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(3) The complaint must be addressed to the Director of Equal Employment Opportunity, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580.

(e) If the Director of Equal Employment Opportunity receives a complaint over which the Commission does not have jurisdiction, he or she shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The Director of Equal Employment Opportunity shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157) is not readily accessible to and usable by individuals with handicaps.

(g)(1) The Director of Equal Employment Opportunity shall accept and investigate a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Commission has jurisdiction.

(2) If the Director of Equal Employment Opportunity receives a complaint that is not complete (see §6.103), he or she shall, within 30 days thereafter, notify the complainant that additional information is needed. If the complainant fails to complete the complaint within 30 days of the date of the Director's notice, the Director of Equal Employment Opportunity may dismiss the complaint without prejudice.

(h) Within 180 days of the receipt of a complete complaint over which the Commission has jurisdiction, the Director of Equal Employment Opportunity shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal to the Commission's General Counsel.

(i)(1) An appeal under this section must be filed within 90 days of the complainant's receipt of the letter under paragraph (h) of this section unless the General Counsel extends the time period for good cause.

(2) The appeal must be addressed to the General Counsel, Federal Trade Commission, 6th and Pennsylvania Ave. NW., Washington, DC 20580.

(3) The appeal shall specify the questions raised by the appeal and the arguments on the points of fact and law relied upon in support of the position taken on each question; and it shall include copies of the complaint filed under paragraph (d) of this section and the letter by the Director of Equal Employment Opportunity under paragraph (h) of this section as well as any other material relied upon in support of the appeal.

(j) The General Counsel shall notify the complainant of the results of the appeal within 60 days of the receipt of the appeal. If the General Counsel determines that additional information is needed from the complainant, the General Counsel shall have 60 days from the date of receipt of the additional information to make a final determination on the appeal. The General Counsel may submit the appeal to the Commission for final determination provided that any final determination of the appeal is made by the Commission within the 60-day period specified by this paragraph.

(k) The time limits specified by paragraphs (h) and (j) of this section may be extended by the Chairman for good cause.

(l) The Commission may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 6.171–6.999 [Reserved]

PART 14—ADMINISTRATIVE INTERPRETATIONS, GENERAL POLICY STATEMENTS, AND ENFORCEMENT POLICY STATEMENTS

Sec.

14.9 Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials.
14.12 Use of secret coding in marketing research.
14.15 In regard to comparative advertising.
14.16 Interpretation of Truth-in-Lending Orders consistent with amendments to the Truth-in-Lending Act and Regulation Z.

AUTHORITY: 15 U.S.C. 41–58.

§ 14.9 Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials.

The Federal Trade Commission has noted that, with increasing intensity, advertisers are making special efforts to reach foreign language-speaking consumers. As part of this special effort, advertisements, brochures and sales documents are being printed in foreign languages. In recent years the Commission has issued various cease-and-desist orders as well as rules, guides and other statements, which require affirmative disclosures in connection with certain kinds of representations and business activities. Generally, these disclosures are required to be ''clear and conspicuous.'' Because questions have arisen as to the meaning and application of the phrase ''clear and conspicuous'' with respect to foreign language advertisements and sales materials, the Commission deems it appropriate to set forth the following enforcement policy statement:

(a) Where cease-and-desist orders as well as rules, guides and other statements require ''clear and conspicuous'' disclosure of certain information in an advertisement or sales material in a newspaper, magazine, periodical, or other publication that is not in English, the disclosure shall appear in the predominant language of the publication in which the advertisement or sales material appears. In the case of any other advertisement or sales material, the disclosure shall appear in the language of the target audience (ordinarily the language principally used in the advertisement or sales material).

(b) Any respondent who fails to comply with this requirement may be the subject of a civil penalty or other law enforcement proceeding for violating the terms of a Commission cease-and-desist order or rule.

(Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[38 FR 21494, Aug. 9, 1973, as amended at 63 FR 34808, June 26, 1998]

§ 14.12 Use of secret coding in marketing research.

