06 Seller's future prices.** No price comparison may be made by a seller based on an increased price at which consumer property or services will be offered or sold in the future unless:

(1) The advertisement clearly discloses that the price comparison is based on a future price increase; and

(2) The effective date of the future price increase, if more than 90 days after the price comparison is first stated in an advertisement, is clearly disclosed in the advertisement; and

(3) 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

(4) The consumer property or services are continuously and actively offered for sale by the seller at a price not less than the advertised future price for at least 4 consecutive weeks after the effective date of the price increase, except where compliance becomes impossible of circumstances beyond the seller's 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; am. Register, January, 1978, No. 265, eff. 2-1-78.

**ATCP 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.

**ATCP 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 the retail seller, 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 s. ATCP 124.04 (1) (b) or 124.05 (1) (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, 1971, except that for advertisements in catalogs it shall take effect July 1, 1974; am. (2), Register, January, 1978, No. 265, eff. 2-1-78; correction in (1) made under s. 13.93 (2m) (b) 5., Stats., Register, April, 1993, No. 448.

**ATCP 124.09 Reporting.** Pursuant to s. 93.15 (1), Stats., persons making price comparisons shall, within 14 days after receipt of specific written questions from the department, submit answers in writing concerning the basis on which the price comparison was made, including, where requested, a description of such invoices, receipts or other business records as may be in the seller's possession which would tend to substantiate the basis for 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; am. Register, January, 1978, No. 265, eff. 2-1-78.