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§ 21-10.2 **Unfair trade practices prohibited; enforcement.**<sup>88</sup>

1. Unfair Trade Practices Prohibited; Licenses Required

- (a) 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, in the extension of consumer credit, or in the collection of consumer debts.
- (b) It shall be unlawful for any person or entity required to be licensed pursuant to the provisions of this title or pursuant to provisions of state law authorized to be enforced by the Department to engage in any trade, business or activity for which a license is required unless such person or entity possesses such license.  
(Amended by Local Law 20-2002, in effect November 15, 2002.)

2. Definitions.

- a. "Person." An individual, merchant, partnership, firm or corporation.
- b. "Deceptive trade practice." Any false, falsely disparaging, or misleading oral or written statement, visual description or other representation of any kind, which has the capacity, tendency or effect of deceiving or misleading consumers and is made in connection with the sale, lease, rental or loan of consumer goods or services; the offering for sale, lease, rental or loan of consumer goods or services; the extension of consumer credit; or the collection of consumer debts, deceptive trade practices include but are not limited to:
1. representations that:
- (a) goods or services have sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, or quantities that they do not have;

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<sup>88</sup> See *Matter of Food Parade v. Office of Consumer Affairs*, 7 N.Y.3d 568 (2006).

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- (b) the merchant has a sponsorship, approval, status, affiliation or connection that he does not have;
  - (c) goods are original or new if they are deteriorated altered, reconditioned, reclaimed, or secondhand:
  - (d) goods or services are of 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:
  3. failure to state a material fact if such use or failure deceives or tends to deceive;
  4. disparaging the goods, services, or business of another by false or misleading representations of materials facts;
  5. offering goods or services without intent to sell them:
  6. offering goods or services without intent to supply reasonably expectable public demand, unless the offer discloses the limitation;
  7. making false or misleading representations of fact concerning: the reason for, existence of, or amounts of price reductions; or the price in comparison to prices of competitors to one's own price at a past or future time;
  8. falsely stating that a consumer transaction involves consumer rights, remedies or obligations:
  9. falsely stating that services, replacements or repairs are needed; and
  10. falsely stating the reasons for offering or supplying goods or services at sale or discount prices.
  11. causing, permitting, allowing or approving the blockage, obstruction or concealment from the view of the purchaser or purchasers, the indicators of any machine, device or register used to Itemize and/or total sales to such purchaser or purchasers, by any person engaged in any commercial business activity in which consumer goods and/or services are sold to the public.
  12. advertising a price for goods or services which price is a

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comparative price to the price of a specified merchant or to the prices of other specified merchants, unless such comparative price is a price at or below the price at which goods or services of identical or substantially the same kind or quality are to have been offered for sale by the specified merchant.

(Subd. (12) added by Local Law No. 2-1996, In effect May 8, 1996.)

13. advertising former price unless goods or services of identical or substantially the same kind or quality have been sold in reasonable quantities for a price equal to or below the former price or openly and actively offered for sale to the public for a reasonable period of time in the regular course of business in good faith and not for the purpose of establishing a fictitious price comparison. "Former price" shall mean the price at which goods or services were previously sold in reasonable quantities or offered for sale to the public for a reasonable period of time.

(Subd. 13 added by Local Law No. 2-1996, in effect May 8, 1996.)

- 14.<sup>89</sup> The sale, advertising or offering for sale of gasoline:

- (a) Using the term "regular", either by itself or in combination with any other term, to describe or identify gasoline with an R+M/2 octane number greater than 87;
- (b) Using the terms "mid grade", "plus" or "mid", either by themselves or in combination with any other term, to describe or identify gasoline with R+M/2 Octane number other than 89;
- (c) Using the terms "super", "premium" or "high test", either by themselves or in combination with any other term, to describe or identify gasoline with an R+M/2 Octane number less than 92;
- (d) Using the terms "no lead", "unleaded" or "lead free" or other similar meaning to describe or identify any grade of gasoline. These terms may be used in combination with other terms such as "unleaded regular", "premium no lead", etc., providing such terms meet the conditions set forth in (a), (b) or (c) above;
- (e) Using more than one term, description or identifying name to describe gasolines with the same R+M/2 Octane number at a single retail gasoline location.

(Subd. 14 added by Local Law No. 5-1998, in effect August 19, 1998.)

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<sup>89</sup> There are two subdivisions 14.

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14.<sup>90</sup> failure of any taxicab company and/or limousine service or terminal therefore to include its license and/or Nassau County registration number and the name or the issuing jurisdiction in any print, television or radio advertisement.  
(Subd. 14 added by Local Law No. 20-2000, in effect June 26, 2000.)

