

than three such offers should be made in the same area in any 12-month period. In such period, the offeror's sale in that area of the product in the size promoted with a "Free" offer should not exceed 50 percent of the total volume of his sales of the product, in the same size, in the area.

(i) *Similar terms.* Offers of "Free" merchandise or services which may be deceptive for failure to meet the provisions of this section may not be corrected by the substitution of such similar words and terms as "gift", "given without charge", "bonus", or other words or terms which tend to convey the impression to the consuming public that an article of merchandise or service is "Free".

(38 Stat. 717, as amended; 15 U.S.C. 41-58)

[36 FR 21517, Nov. 10, 1971]

## PART 254—GUIDES FOR PRIVATE VOCATIONAL AND DISTANCE EDUCATION SCHOOLS

Sec.

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AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41-58.

### § 254.0 Scope and application.

(a) The Guides in this part apply to persons, firms, corporations, or organizations engaged in the operation of privately owned schools that offer resident or distance courses, training, or instruction purporting to prepare or qualify individuals for employment in any occupation or trade, or in work requiring mechanical, technical, artistic, business, or clerical skills, or that is for the purpose of enabling a person to improve his appearance, social aptitude, personality, or other attributes. These Guides do not apply to resident

primary or secondary schools or institutions of higher education offering at least a 2-year program of accredited college level studies generally acceptable for credit toward a bachelor's degree.

(b) These Guides represent administrative interpretations of laws administered by the Federal Trade Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. These Guides specifically address the application of section 5 of the FTC Act (15 U.S.C. 45) to the advertising, promotion, marketing, and sale of courses or programs of instruction offered by private vocational or distance education schools. The Guides provide the basis for voluntary compliance with the law by members of the industry. Practices inconsistent with these Guides may result in corrective action by the Commission under section 5 if, after investigation, the Commission has reason to believe that the practices fall within the scope of conduct declared unlawful by the statute.

[63 FR 42572, Aug. 10, 1998]

### § 254.1 Definitions.

(a) *Accredited.* A school or course has been evaluated and found to meet established criteria by an accrediting agency or association recognized for such purposes by the U.S. Department of Education.

(b) *Approved.* A school or course has been recognized by a State or Federal agency as meeting educational standards or other related qualifications as prescribed by that agency for the school or course to which the term is applied. The term is not and should not be used interchangeably with "accredited." The term "approved" is not justified by the mere grant of a corporate charter to operate or license to do business as a school and should not be used unless the represented "approval" has been affirmatively required or authorized by State or Federal law.

(c) *Industry member.* Industry members are the persons, firms, corporations, or organizations covered by these Guides, as explained in § 254.0(a).

[63 FR 42572, Aug. 10, 1998]

## Federal Trade Commission

## § 254.4

### § 254.2 Deceptive trade or business names.

(a) It is deceptive for an industry member to use any trade or business name, label, insignia, or designation which misleads or deceives prospective students as to the nature of the school, its accreditation, programs of instruction, methods of teaching, or any other material fact.

(b) It is deceptive for an industry member to misrepresent, directly or indirectly, by the use of a trade or business name or in any other manner that:

(1) It is a part of or connected with a branch, bureau, or agency of the U.S. Government, or of any State, or civil service commission;

(2) It is an employment agency or an employment agent or authorized training facility for any industry or business or otherwise deceptively conceal the fact that it is a school.

(c) If an industry member conducts its instruction by correspondence, or other form of distance education, it is deceptive to fail to clearly and conspicuously disclose that fact in all promotional materials.

[63 FR 42573, Aug. 10, 1998]

### § 254.3 Misrepresentation of extent or nature of accreditation or approval.

(a) It is deceptive for an industry member to misrepresent, directly or indirectly, the extent or nature of any approval by a State agency or accreditation by an accrediting agency or association. For example, an industry member should not:

(1) Represent, without qualification, that its school is accredited unless all programs of instruction have been accredited by an accrediting agency recognized by the U.S. Department of Education. If an accredited school offers courses or programs of instruction that are not accredited, all advertisements or promotional materials pertaining to those courses or programs, and making reference to the accreditation of the school, should clearly and conspicuously disclose that those particular courses or programs are not accredited.

