



## Ohio Administrative Code Rule 109:4-3-12 Price comparisons.

Effective: May 17, 2020

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### (A) Declaration of policy

This rule is designed to define with reasonable specificity certain circumstances in which a supplier's acts or practices in advertising price comparisons are deceptive and therefore illegal. For purposes of this rule, price comparisons involve a comparison of the present or future price of the subject of a consumer transaction to a reference price, usually as an incentive for consumers to purchase. This rule deals only with out-of-store advertisements as defined in paragraph (B)(3) of this rule. The rule stems from the general principle, codified in division (B) of section 1345.02 of the Revised Code, that it is deceptive for any claimed savings, discount, bargain, or sale not to be genuine, for the prices which are the basis of such comparisons not to be bona fide, genuine prices, and for out-of-store advertisements which indicate price comparisons to create false expectations in the minds of consumers.

### (B) Definitions

(1) "Goods and services" means, for the purposes of this rule, all items which may be the subject of consumer transactions as defined in division (A) of section 1345.01 of the Revised Code.

(2) "Meaningful reduction" means a reduction from a reference price, which reduction is reasonably significant when compared to the reference price as a percentage, or when otherwise compared when the reference price is greater than one hundred dollars.

(3) "Out-of-store advertising" means any advertisement, message, or representation made by a supplier outside of its interior premises. It includes but is not limited to communications made via newspapers, television, radio, printed brochures, leaflets, fliers, billboards, any online or digital medium, or signs painted on or posted in windows.

(4) "Price comparison" or "comparison" means any representation, however expressed, that a



savings, reduction or discount exists or will exist; provided, however, that language which does not reasonably imply a comparison to identifiable prices or items does not express a price comparison.

(5) "Reference price" means a higher price to which a supplier compares another, lower price for the purpose of indicating that a reduction in price exists or will exist.

(6) "Regular price" has the same meaning as in rule 109:4-3-04 of the Administrative Code.

(7) "Trading area" means the geographical area in which a supplier in the regular course of its business solicits substantial numbers of customers. A trading area can be local, regional, or national. In the case of a supplier which does business through branch outlets, any branch outlet or group of outlets may have a trading area distinct from that of the supplier as a whole or from other of the supplier's branch outlets. The geographical reach of the out-of-store advertising of a supplier or of any of its branches can serve as evidence of the extent of its trading area.

(C) Character of supplier

(1) It is deceptive for a supplier to use in its out-of-store advertising words which identify or characterize its business or a section or department thereof in terms such as "discount," "bargain," "outlet," "wholesale," "factory prices," or other terms which indicate that substantially all or most goods and services sold are available at a meaningful reduction in price unless the supplier's business or section or department thereof is, in fact, of such a character.

(2) Where an advertisement which characterizes a supplier's business or a section or department thereof in a manner mentioned in paragraph (C)(1) of this rule does not indicate a particular number, amount, or percentage of goods or services available at a meaningful reduction, it is deceptive if less than a reasonably large and substantial number of all types, brands, and models of items offered for sale by the supplier are available at a meaningful reduction.

(3) Where an advertisement which characterizes a supplier's business or a section or department thereof in a manner mentioned in paragraph (C)(1) of this rule does indicate a particular number, amount, or percentage of goods and services available at a meaningful reduction, it is deceptive if fewer than the advertised number, amount, or percentage of goods and services are in fact available



at a meaningful reduction.

(D) Reduction for special circumstances

(1) It is deceptive for a supplier in its out-of-store advertising to indicate or to imply that a "sale," "bargain," or other offering of a reduction in price will terminate within a given or anticipated period of time unless it does in fact terminate within the period indicated or implied. But, if circumstances which in good faith were unforeseen at the time the reduction was advertised necessitate an extension of the time within which the reduction is to terminate, a supplier does not violate this rule if it:

(a) Extends the time of termination of the reduction; and

(b) Clearly and conspicuously discloses in its further advertising the fact of such an extension.