(a) The Federal Trade Commission has determined to close its industry-wide investigation of marketing research firms that was initiated in November 1975, to determine if the firms were using questionnaires with invisible coding that could be used to reveal a survey respondent's identity. After a thorough investigation, the Commission has determined that invisible coding has been used by the marketing research industry, but it is neither a commonly used nor widespread practice. Moreover, use of the practice appears to have diminished in recent years. For these reasons, the Commission has determined that further action is not warranted at this time.

(b) However, for the purpose of providing guidance to the marketing research industry, the Commission is issuing the following statement with regard to its future enforcement intentions. The Commission has reason to believe that it is an unfair or deceptive act or practice, violative of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to induce consumers to provide information about themselves by expressly or implicitly promising that such information is being provided anonymously, when, in fact, a secret or invisible code is used on the survey form or return envelope that allows identification of the consumer who has provided the information.

(c) While the Commission has made no final determination regarding the legality of the foregoing practice, the Commission will take appropriate enforcement action should it discover the practice to be continuing in the future, and in the event that it may be causing substantial consumer injury. Among the circumstances in which the Commission believes that the use of secret coding may cause significant consumer harm are those in which:

(1) A misleading promise of anonymity is used to obtain highly sensitive information about a consumer that such consumer would not choose to disclose if he or she were informed that a code was being used that would allow his or her name to be associated with the response; and

(2) Information of any sort is used for purposes other than those of the market survey.

[43 FR 42742, Sept. 21, 1978]

§ 14.15 In regard to comparative advertising.

(a) *Introduction.* The Commission's staff has conducted an investigation of industry trade associations and the advertising media regarding their comparative advertising policies. In the course of this investigation, numerous industry codes, statements of policy, interpretations and standards were examined. Many of the industry codes and standards contain language that could be interpreted as discouraging the use of comparative advertising. This Policy Statement enunciates the Commission's position that industry self-regulation should not restrain the use by advertisers of truthful comparative advertising.

(b) *Policy Statement.* The Federal Trade Commission has determined that it would be of benefit to advertisers, advertising agencies, broadcasters, and self-regulation entities to restate its current policy concerning comparative advertising.[1] Commission policy in the area of comparative advertising encourages the naming of, or reference to competitiors, but requires clarity, and, if necessary, disclosure to avoid deception of the consumer. Additionally, the use of truthful comparative advertising should not be restrained by broadcasters or self-regulation entities.

(c) The Commission has supported the use of brand comparisions where the bases of comparision are clearly identified. Comparative advertising, when truthful and nondeceptive, is a source of important information to consumers and assists them in making rational purchase decisions. Comparative advertising encourages product improvement and innovation, and can lead to lower prices in the marketplace. For these reasons, the Commission will continue to scrutinize carefully restraints upon its use.

(1) *Disparagement.* Some industry codes which prohibit practices such as ''disparagement,'' ''disparagement of competitors,'' ''improper disparagement,'' ''unfairly attaching,'' ''discrediting,'' may operate as a restriction on comparative advertising. The Commission has previously held that disparaging advertising is permissible so long as it is truthful and not deceptive. In *Carter Products, Inc.*, 60 F.T.C. 782, *modified*, 323 F.2d 523 (5th Cir. 1963), the Commission narrowed an order recommended by the hearing examiner which would have prohibited respondents from disparaging competing products through the use of false or misleading pictures, depictions, or demonstrations, ''or otherwise'' disparaging such products. In explaining why it eliminated ''or otherwise'' from the final order, the Commission observed that the phrase would have prevented:

> respondents from making truthful and non-deceptive statements that a product has certain desirable properties or qualities which a competing product or products do not possess. Such a comparison may have the effect of disparaging the competing product, but we know of no rule of law which prevents a seller from honestly informing the public of the advantages of its products as opposed to those of competing products. 60 F.T.C. at 796.

Industry codes which restrain comparative advertising in this manner are subject to challenge by the Federal Trade Commission.

