

## **Rules and Regulation Regarding Unfair Trade Practices**

**Notice is hereby given that pursuant to section 21-10.2 (3) of the Nassau County Administrative Code, the Commissioner of Consumer Affairs for the County of Nassau, subsequent to a hearing held on April 19, 1972, at Mineola in the County of Nassau has promulgated the following rules and regulations:**

- 1. It shall be deemed a deceptive trade practice if any facts required to be disclosed in the extension of consumer credit by the Federal Consumer Protection Act or the Personal Property Law of the State of New York are not so disclosed.**
- 2. It shall be deemed an unconscionable trade practice in the collection of a debt concerned with the sale or rental of a consumer good or service if:**
  - a) An alleged creditor, his assignee, agent or employee contacts the alleged debtor's employer prior to obtaining final judgment.**
  - b) Said alleged creditor, his assignee, agent or employee creates the notion of legal service or sanction of a governmental agency when contacting the alleged debtor.**
  - c) Contact with the alleged debtor by an alleged creditor, his assignee, agent or employee is attempted at hours of the day or night considered not to be reasonable. For purposes of this regulation, attempted contact of an alleged debtor shall not be made after 11:00 p.m. nor before 6:00 a.m.**
  - d) When any default judgement has been entered against an alleged judgement debtor, by an alleged judgement creditor, such alleged judgement creditor, his assignee, agent or employee contacts or communicates with the alleged judgement debtor's employer except thru such supplementary proceedings as are provided by New York State Law.**
- 3. It shall be deemed an unconscionable trade practice for any person, firm, partnership or corporation who engages in the rental or lease of powered or mechanical equipment to fail to warn the customer in writing of the potential danger resulting from the careless use of the equipment or lack of knowledge as to how such equipment is operated. Said person, firm, partnership or corporation must also at the time of the rental or lease, instruct the customer as to the operation of the subject equipment.**

**4. "It shall be deemed an unconscionable and deceptive trade practice for any person, firm, partnership or corporation to violate any provisions of the Rules and Regulations of the Agriculture and Markets Law of the State of New York as set forth in 1 NYC RR Part 260 or Part 262." (Effective 5/8/78)**

**5. It shall be deemed a deceptive trade practice to use the word "free" except as herein provided:**

**a) When making "free" or similar offers, all substantial terms, conditions and obligations upon which the right to take advantage of such offer is directly dependent shall appear in close conjunction with offer of "free" merchandise or service. For the purposes of this regulation, placement of the terms of an offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer is not in "close conjunction".**

**b) If a consumer good or service is to be given free upon the purchase of some additional merchandise or service said additional service or merchandise must not be sold at above the regular price nor may the quantity or quality of the product be diminished.**

**c) A "free" offer of a single size of a product or a single kind of a service shall not be advertised by the same person in a trade area for more than six (6) months in any twelve (12) month period. At least thirty (30) days shall elapse before another such offer is promoted in the same trade area. No more than three (3) such offers should be made in the same area in any twelve (12) month period.**

**d) No "free" offer shall be made in connection with the introduction of a new product or service offered for sale at a specified price unless offerer expects, in good faith, to discontinue the offer after a limited time and to commence selling the product or service promoted, separately, at the same price at which it was promoted with a "free" offer.**

**e) Where the common business practice is to negotiate an individual sale said regulations do not apply.**

**f) The use of any term in any advertisement which imparts or tends to impart the interpretation of "free" shall fall within the purview of these regulations.**

**For the purpose of this regulation the following definitions shall apply:**

**1) Free - "free" shall mean that a consumer shall pay nothing for an article so offered and no more than the regular price for any other article which must be purchased by the consumer in order to avail himself of said "free" offer.**

**2) Regular Price - The term regular price shall mean the price in the same quantity, quality and with the same service, at which the seller or advertiser of said product or service has openly and actively sold the product or service in the trade area in which he is making a "free or similar" offer for a prior period of thirty (30) days. For consumer products or services which fluctuate in price, the regular price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period.**

**6. It shall be deemed a deceptive trade practice to advertise price except as follows:**

**a) When price is advertised in dollar amounts and fractions thereof, said numbers indicating the fractional amounts must be clear and conspicuous in the body of such advertisement.**

**b) The price advertised must be clearly and conspicuously related to a specific consumer good or service.**

**c) If at any time there are substantial conditions or obligations upon which the right to take advantage of a sale item is dependent, such conditions or obligations must be made known in the body of the advertisement of such sale. As used in this section, the phrase "conditions or obligations" shall mean such conditions and obligations upon which receipt and retention of an item are directly dependent.**

**For purposes of this section conditions such as length of sale, locations of sale, limitation of supply, credit restrictions and shipping and handling charges shall be deemed to be conditions which must be made known. Such terms as "Sorry no mail or phone," "No C.O.D.'s," and the like, are not to be considered substantial conditions or obligations.**

**7. "It shall be deemed an unconscionable and deceptive trade practice for any person, firm, partnership or corporation to violate any provisions of Sec. 328-a or Sec. 391-a of the General Business Law of the State of New York." (Effective 5/8/78).**

**8. It is a deceptive trade practice in the sale or lease, or offering for sale or lease, of consumer goods and services of any person (including any business entity) engaged in the delivery, pick-up, inspection or repair of consumer goods in the home to fail to keep an appointment to perform such services on the day agreed upon with the consumer unless the consumer received written or verbal notice of delay or cancellation before the end of the preceding business day.**

