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Buy 3, get four at no additional cost.
Buy one tire at $____, get second tire at 50% off.
Get a wheel free with purchase of each snow tire.
Free wheel alignment with purchase of two new tires.

Such advertising is understood by purchasers to mean that the price charged by the advertiser for the initial tire or tires to be purchased is the price at which they have been regularly sold by the advertiser for a reasonably substantial period of time prior to the sale, and that the amount of the purported reduction or the value of the so-called ''free'' article or service represents actual savings. If the price of the tires to be purchased is not the advertiser's regular selling price, purchasers are deceived.

Example. Dealer E advertises ''2nd Tire ½ Off When You Buy First Tire At Price Listed Below—No Trade-In Needed!'' In the body of the advertisement the first tire is listed as costing $25.15 and the second tire $12.57. The figure listed as the price for the first tire is not Dealer E's regular selling price, but the manufacturer's suggested ''no trade-in'' price. E's regular selling price prior to the so-called sale had been $18.85 per tire. Under the circumstances, the ''½ Off'' offer would be deceptive. The basis for the advertised offer is not the advertiser's actual selling price for the tire. While consumers are led to believe that they are being afforded substantial savings by purchasing a second tire, in fact they are paying Dealer E's regular selling price for two tires.

(g) *Federal Excise Tax*. Since the Federal Excise Tax on tires is assessed on the manufacturer and is based on the weight of the materials used and not the retail selling price, the tax should be included in the price quoted for a particular tire, or the amount of the tax set out in immediate conjunction with the tire price. For example, assuming the tax on a particular tire to be $1 and the advertised selling price $9.95, the price should be stated as ''$10.95'' or ''$9.95 plus $1 Federal Excise Tax'' and not ''$9.95 plus Federal Excise Tax.''

(h) *Advertising furnished by tire manufacturers*. It is the practice of some tire manufacturers to supply advertising to independent as well as to wholly owned retail outlets in local trade areas. A tire manufacturer providing advertising material to be used in local trade areas by either wholly owned or independent outlets is responsible for the representations made in such advertising and should base price and savings claims on conditions actually existing in the particular areas. In view of price fluctuations at the local level, the general dissemination (i.e., in more than one trade area) to independent retail outlets of advertising material containing stated prices or reduction claims results in deception[1] and is, accordingly, contrary to this part. [Guide 15]

§ 228.16 Guarantees.

(a) In general, any advertising containing a guarantee representation shall clearly and conspicuously disclose:

(1) *The nature and extent of the guarantee*. (i) The general nature of the guarantee should be disclosed. If the guarantee is, for example, against defects in material or workmanship, this should be clearly revealed.

(ii) Disclosure should be made of any material conditions or limitations in the guarantee. This would include any limitation as to the duration of a guarantee, whether stated in terms of treadwear, time, mileage, or otherwise. Exclusion of tire punctures also would constitute a material limitation. If the guarantor's performance is conditioned on the return of the tire to the dealer who made the original sale, this fact should be revealed.

(iii) When a tire is represented as ''guaranteed for life'' or as having a ''lifetime guarantee,'' the meaning of the term *life* or *lifetime* should be explained.

(iv) Guarantees which under normal conditions are impractical of fulfillment or for such a period of time or number of miles as to mislead purchasers into the belief the tires so guaranteed have a greater degree of serviceability or durability than is true in fact, should not be used.

[1] This part does not deal with the question of whether such practice may be improper as contributing to unlawful restraints of trade connected with the enforcement of the Antitrust Laws and the Federal Trade Commission Act.

(2) *The manner in which the guarantor will perform.* This consists generally of a statement of what the guarantor undertakes to do under the guarantee. Types of performance would be repair of the tire, refund of purchase price or replacement of the tire. If the guarantor has an option as to the manner of the performance, this should be expressly stated.

(3) *The identity of the guarantor.* The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. Confusion of purchasers often occurs when it is not clear whether the manufacturer or the retailer is the guarantor.

(4) *Pro rata adjustment of guarantees*—(i) *Disclosure in advertising.* Many guarantees provide that in the event of tire failure during the guarantee period a credit will be allowed on the purchase price of a replacement tire, the amount of the credit being in proportion to the treadwear or time remaining under the guarantee. All advertising of the guarantee should clearly disclose the pro rata nature of the guarantee and the price basis upon which adjustments will be made.

(ii) *Price basis for adjustments.* Usually under this type of guarantee the same predetermined amount is used as a basis for the prorated credit and the purchase price of the replacement tire. If this so-called ''adjustment'' price is not the actual selling price but is an artificial, inflated price the purchaser does not receive the full value of his guarantee. This is illustrated by the following example:

> ''A'' purchases a tire which is represented as being guaranteed for the life of the tread. After 75 percent of the tread is worn, the tire fails. The dealer from whom ''A'' seeks an adjustment under his guarantee is currently selling the tire for $15 but the ''adjustment'' price of the tire is $20. ''A'' receives a credit of 25 percent or $5 toward the price of the replacement tire. This credit is applied not on the actual selling price but on the artificial ''adjustment'' price of $20. Thus, ''A'' pays $15 for the new tire which is the current selling price of the tire.

Under the facts described in this illustration the guarantee was worthless as the purchaser could have purchased a new tire at the same price without a guarantee. If 50 percent of the tread remained when the adjustment was made, the purchaser would have received a credit of $10 toward the $20 replacement price. He must still pay $10 for a replacement tire. Had the adjustment been made on the basis of the actual selling price he would have obtained a new tire for $7.50. Thus, while deriving some value from his guarantee he did not receive the value he had reason to expect under the guarantee.

(b) Accordingly, to avoid deception of purchasers as to the value of guarantees, adjustments should be made on the basis of a price which realistically reflects the actual selling price of the tire. The following would be considered appropriate price bases for making guarantee adjustments:

(1) The original purchase price of the guaranteed tire; or

(2) The adjusting dealer's actual current selling price at the time of adjustment; or

(3) A predetermined price which fairly represents the actual selling price of the tire.

Whenever an advertisement for tires includes reference to a guarantee, the advertisement should also disclose, clearly and conspicuously, the price basis on which adjustments will be made. Such disclosure of the price basis for adjustments should be in terms of actual purchase or selling price, e.g., original purchase price, adjusting dealer's current selling price, etc. A mere reference to a guarantor's ''adjustment price,'' for example, would not satisfy this disclosure requirement. In addition, written material disclosing the basis for adjustments should be made available to prospective purchasers at the point of sale, and if the third method of adjustment is chosen, such written material should include the actual price on which guarantee adjustments will be made. [Guide 16]

§ 228.17 Safety or performance features.

Absolute terms such as ''skidproof,'' ''blowout proof,'' ''blow proof,'' ''puncture proof'' should not be unqualifiedly used unless the product so described affords complete and absolute protection from skidding, blowouts, or punctures,