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DACO ALERT

New DACO Advertising Regulation

The Department of Consumer Affairs (DACO) issued a new Regulation against Deceptive Practices and Advertisements that will be effective on November 14, 2010. The main amendments of the new Regulation are the following:

- Rule 5 (DD) – the definition of “Sale” was amended. As per the current definition, Sale is the act of selling goods and services at a lower price than the regular price, but it also includes the selling of items using words like attractive, beneficial, exceptional, clearance sale, and similar terms that imply some savings or an added value with the purpose of calling the attention of the consumers. The new definition expressly excludes the sale of items which regular prices have not been reduced, the clearance sales, and articles announced at regular price that are not part of the regular inventory of the store.
- Rule 5 (EE) – a new definition of “Clearance sale” was added. As per the new definition, a “clearance sale” is any act to sell items with the purpose to eliminate them from the store inventory since they are not expected to be sold in the future, or that new models are coming, or are seasonal items. When there is a clearance sale, it must be expressly indicated in the advertisement and that the sale will end upon selling of the identified merchandise.
- Rule 5 (M) – a new definition of “Reasonably anticipated demand” was added. As per the new definition, a “reasonably anticipated demand” is the future projection in the inventory of a determined item using as the base the amounts registered in the books of the business, with respect to that item, during the previous year.
- Rule 7 (B)(21) – this new rule prohibits the automatic renewal clauses in the contracts and the charges for such concept, except with the express consent of the consumer.
- Rule 13 – this rule currently provides that the stores must have the items announced on sale available in sufficient amounts to respond to the reasonably anticipated demand during the entire sale period. It was amended to add that the items announced on sale need not last the entire sale period if the advertisement includes the number of items available per store or in the warehouse and it is indicated the minimum guaranteed time during which the item will be available. For example, “item X, sale \$1.99, reg. \$3.99. Available 100 per store, while supplies last (min. guaranteed time: 2 hours).”

When indicating the effective date of the sale, the stores must add “or while supplies of the available items last.” If the items on sale are sold before the minimum guaranteed time, the stores have to offer the consumers substitute items or rain checks. If the items on sale are sold after the minimum guaranteed time, the stores do not have to offer the consumers substitute items nor rain checks.

- Rule 14 – it now provides that, if the number of items announced on sale were not included in the advertisement and the store runs out of an item announced on sale, it has to offer the consumer a substitute item for the same sale price or issue a rain-check for the item announced on sale. However, if there is no substitute item, the store has to pay in cash to the consumer the amount he or she would have saved if the announced item would have been available. Rule 14 was amended to eliminate this provision of the cash payments.
- Rule 15 (A)(2) – this rule prohibits the announcement of items in the circulars that are not available in Puerto Rico. If the circular was made for various markets and an item in that circular is not going to be available in Puerto Rico, the store must place across the picture of the item the following language: “Not available in Puerto Rico.”
- Rule 15 (A)(3) – the current rule provides that a sale cannot last less than 8 hours. This new rule reduced said period to 4 hours. This new rule reduced that period to 4 hours.
- Rule 23 – it now provides that the clarifying note that is required to be published in a newspaper to correct a mistake in an advertisement or in a circular, can also be published using other communication media such as radio or TV. Thus, now the stores do not have to wait 24 hours to correct a mistake.

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