(2) *Substantiation.* On occasion, a higher standard of substantiation by advertisers using comparative advertising has been required by self-regulation entities. The Commission evaluates comparative advertising in the same manner as it evaluates all other advertising techniques. The ultimate question is whether or not the advertising has a tendency or capacity to be false or deceptive. This is a factual issue to be determined on a case-by-case basis. However, industry codes and interpretations that impose a higher standard of substantiation for comparative claims than for unilateral claims are inappropriate and should be revised.

(Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[44 FR 47328, Aug. 13, 1979]

[1] For purposes of this Policy Statement, comparative advertising is defined as advertising that compares alternative brands on objectively measurable attributes or price, and identifies the alternative brand by name, illustration or other distinctive information.

§ 14.16 Interpretation of Truth-in-Lending Orders consistent with amendments to the Truth-in-Lending Act and Regulation Z.

Introduction

The Federal Trade Commission (FTC) has determined that there is a need to clarify the compliance responsibilities under the Truth-in-Lending Act (TILA) (Title I, Consumer Credit Protection Act, 15 U.S.C. 1601 *et seq.*), as amended by the Truth-in-Lending Simplification and Reform Act of 1980 (Pub. L. 96–221, 94 Stat. 168), and under revised Regulation Z (12 CFR part 226, 46 FR 20848), and subsequent amendments to the TILA and Regulation Z, of those creditors and advertisers who are subject to final cease and desist orders that require compliance with provisions of the Truth-in-Lending statute or Regulation Z. Clarification is necessary because the Truth-in-Lending Simplification and Reform Act and revised Regulation Z significantly relaxed prior Truth-in-Lending requirements on which provisions of numerous outstanding orders were based. The Policy Statement provides that the Commission will interpret and enforce Truth-in-Lending provisions of all orders so as to impose no greater or different disclosure obligations on creditors and advertisers named in such orders than are required generally of creditors and advertisers under the TILA and Regulation Z, and subsequent amendments to the TILA and Regulation Z.

Policy Statement

(a) All cease and desist orders issued by the FTC that require compliance with provisions of the Truth-in-Lending Act and Regulation Z (12 CFR part 226) will be interpreted and enforced consistent with the amendments to the TILA incorporated by the Truth-in-Lending Simplification and Reform Act of 1980, and the revision of Regulation Z implementing the same, promulgated on April 1, 1981 by the Board of Governors of the Federal Reserve System (46 FR 20848), and by subsequent amendments to the TILA and Regulation Z. Likewise, the Federal Reserve Board staff commentary to revised Regulation Z (46 FR 50288, October 9, 1981), and subsequent revisions to the Federal Reserve Board staff commentary to Regulation Z, will be considered in interpreting the requirements of existing orders.

(b) After an amendment to Regulation Z becomes effective, compliance with the revised credit disclosure requirements will be considered compliance with the existing order, and:

(1) To the extent that revised Regulation Z deletes disclosure requirements imposed by any Commission order, compliance with these requirements will no longer be required; however,

(2) To the extent that revised Regulation Z imposes additional disclosure or format requirements, a failure to comply with the added requirements will be considered a violation of the TILA.

(c) A creditor or advertiser must continue to comply with all provisions of the order which do not relate to Truth-in-Lending Act requirements or are unaffected by Regulation Z. These provisions are not affected by this policy statement and will remain in full force and effect.

Staff Clarifications

The Commission intends that this Enforcement Policy Statement obviate the need for any creditor or advertiser to file a petition to reopen and modify any affected order under section 2.51 of the Commission's rules of practice (16 CFR 2.51). However, the Commission recognizes that the policy statement may not provide clear guidance to every creditor or advertiser under order. The staff of the Division of Enforcement, Bureau of Consumer Protection, will respond to written requests for clarification of any order affected by this policy statement.

[60 FR 42033, Aug. 15, 1995]

PART 16—ADVISORY COMMITTEE MANAGEMENT

Sec.

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