(2) Represent that its school or a course is approved, unless the nature,

extent, and purpose of that approval are disclosed.

(3) Misrepresent that students successfully completing a course or program of instruction can transfer the credit to an accredited institution of higher education.

(b) It is deceptive for an industry member to misrepresent that a course of instruction has been approved by a particular industry, or that successful completion of the course qualifies the student for admission to a labor union or similar organization or for receiving a State or Federal license to perform certain functions.

(c) It is deceptive for an industry member to misrepresent that its courses are recommended by vocational counselors, high schools, colleges, educational organizations, employment agencies, or members of a particular industry, or that it has been the subject of unsolicited testimonials or endorsements from former students. It is deceptive for an industry member to use testimonials or endorsements that do not accurately reflect current practices of the school or current conditions or employment opportunities in the industry or occupation for which students are being trained.

NOTE TO PARAGRAPH (C): The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

[63 FR 42573, Aug. 10, 1998]

### § 254.4 Misrepresentation of facilities, services, qualifications of staff, status, and employment prospects for students after training.

(a) It is deceptive for an industry member to misrepresent, directly or indirectly, in advertising, promotional materials, or in any other manner, the size, location, services, facilities, or equipment of its school or the number or educational qualifications of its faculty and other personnel. For example, an industry member should not:

(1) Misrepresent the qualifications, credentials, experience, or educational background of its instructors, sales representatives, or other employees.

(2) Misrepresent, through statements or pictures, the nature or efficacy of its

## § 254.5

courses, training devices, methods, or equipment.

(3) Misrepresent the availability of employment while the student is undergoing instruction or the role of the school in providing or arranging for such employment.

(4) Misrepresent the availability or nature of any financial assistance available to students. If the cost of training is financed in whole or in part by loans, students should be informed that loans must be repaid whether or not they are successful in completing the program and obtaining employment.

(5) Misrepresent the nature of any relationship between the school or its personnel and any government agency or that students of the school will receive preferred consideration for employment with any government agency.

(6) Misrepresent that certain individuals or classes of individuals are members of its faculty or advisory board; have prepared instructional materials; or are otherwise affiliated with the school.

(7) Misrepresent the nature and extent of any personal instruction, guidance, assistance, or other service, including placement assistance, it will provide students either during or after completion of a course.

(b) It is deceptive for an industry member to misrepresent that it is a nonprofit organization or to misrepresent affiliation or connection with any public institution or private religious or charitable organization.

(c) It is deceptive for an industry member to misrepresent that a course has been recently revised or instructional equipment is up-to-date, or misrepresent its ability to keep a program current and up-to-date.

(d) It is deceptive for an industry member, in promoting any course of training in its advertising, promotional materials, or in any other manner, to misrepresent, directly or by implication, whether through the use of text, images, endorsements, or by other means, the availability of employment after graduation from a course of training, the success that the member's graduates have realized in obtaining such employment, or the salary that

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the member's graduates will receive in such employment.

NOTE TO PARAGRAPH (D): The Commission's Guides Concerning Use of Endorsements and Testimonials in Advertising (part 255 of this chapter) provide further guidance in this area.

[63 FR 42573, Aug. 10, 1998 as amended at, 63 FR 72350, Dec. 31, 1998]

### § 254.5 Misrepresentations of enrollment qualifications or limitations.

(a) It is deceptive for an industry member to misrepresent the nature or extent of any prerequisites or qualifications for enrollment in a course or program of instruction.

(b) It is deceptive for an industry member to misrepresent that the lack of a high school education or prior training or experience is not an impediment to successful completion of a course or obtaining employment in the field for which the course provides training.

