

§ 238.0 Bait advertising defined. [FN 1], 16 C.F.R. § 238.0

Code of Federal Regulations
Title 16. Commercial Practices
Chapter I. Federal Trade Commission
Subchapter B. Guides and Trade Practice Rules
Part 238. Guides Against Bait Advertising (Refs & Annos)

16 C.F.R. § 238.0

§ 238.0 Bait advertising defined.¹

Currentness

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

SOURCE: 32 FR 15540, Nov. 8, 1967, unless otherwise noted.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

Notes of Decisions (5)

Current through January 24, 2013; 78 FR 5145

Footnotes

1 For the purpose of this part “advertising” includes any form of public notice however disseminated or utilized.

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§ 238.1 Bait advertisement., 16 C.F.R. § 238.1

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16 C.F.R. § 238.1

§ 238.1 Bait advertisement.

Currentness

No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. [Guide 1]

SOURCE: 32 FR 15540, Nov. 8, 1967, unless otherwise noted.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

Notes of Decisions (5)

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§ 238.2 Initial offer., 16 C.F.R. § 238.2

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16 C.F.R. § 238.2

§ 238.2 Initial offer.

Currentness

(a) No statement or illustration should be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised product to another.

(b) Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception. [Guide 2]

SOURCE: 32 FR 15540, Nov. 8, 1967, unless otherwise noted.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

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§ 238.3 Discouragement of purchase of advertised merchandise., 16 C.F.R. § 238.3

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16 C.F.R. § 238.3

§ 238.3 Discouragement of purchase of advertised merchandise.

Currentness

No act or practice should be engaged in by an advertiser to discourage the purchase of the advertised merchandise as part of a bait scheme to sell other merchandise. Among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:

- (a) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer,
- (b) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it,
- (c) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the merchandise is available only at designated outlets,
- (d) The refusal to take orders for the advertised merchandise to be delivered within a reasonable period of time,
- (e) The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement,
- (f) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product. [Guide 3]

SOURCE: 32 FR 15540, Nov. 8, 1967, unless otherwise noted.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

Notes of Decisions (19)

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§ 238.3 Discouragement of purchase of advertised merchandise., 16 C.F.R. § 238.3

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§ 238.4 Switch after sale., 16 C.F.R. § 238.4

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16 C.F.R. § 238.4

§ 238.4 Switch after sale.

Currentness

No practice should be pursued by an advertiser, in the event of sale of the advertised product, of “unselling” with the intent and purpose of selling other merchandise in its stead. Among acts or practices which will be considered in determining if the initial sale was in good faith, and not a strategem to sell other merchandise, are:

- (a) Accepting a deposit for the advertised product, then switching the purchaser to a higher-priced product,
- (b) Failure to make delivery of the advertised product within a reasonable time or to make a refund,
- (c) Disparagement by acts or words of the advertised product, or the disparagement of the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it,
- (d) The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. [Guide 4]

Note: Sales of advertised merchandise. Sales of the advertised merchandise do not preclude the existence of a bait and switch scheme. It has been determined that, on occasions, this is a mere incidental byproduct of the fundamental plan and is intended to provide an aura of legitimacy to the overall operation.

SOURCE: 32 FR 15540, Nov. 8, 1967, unless otherwise noted.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46, unless otherwise noted.

Notes of Decisions (2)

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