

Wisconsin's price comparison advertising

Price comparison advertising is an important feature of today's competitive marketplace. At one time or another, virtually every seller of consumer goods or services makes use of price comparisons, in which current selling prices are compared to former or future prices to show price reductions or savings.

Examples:

- The current selling price is compared to a stated value – suggesting a price reduction or savings.
- The usage of a percentage off or savings without a stated price – implies comparison to the current price.

While accurate price comparisons can help consumers make informed buying decisions, price comparisons based on arbitrary or inflated prices or values can be deceiving or misleading. Abuse can also occur when sellers fail to disclose information necessary to the consumer understanding of the comparisons.

Wisconsin's Price Comparison Advertising Rule (Wis. Adm. Ch. ATCP 124) specifically regulates price comparison advertising. The

rule has been in effect since 1974. Subsequently, it has been revised and strengthened, with amendments taking effect on February 1, 1978. The rule has the full force and effect of law, and violations can result in civil or criminal penalties. It is therefore important that all sellers of consumer goods and services have a full and accurate understanding of the rule's provisions.

What does the rule cover?

The rule covers all price comparisons made by a seller, whether printed or broadcast advertisements, catalogs, store labels, signs, tags, or verbal statements by sales personnel. A price comparison is any direct comparison (expressed wholly or in part by dollars, cents, fractions, or percentages) of a seller's current price with any other price or statement of value.

Percentage or fraction examples:

- **50% OFF**
- **SAVE 1/3**
- **Half-price Sale**

Dollars or cents examples:

- **Was \$20 – Now Half Price**
- **\$10 Value – Now \$8**
- **Was \$7 – Now \$6**

It does not include general statements such as "big savings" or "prices slashed".

How does the rule affect the use of price comparisons?

The rule is designed to prevent misleading price comparisons, including those based on arbitrary or inflated comparison values. In particular:

- The rule prohibits the comparison of "apples to oranges." That is, it prohibits sellers from comparing prices between goods or services which differ in the kind of quality, composition, or performance characteristics; unless the nature of the material differences is clearly disclosed.
- To ensure that comparison values are not merely arbitrary or fictitious, but reflect actual market values in the trade area, the rule provides that no

comparison price may be used unless it is either:

- 1. An actual sale price** – at which the goods or services have actually been sold at the comparative price during the preceding 90 days; or – if sold prior to the 90 days, the advertisement must disclose the date, time, or season when it was sold. The comparative price may not exceed the seller's cost plus regular markup used during recent business.
- 2. A bona fide offered price** – at which the goods or services have actually been offered for sale at the comparative price for at least 4 weeks during the preceding 90 days; or – if the 4 week period was prior to the 90 days, the advertisement must disclose the date, time, or season when it was offered at that price. The comparative price may not exceed the seller's cost plus regular markup used in an actual, or similar, sale during recent business.
- 3. A future price** – at which the goods or services will actually be offered for sale within the next 90 days for at least 4 consecutive weeks, and the future price comparison must be clearly identified as such; or – the advertisement must disclose the effective date when the 4 consecutive week price increase will begin. Regardless of when the price increase will take effect, the advertisement must clearly disclose that the comparison

is based on a future price (as opposed to a former or competitor's price).

- 4. A representative competitor's price** – at which the goods or services have actually been sold or advertised by a competitor in the past 90 days. The competitor's price must represent the price that the product or service was sold or advertised at. The advertisement must disclose that the comparison price is not the seller's own price.

The use of any other comparison value, such as a manufacturer's suggested retail price, is prohibited unless it qualifies under one of the above criteria.

Non-removable price labels imprinted by a manufacturer or supplier, or suggested price labels required by federal law, should not be altered by the retailer, when the retailer's current offering price is placed on a label, tag or sign accompanying the goods. This is provided that no other price comparison is based on this comparison.

Who to contact

For more information or to file a complaint, visit our website or contact the Bureau of Consumer Protection.

**Bureau of Consumer Protection
2811 Agriculture Drive
PO Box 8911
Madison WI 53708-8911**

E-MAIL: DATCPHotline@wi.gov

WEBSITE: datcp.wi.gov

(800) 422-7128

(608) 224-4953

FAX: (608) 224-4677

TTY: (608) 224-5058