**Where unexpected circumstances, such as mechanical breakdown, preclude notification by the end of the preceding business day no violation shall occur if actual notice is given to the consumer as soon as practicably possible.**

**Extenuating circumstances which shall excuse the failure to perform without notice shall be limited to cases in which a consumer has requested same-day emergency service, or in which the consumer is responsible for the cancellation or delay, or strikes or natural disasters.**

**As used in this regulation, inspection of consumer goods includes but is not limited to examination of goods for future repair, exchange or refund.**

**The provisions of this regulation shall not be construed to supersede any existing rule, regulation or guideline promulgated by the Office of Consumer Affairs.**

**Nothing in this regulation shall be construed to waive any right that a consumer has under the common law or by statute.**

**9. "It shall not be deemed a violation of Sub-paragraph Eleven of paragraph b of Subdivision two of Section 21-10.2 of the Nassau County Administrative Code as amended October 1,**

1973, in those instances where the vendor gives to the purchaser or purchasers at time of the transaction utilizing such machine, device or register, an itemized sales slip designating in words each item purchased and the cost thereof, plus taxes and the total cost for all items purchased." (Effective 5/8/78).

**10. Deceptive Representations Concerning Furniture Delivery.**

**10.1 Definition:** For purposes of this Regulation the term "furniture" shall include articles which are intended for use as furniture in a house, apartment, or other dwelling place. Such articles include various kinds and types of chairs, tables, cabinets, desks, sofas, carpets, rugs, bedsteads and chests, but shall not include furniture which is in substantial part custom-made, custom finished, or special ordered.

**10.2** It is a deceptive practice in the sale or lease or the offering for sale or lease of consumer goods for any person (including any business entity) which sells or leases furniture (hereinafter referred to as "the seller")

a) to fail to disclose an estimated delivery date, or an estimated range of delivery dates, conspicuously in writing on the contract for the sale of furniture at the time the order is taken; and

b) to fail to deliver the furniture by the latest date promised or stated for delivery, except in conformity with this Regulation.

For the purpose of this Regulation the term "as soon as possible" will not be permitted.

**10.3 a)** The seller must deliver the furniture no later than the last date for delivery disclosed on the contract, unless the customer is notified in writing, or by verbal communication supplemented within one day by a writing, of the day and the anticipated delivery date or range of delivery dates.

b) If the furniture has not been delivered within 30 days of the originally promised date, the seller must, at the option of the customer:

- (i) cancel the contract with full refund;
- (ii) cancel the contract and give the customer a credit;
- (iii) negotiate a new delivery date with the customer;
- (iv) allow the customer to make a new selection of furniture.

c) The customer shall be notified in writing of these options prior to the expiration of this 30 day period.

d) When a customer requests a refund pursuant to the provisions of this Regulation, the refund must be made within two weeks of the request.

e)(i) When a partial delivery has been made, subsection 10.3 applies only to the undelivered portion of a furniture order.

(ii) Where a delay in delivery beyond the originally promised date is caused by a strike, the delivery date can be extended by an amount of time equal to the delay caused by the strike.

**10.4 Exemption.** There is no violation of section 10.3 when the failure to deliver is caused solely by the customer or caused by circumstances which prevent the seller from giving timely notice to the customer.

**10.5** Nothing in this regulation shall be construed to waive any right that a customer has under the common law or by status. (effective 3/1/80)

**11.** "It shall be deemed an unconscionable and deceptive trade practice for any person, firm, partnership or corporation to violate any provisions of Sections 190a and 190b of the Agriculture and Markets Law of the State of New York."

These sections apply to "home food service plans and sale of meat in bulk." (Effective 3/19/94)

**12.** "It shall be deemed an unconscionable and deceptive trade practice for any person, firm, partnership or corporation to violate any provisions of the New York State General Business Law, Article 12-B Section 218a - Disclosure of refund policies." (Effective 4/11/84)

**13.** It shall be deemed a deceptive trade practice in the sale or lease, or offering for sale or lease, of any consumer goods or services to fail to comply with the following:

**13.1 Duration of Sale.** Once a specific discount, sale, reduction or savings claim is made for an article or service, such claim may not be made for more than 30 days within any 90 day period.

**13.2 Sales.** An advertiser may not use the word "sale", "discount", "savings", "price cut", "bargain", "reduced", or other similar terms which imply a saving from a former price, unless the price currently offered is substantially less than the former, actual bona fide price at which the same item or service was actually offered to the public during at least the 14 days immediately preceding the date on which a price comparison claim relating to that price is made.

**13.3 Lowest Priced Guaranteed Claims.** An advertiser may not use the terms "lowest prices", "guaranteed lowest prices", "prices lower than anyone else" or similar terms, when generally referring to all prices or the prices of specific items, unless the retailer has systematically monitored and continues to monitor in the Nassau County metropolitan trading area competitive prices on every such item to which the claim refers and can substantiate such claims.

**13.4 Price Matching or Price Beating Claims.** An advertiser may not use terms such as "we will meet your best price" or "we won't be undersold" or similar terms which imply that the advertiser will beat or match a competitor's price unless:

(a) The advertiser clearly and conspicuously discloses its price matching policy and any limitations; and

(b) Such policy does not require the taking of any action which places an unreasonable burden on consumers.

**13.5 Adequacy of Disclosures. All disclosures shall be made clearly and conspicuously in print that is easily readable. The use of color contrasts which make the text difficult to read (such as grey print on a grey background) would constitute a violation of this regulation. The use of print that is too small to be easily readable would constitute a violation of this regulation. (Effective 1/22/97)**