(2) It is deceptive for a supplier in its out-of-store advertising to indicate in any way that a reduction in price exists for reasons which are not true.

(E) Comparison with supplier's own price

(1) It is deceptive for a supplier in its out-of-store advertising to make any price comparison by the use of such terms as "regularly . . . . ., now . . . . .," ". . . . . per cent off," "reduced from . . . . . to . . . . .," "save \$. . . . .," unless:

(a) The comparison is to the supplier's regular price; or

(b) If the reference price is the regular price of a previous season, the season and year are clearly and conspicuously disclosed; or

(c) There is language in the advertisement which clearly and conspicuously discloses that the comparison is to another price and which discloses the nature of the reference price.

(2) If a supplier, in its out-of-store advertising, uses language indicating a range of savings or



reduction, it is deceptive if the goods and services offered at the savings do not contain a reasonable number of items priced at the maximum reduction. Where the offering does not contain such reasonable number of items, a supplier does not violate this rule if it clearly and conspicuously discloses this fact in its out-of-store advertising.

(3) It is recognized that some goods and services are almost never sold at a "regular price" but instead are sold by means of individually negotiated transactions. A supplier of goods and services, identical in all material aspects, sold in negotiated transactions is permitted to advertise using an "average price" as a reference price as long as the advertised "average price" is the mean average selling price of all such goods or services openly and actively sold by the supplier to consumers for a substantial period of time in the recent past and the fact that the reference price is an "average price" is clearly and conspicuously disclosed in close proximity to the advertised reference price.

(F) Comparison with prices which are not the supplier's own

(1) It is deceptive for a supplier in its out-of-store advertising to use as a reference price in making a price comparison any "list," "catalogue," "manufacturer's suggested," "competitor's," or any other price which is not its own unless:

(a) Such a reference price is genuine; and

(b) The advertisement clearly and conspicuously indicates that the reference price is not the supplier's own price.

(2) For a reference price which is not a supplier's own to be genuine, it must correspond to prices at which substantial offers for sales have recently been made at retail outlets in the trading area in which the goods or services are offered at the reference price, and it must not be an isolated price.

(3) It is prima facie evidence of compliance with paragraphs (F)(1) and (F)(2) of this rule if the supplier:

(a) Has no knowledge that the reference price is not genuine; and



(b) Has made reasonable, bona fide efforts to determine whether the reference price is genuine.

(G) Comparison with non-identical goods

It is deceptive for a supplier in its out-of-store advertising to make a comparison between the prices of similar, but non-identical goods or services unless:

(1) The non-identical goods or services are of essentially similar quality to the advertised goods or services or the dissimilar aspects are clearly and conspicuously disclosed in the advertisements; and

(2) The advertisement clearly and conspicuously discloses that non-identical goods or services are being compared; and

(3) Either:

(a) The price comparison is to the regular price of the reference goods or services; or

(b) The nature of the reference price is clearly and conspicuously disclosed; and

(4) Either:

(a) The reference goods or services are available in the supplier's trading area; or

(b) The fact that they are not available is clearly and conspicuously disclosed.

(H) Advance or introductory sales

(1) It is deceptive for a supplier in its out-of-store advertising to use terms such as "advance sale," "introductory offer," or other language which makes a comparison to a reference price which is a future price unless the reference price becomes the regular price within the period reasonably implied by the advertisement.

(2) A supplier will not be in violation of paragraph (H)(1) of this rule if circumstances which in good



faith were unforeseen at the time that the reference price was advertised as a future regular price necessitate the reference price not becoming or remaining the regular price.

(I) Significant reduction

It is deceptive for a supplier in its out-of-store advertising to use such terms as "sale," "discount," "bargain," or any other terms indicating a savings or reduction in prices unless:

(1) The savings or reduction is a meaningful reduction; or

(2) The actual amount or percentage of savings is clearly and conspicuously indicated in the advertisement.