

8536

2009-2010 Regular Sessions

I N A S S E M B L Y

May 27, 2009

Introduced by M. of A. CALHOUN, BALL, ERRIGO, FINCH, McDONOUGH, RAIA,
TOWNSEND, WALKER -- Multi-Sponsored by -- M. of A. HAWLEY, MENG,
SAYWARD, WEISENBERG -- read once and referred to the Committee on
Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to false adver-
tisements and providing that any rebates be given at the time of
purchase

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 3 of section 350-a of the general business law,
2 as added by chapter 107 of the laws of 1994, is amended to read as
3 follows:
4 3. It shall constitute false advertising to: (A) display or announce,
5 in print or broadcast advertising, the price of an item after deduction
6 of a rebate unless the actual selling price is displayed or announced,
7 and clear and conspicuous notice is given in the advertisement that a
8 mail-in rebate is required to achieve the lower net price[.];
9 (B) ADVERTISE THE PRICE OF MERCHANDISE OR SERVICE AS FREE BY USE OF
10 THE WORD "FREE" OR ANY OTHER TERM OF SIMILAR IMPORT WHEN THE MERCHANDISE
11 OR SERVICE IS NOT, IN FACT, FREE;
12 (C) ADVERTISE THE PRICE OF MERCHANDISE OR SERVICE AS A REDUCED OR SALE
13 PRICE, OR COMPARE THE PRICE TO A PREVIOUS PRICE UNLESS THE ADVERTISED
14 PRICE IS LOWER THAN THE ACTUAL, BONA FIDE PRICE FOR WHICH THE MERCHAN-
15 DISE OR SERVICE WAS OFFERED TO THE PUBLIC ON A REGULAR BASIS BY THE
16 ADVERTISER, FOR A REASONABLY SUBSTANTIAL PERIOD OF TIME PRIOR TO THE
17 ADVERTISEMENT OR AS A DISCOUNT PRICE, UNLESS THE ADVERTISED PRICE IS
18 LOWER THAN THE PRICE BEING CHARGED FOR THE SAME MERCHANDISE OR SERVICE
19 BY OTHER SELLERS IN THE AREA; PROVIDED, HOWEVER, IN THE CASE OF A NEW
20 PRODUCT, IF THE ADVERTISED PRICE IS LESS THAN THE PRICE WHICH THE ADVER-
21 TISER, IN GOOD FAITH, EXPECTS TO CHARGE AFTER TERMINATION OF THE INTRO-
22 DUCTORY SALE, THERE IS NO VIOLATION OF THIS SUBDIVISION. THE ACTUAL

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 PRICE AFTER THE SALE SHALL BE EVIDENCE OF THE ADVERTISER'S GOOD FAITH
2 EXPECTATIONS;

3 (D) ADVERTISE THE PRICE OF ANY MERCHANDISE AS BELOW COST, UNLESS THE
4 PRICE IS, IN FACT, BELOW THE COST FOR WHICH THE MERCHANDISE WAS
5 PURCHASED AND PREPARED FOR SALE BY THE ADVERTISER; AND

6 (E) ADVERTISE MERCHANDISE OR SERVICE AS FREE OR THE PRICE OF MERCHAN-
7 DISE OR A SERVICE AS A DISCOUNT, REDUCED, OR SALE PRICE IF RECEIPT OF
8 SUCH MERCHANDISE OR SERVICE IS CONTINGENT UPON THE PURCHASE OF OTHER
9 MERCHANDISE OR SERVICE AT A PRICE WHICH IS HIGHER THAN THE ACTUAL, BONA-
10 FIDE PRICE AT WHICH THE MERCHANDISE OR SERVICE WAS OFFERED TO THE PUBLIC
11 ON A REGULAR BASIS BY THE ADVERTISER FOR A REASONABLY SUBSTANTIAL PERIOD
12 OF TIME PRIOR TO THE ADVERTISEMENT, OR AT A PRICE WHICH IS SUBSTANTIALLY
13 HIGHER THAN THE PRICE BEING CHARGED FOR THE SAME MERCHANDISE OR SERVICE
14 BY OTHER SELLERS IN THE AREA; PROVIDED, HOWEVER, IN THE CASE OF A NEW
15 PRODUCT, IF THE ADVERTISED PRICE IS LESS THAN THE PRICE WHICH THE ADVER-
16 TISER, IN GOOD FAITH, EXPECTS TO CHARGE AFTER TERMINATION OF THE INTRO-
17 DUCTORY SALE, THERE IS NO VIOLATION OF THIS SUBDIVISION. THE ACTUAL
18 PRICE AFTER THE SALE SHALL BE EVIDENCE OF THE ADVERTISER'S GOOD FAITH
19 EXPECTATIONS.

20 S 2. The general business law is amended by adding a new section 399-i
21 to read as follows:

22 S 399-I. REBATE GIVEN AT TIME OF PURCHASE. WHENEVER THE PRICE OF AN
23 ITEM AFTER DEDUCTION OF A REBATE IS DISPLAYED OR ANNOUNCED IN PRINT OR
24 BROADCAST ADVERTISING, SUCH PRICE AFTER DEDUCTION SHALL BE GRANTED AT
25 THE TIME OF PURCHASE.

26 S 3. This act shall take effect immediately.