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RETAIL ALERT

DACO Issues New Advertising Regulation

On May 29, 2015, the Department of Consumer Affairs (DACO) filed before the State Department of Puerto Rico a new Regulation against Deceptive Practices and Advertisements. This new Regulation will become effective on, Sunday, **June 28, 2015**.

The Regulation includes various important amendments that will affect the manner in which retailers will conduct sales and will advertise its items in Puerto Rico.

Some of the more important amendments are the following:

19. Rule 5 (K) - Re-stocking fee - a res-stocking fee may now be charged as long as it is clearly stated in the return policy, including the percentage to be charged. However, this fee cannot be charged when the item is returned under warranty.
20. Rule 7 (B) - Misleading Practices – now, under subsection 1, if a store announces an item at regular price, not on sale, and it is not available, it is considered a misleading advertisement and DACO can issue a penalty.

Subsection 20, which remained the same, provides that, if the store does not provide an item announced, it is considered a misleading advertisement. This subsection 20 and the new subsection 1 will be used by DACO to issue penalties when items announced at regular prices are not available.

Subsection 22 now provides that, if a price in a tag is different from the price in the cash register, it would constitute a misleading practice. Notwithstanding, Rule 11(D) provides that, when an item has more than one price, the lowest one will be the one to be charged.

3. Rule 13 - Availability of Products – Subsection A was amended to provide that, if items announced on sale are available at the warehouse instead of in the stores, the ad must indicate that the items are available in the warehouse and the delivery requirements (like price and time frame) applicable to the items.

Subsection B was amended to extend the minimum guaranteed time from 1 hour to, at least, 4 hours. For 7-day sales, the minimum guaranteed time is now 3 days and, for any other sales, the minimum guaranteed time would be 50% of the term of the sale. For example, in a 1-day sale of 8 hours, the minimum guaranteed time would be 4 hours and, in a 30-days sale, the minimum guaranteed time would be 15 days.

Subsection C was added to regulated items announced at regular prices and in clearance. Now, in the circulars, the store must identify a price as “regular” or as “clearance”; the minimum amount available per store; while supplies last; and that no rain-checks or substitute items are available.

This subsection C also provides that, when the same ad has items announced on sale, at clearance, and at regular prices, the ad must separate these differently priced items and must identify, like on the top of the page and prominently, if the prices in that page are regular, sale or clearance prices.

4. Rule 14 - Rain-checks/Substitute Items – Subsection B now provides that, if a rain-check is issued during Black Friday, the store has to provide the item object of the rain-check within 15 days (not 30 days).

If the store cannot provide the item within those 15 days or the 30 days of regular rain-checks and cannot offer a substitute item, the store has to offer to the customer the same discount in another similarly priced item. For example, if a \$400 item is announced on sale at \$200, the store runs out of it before the minimum guaranteed time and there are no substitute items, according to the definition, and cannot obtain the item during the rain-check period, the store has to offer the discount of \$200 in another item which regular price is \$400 or higher.

In subsection D, which lists the information to appear in the rain-check form, now includes the “announced price” of the item object of the rain-check, to include items announced at regular prices. This appears to mean that, considering Rules 7(B)(1) and (20), if a store announces an item at regular price and it runs out of it before the minimum guaranteed time, it has to issue a rain-check for that item.

Subsection E of the previous Rule 14 was eliminated. It provided that, if the store issued a rain-check when running out of an item announced on sale, DACO had to set aside the penalty for not having an item announced on sale. Thus, now, even if the store issues a rain-check, DACO could still issue a penalty for running out of an item.

5. Rule 23 – Corrections of errors in advertisements – The correction has to be published in the same media in which the advertisement was originally published. The published correction must also be placed where the item is sold, at the entrance door, and at all cash registers. If the ad with the error was in color and with a photo of the item, the correction must include the photo in color and the font size of the ad must be the same one as the one in the ad.

If the store is not going to have an item in a circular that will be published or runs out of an item, it can publish a correction indicating the foregoing and DACO will not issue a penalty for not having available an item announced. This correction must be placed, together with a notice listing the unavailable products and the remedies, where the corrected items are sold, at the entrance door, and at the cash registers.

6. Rule 25 (E) - Advertisements during regular programming – This new rule provides that, when an advertisement is aired as part of a regular radio or tv program, it must be indicated that it is an advertisement (and not part of the program or a news). The same applies to newspaper and other printed ads.
7. Rule 27 – Files – Now, in addition to the information about the veracity of the claims in the ads, the store must keep in a file for 1 year the number of items available before the commencement of a sale and the number of items sold, the number of items sold with the

rain-checks, the substitute items sold, and the analysis to determine the reasonably anticipated demand for the items to be announced on sale.

You may access copy of the Regulation (in Spanish) [here](#). As required by Rule 31, a printed copy of the Regulation has to be available in each store. Thus, please request that it be sent to your respective stores.

If you have any questions or wish additional information regarding this matter, please contact any of the following attorneys:

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