S T A T E O F N E W Y O R K

5664--A

2009-2010 Regular Sessions

I N S E N A T E

May 27, 2009

Introduced by Sens. ADAMS, O. JOHNSON, ONORATO, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

Section 1. Subdivision 3 of section 350-a of the general business law, as added by chapter 107 of the laws of 1994, is amended to read as follows:

3. It shall constitute false advertising to: (A) display or announce, in print or broadcast advertising, the price of an item after deduction of a rebate unless the actual selling price is displayed or announced, and clear and conspicuous notice is given in the advertisement that a mail-in rebate is required to achieve the lower net price[.];

(B) ADVERTISE THE PRICE OF MERCHANDISE OR SERVICE AS FREE BY USE OF THE WORD "FREE" OR ANY OTHER TERM OF SIMILAR IMPORT WHEN THE MERCHANDISE OR SERVICE IS NOT, IN FACT, FREE;

(C) ADVERTISE THE PRICE OF MERCHANDISE OR SERVICE AS A REDUCED OR SALE PRICE, OR COMPARE THE PRICE TO A PREVIOUS PRICE UNLESS THE ADVERTISED PRICE IS LOWER THAN THE ACTUAL, BONA FIDE PRICE FOR WHICH THE MERCHANDISE OR SERVICE WAS OFFERED TO THE PUBLIC ON A REGULAR BASIS BY THE ADVERTISER, FOR A REASONABLY SUBSTANTIAL PERIOD OF TIME PRIOR TO THE ADVERTISEMENT OR AS A DISCOUNT PRICE, UNLESS THE ADVERTISED PRICE IS LOWER THAN THE PRICE BEING CHARGED FOR THE SAME MERCHANDISE OR SERVICE BY OTHER SELLERS IN THE AREA; PROVIDED, HOWEVER, IN THE CASE OF A NEW PRODUCT, IF THE ADVERTISED PRICE IS LESS THAN THE PRICE WHICH THE ADVERTISER, IN GOOD FAITH, EXPECTS TO CHARGE AFTER TERMINATION OF THE INTRODUCTORY 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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PRICE AFTER THE SALE SHALL BE EVIDENCE OF THE ADVERTISER'S GOOD FAITH EXPECTATIONS;

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

(E) ADVERTISE MERCHANDISE OR SERVICE AS FREE OR THE PRICE OF MERCHANDISE OR A SERVICE AS A DISCOUNT, REDUCED, OR SALE PRICE IF RECEIPT OF SUCH MERCHANDISE OR SERVICE IS CONTINGENT UPON THE PURCHASE OF OTHER MERCHANDISE OR SERVICE AT A PRICE WHICH IS HIGHER THAN THE ACTUAL, BONA FIDE PRICE AT WHICH THE MERCHANDISE OR SERVICE WAS OFFERED TO THE PUBLIC ON A REGULAR BASIS BY THE ADVERTISER FOR A REASONABLY SUBSTANTIAL PERIOD OF TIME PRIOR TO THE ADVERTISEMENT, OR AT A PRICE WHICH IS SUBSTANTIALLY HIGHER THAN THE PRICE BEING CHARGED FOR THE SAME MERCHANDISE OR SERVICE BY OTHER SELLERS IN THE AREA; PROVIDED, HOWEVER, IN THE CASE OF A NEW PRODUCT, IF THE ADVERTISED PRICE IS LESS THAN THE PRICE WHICH THE ADVERTISER, IN GOOD FAITH, EXPECTS TO CHARGE AFTER TERMINATION OF THE INTRODUCTORY SALE, THERE IS NO VIOLATION OF THIS SUBDIVISION. THE ACTUAL PRICE AFTER THE SALE SHALL BE EVIDENCE OF THE ADVERTISER'S GOOD FAITH EXPECTATIONS.

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

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

S 3. This act shall take effect immediately.