- c. "Unconscionable trade practice." Any act or practice is unconscionable if it takes unfair advantage of the lack of knowledge, ability, experience or capacity of a consumer which results in a gross disparity in the rights of a consumer as against the merchant or results in a gross disparity between the value received by a consumer and the price paid by the consumer;
  - d. "Consumer goods, services, credit and debts." Goods, services, credit and debts which are primarily for personal household or family purposes;
  - e. "Consumer." A purchaser, lessee or recipient or prospective purchaser, lessee or recipient of consumer goods or services or consumer credit. Including a co-obligor or surety;
  - f. "Merchant" A manufacturer, supplier, seller, lessor, creditor or other person, firm or corporation who makes available to consumers, either directly or indirectly, goods, services, or credit;
  - g. "Commissioner." The Commissioner of Consumer Affairs.
2. Regulations. The Commissioner may, after a public hearing, adopt such rules and regulations as may be necessary to effectuate the purposes of this section, including regulations defining specific deceptive or unconscionable trade practices. At least seven days prior notice of such public hearing shall be published in the official newspapers of the County. A copy of the rules and regulations adopted hereunder and any amendments thereto shall be filed in the office of the clerk of the Legislature and posted to the Department of Consumer Affairs webpage on the official website of Nassau County.  
(Amended by Local Law No. 1-2021, in effect January 13, 2021\_

4. Enforcement.

- (a) The violation of any provision of this section or of any rule or regulation promulgated hereunder shall render the violator liable for the payment to the County of a civil penalty, recoverable in a civil

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action, in the sum of not more than \$5,000 for each violation, together with, in each instance, the cost of the investigation incurred by the Commissioner.

- (i) Prior to the issuance of a ticket or summons for an alleged unconscionable trade practice in violation of any provision of this section or any rule promulgated hereunder, the Department of Consumer Affairs shall provide a reasonable opportunity for businesses to present evidence including receipts, books, and records showing that the increased price to be paid by a consumer is attributable to increased or additional costs incurred that are not within the control of the business or that the amount charged preserves the margin of profit that the business received for the same goods or services prior to the abnormal disruption in the market. Notwithstanding the foregoing, there shall be no obligation for businesses to present such evidence.
- (ii) Prior to the issuance of a ticket or summons for an alleged deceptive trade practice in violation of any provision of this section or any rule promulgated hereunder, the Department of Consumer Affairs shall provide a reasonable opportunity for businesses to present exculpatory evidence. Notwithstanding the foregoing, there shall be no obligation for businesses to present such evidence.
- (iii) After the issuance of a summons for alleged violation of any provision of this section or any rule promulgated hereunder and within five (5) business days prior to a hearing or conference on such charges, the Department of Consumer Affairs shall provide a written explanation of the alleged violations to the defendant business including the evidence it will present to prove that a violation has occurred under this section. Failure of the Department to meet this deadline shall result in the adjournment of the matter for a first offense and dismissal of the matter for a second offense.

(Amended by Local Law No. 19-1990, in effect November 26, 1990; amended by Local Law No. 25-2000, in effect July 31, 2000; amended by Local Law No. 20-2002, in effect November 15, 2002. Amended by Local Law No. 20-2014, in effect August 6, 2014. Amended by Local Law No. 1-2021, in effect January 13, 2021)

- (b) Whenever any person has engaged in any acts or practices which constitute repeated, persistent or multiple violations of any provision of this section or of any rule or regulation promulgated hereunder, the County Attorney, upon the request of the Commissioner of Consumer Affairs, may make application to the Supreme Court for a temporary

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or permanent injunction, restraining order, or other equitable relief.

(c) Notwithstanding any other provision in this title, the Commissioner after notice and a hearing shall be authorized to impose fines upon any person or entity in violation of this paragraph (b) of subdivision 1 of this section of one hundred dollars (\$100.00) per violation per day for each and every day of such violation.

(Subd. (c) added by Local Law No. 20-2002, in effect November 15, 2002.)

5. Settlements. In lieu of instituting or continuing an action or proceeding, the Commissioner may accept written assurance of discontinuance of any act or practice in violation of this section. Such assurance may include a stipulation for the payment by the violator of the costs of investigation, a fine, and/or a stipulation for the restitution by the violator to consumers of money, property or other things received from such consumers in connection with a violation of this section. Any civil penalty authorized by subdivision 4 of §10.2 may be waived or compromised by the Commissioner or his designated representative.

(Subd. 5 amended by Local Law No. 7-1994, in effect August 1, 1994.)

6. Exclusions. Nothing in this section 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 an advertisement which violates this section except insofar as such station or publisher or printer engages in a deceptive or unconscionable practice in the sale or offering for sale of its own goods or services.

7. Separability. If any provision of this section or the application of such provision to any person or circumstance shall be held unconstitutional or invalid, the constitutionality or validity of the remainder of this section and the applicability of such provision to other persons or circumstances shall not be affected thereby.

(Title D added by Local Law No. 9, 1961 § 2, in effect June 9, 1961; § 21-10.1 amended by Local Law No. 5, 1968; §21.10.2 added by Local Law No. 2, 1970; paragraph b of subdivision 2 of § 21-10.2 amended by Local Law No. 6, 1971 adding subparagraph 11; subparagraph 11 of paragraph b of subdivision 2 of § 21.10.2 amended by Local Law No. 11, 1973, in effect October 1, 1973; subparagraphs (12) and (13) of § 21-10.2 amended by Local Law No. 2-1996, in effect May 8, 1996.)

<sup>91</sup> Not in local law. Added to facilitate use.