[63 FR 42574, Aug. 10, 1998]

### § 254.6 Deceptive use of diplomas, degrees, or certificates.

(a) It is deceptive for an industry member to issue a degree, diploma, certificate of completion, or any similar document, that misrepresents, directly or indirectly, the subject matter, substance, or content of the course of study or any other material fact concerning the course for which it was awarded or the accomplishments of the student to whom it was awarded.

(b) It is deceptive for an industry member to offer or confer an academic, professional, or occupational degree, if the award of such degree has not been authorized by the appropriate State educational agency or approved by a nationally recognized accrediting agency, unless it clearly and conspicuously discloses, in all advertising and promotional materials that contain a reference to such degree, that its award has not been authorized or approved by such an agency.

(c) It is deceptive for an industry member to offer or confer a high school diploma unless the program of instruction to which it pertains is substantially equivalent to that offered by a resident secondary school, and unless the student is informed, by a clear and

conspicuous disclosure in writing prior to enrollment, that the industry member cannot guarantee or otherwise control the recognition that will be accorded the diploma by institutions of higher education, other schools, or prospective employers, and that such recognition is a matter solely within the discretion of those entities.

[63 FR 42574, Aug. 10, 1998]

#### § 254.7 Deceptive sales practices.

(a) It is deceptive for an industry member to use advertisements or promotional materials that misrepresent, directly or by implication, that employment is being offered or that a talent hunt or contest is being conducted. For example, captions such as, “Men/women wanted to train for \* \* \*,” “Help Wanted,” “Employment,” “Business Opportunities,” and words or terms of similar import, may falsely convey that employment is being offered and therefore should be avoided.

(b) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, the total cost of the program and the school’s refund policy if the student does not complete the program.

(c) It is deceptive for an industry member to fail to disclose to a prospective student, prior to enrollment, all requirements for successfully completing the course or program and the circumstances that would constitute grounds for terminating the student’s enrollment prior to completion of the program.

[63 FR 42574, Aug. 10, 1998 as amended at, 63 FR 72350, Dec. 31, 1998]

## PART 255—GUIDES CONCERNING USE OF ENDORSEMENTS AND TESTIMONIALS IN ADVERTISING

Sec.

255.0 Definitions.

255.1 General considerations.

255.2 Consumer endorsements.

255.3 Expert endorsements.

255.4 Endorsements by organizations.

255.5 Disclosure of material connections.

AUTHORITY: 38 Stat. 717, as amended; 15 U.S.C. 41–58.

#### § 255.0 Definitions.

(a) The Commission intends to treat endorsements and testimonials identically in the context of its enforcement of the Federal Trade Commission Act and for purposes of this part. The term *endorsements* is therefore generally used hereinafter to cover both terms and situations.

(b) For purposes of this part, an *endorsement* means any advertising message (including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual or the name or seal of an organization) which message consumers are likely to believe reflects the opinions, beliefs, findings, or experience of a party other than the sponsoring advertiser. The party whose opinions, beliefs, findings, or experience the message appears to reflect will be called the endorser and may be an individual, group or institution.

(c) For purposes of this part, the term *product* includes any product, service, company or industry.

(d) For purposes of this part, an *expert* is an individual, group or institution possessing, as a result of experience, study or training, knowledge of a particular subject, which knowledge is superior to that generally acquired by ordinary individuals.

*Example 1:* A film critic’s review of a movie is excerpted in an advertisement. When so used, the review meets the definition of an endorsement since it is viewed by readers as a statement of the critic’s own opinions and not those of the film producer, distributor or exhibitor. Therefore, any alteration in or quotation from the text of the review which does not fairly reflect its substance would be a violation of the standards set by this part.

*Example 2:* A TV commercial depicts two women in a supermarket buying a laundry detergent. The women are not identified outside the context of the advertisement. One comments to the other how clean her brand makes her family’s clothes, and the other then comments that she will try it because she has not been fully satisfied with her own brand. This obvious fictional dramatization of a real life situation would not be an endorsement.

*Example 3:* In an advertisement for a pain remedy, an announcer who is not familiar to consumers except as a spokesman for the advertising drug company praises the drug’s ability to deliver fast and lasting pain relief.