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may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised product to another.

(b) Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception. [Guide 2]

§ 238.3 Discouragement of purchase of advertised merchandise.

No act or practice should be engaged in by an advertiser to discourage the purchase of the advertised merchandise as part of a bait scheme to sell other merchandise. Among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:

(a) The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer,

(b) The disparagement by acts or words of the advertised product or the disparagement of the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it,

(c) The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the merchandise is available only at designated outlets,

(d) The refusal to take orders for the advertised merchandise to be delivered within a reasonable period of time,

(e) The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement,

(f) Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product. [Guide 3]

§ 238.4 Switch after sale.

No practice should be pursued by an advertiser, in the event of sale of the advertised product, of ''unselling'' with the intent and purpose of selling other merchandise in its stead. Among acts or practices which will be considered in determining if the initial sale was in good faith, and not a strategem to sell other merchandise, are:

(a) Accepting a deposit for the advertised product, then switching the purchaser to a higher-priced product,

(b) Failure to make delivery of the advertised product within a reasonable time or to make a refund,

(c) Disparagement by acts or words of the advertised product, or the disparagement of the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it,

(d) The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. [Guide 4]

NOTE: *Sales of advertised merchandise.* Sales of the advertised merchandise do not preclude the existence of a bait and switch scheme. It has been determined that, on occasions, this is a mere incidental byproduct of the fundamental plan and is intended to provide an aura of legitimacy to the overall operation.

PART 239—GUIDES FOR THE ADVERTISING OF WARRANTIES AND GUARANTEES

Sec.

239.1 Purpose and scope of the guides.
239.2 Disclosures in warranty or guarantee advertising.
239.3 ''Satisfaction Guarantees'' and similar representations in advertising; disclosure in advertising that mentions ''satisfaction guarantees'' or similar representations.
239.4 ''Lifetime'' and similar representations.
239.5 Performance of warranties or guarantees.

AUTHORITY: Secs. 5, 6, 38 Stat. 719 as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 50 FR 18470, May 1, 1985, unless otherwise noted.

§ 239.1 Purpose and scope of the guides.

The Guides for the Advertising of Warranties and Guarantees are intended to help advertisers avoid unfair or deceptive practices in the advertising of warranties or guarantees. The Guides are based upon Commission

cases, and reflect changes in circumstances brought about by the Magnuson-Moss Warranty Act (15 U.S.C. 2301 *et seq.*) and the FTC Rules promulgated pursuant to the Act (16 CFR parts 701 and 702). The Guides do not purport to anticipate all possible unfair or deceptive acts or practices in the advertising of warranties or guarantees and the Guides should not be interpreted to limit the Commission's authority to proceed against such acts or practices under section 5 of the Federal Trade Commission Act. The Commission may bring an action under section 5 against any advertiser who misrepresents the product or service offered, who misrepresents the terms or conditions of the warranty offered, or who employs other deceptive or unfair means.

Section 239.2 of the Guides applies only to advertisements for written warranties on consumer products, as ''written warranty'' and ''consumer product'' are defined in the Magnuson-Moss Warranty Act, 15 U.S.C. 2301, that are covered by the Rule on Pre-Sale Availability or Written Warranty Terms, 16 CFR part 702. The other sections of the Guides apply to the advertising of any warranty or guarantee.

[50 FR 18470, May 1, 1985; 50 FR 20899, May 21, 1985]

§ 239.2 Disclosures in warranty or guarantee advertising.

(a) If an advertisement mentions a warranty or guarantee that is offered on the advertised product, the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, that prior to sale, at the place where the product is sold, prospective purchasers can see the written warranty or guarantee for complete details of the warranty coverage.[1]

Examples: The following are examples of disclosures sufficient to convey to prospective purchasers that, prior to sale, at the place where the product is sold, they can see the written warranty or guarantee for complete details of the warranty coverage. These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive. In each example, the portion of the advertisement that mentions the warranty or guarantee is in regular type and the disclosure is in italics.

A. ''The XYZ washing machine is backed by our limited 1 year warranty. *For complete details, see our warranty at a dealer near you.*''

B. ''The XYZ bicycle is warranted for 5 years. *Some restrictions may apply. See a copy of our warranty wherever XYZ products are sold.*''

C. ''We offer the best guarantee in the business. *Read the details and compare wherever our fine products are sold.*''

D. ''*See our full 2 year warranty at the store nearest you.*''

E. ''Don't take our word—take our warranty. *See our limited 2 year warranty where you shop.*''

(b) If an advertisement in any catalogue, or in any other solicitation[2] for mail order sales or for telephone order sales mentions a warranty or guarantee that is offered on the advertised product, the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, that prospective purchasers can obtain complete details of the written warranty or guarantee free from the seller upon specific written request or from the catalogue or other solicitation (whichever is applicable).

Examples: The following are examples of disclosures sufficient to convey to consumers how they can obtain complete details of the written warranty or guarantee prior to placing a mail or telephone order. These examples are illustrative, not exhaustive. In each example, the portion of the advertisement that mentions the warranty or guarantee is in regular typeface and the disclosure is in italics.

A. ''ABC quality cutlery is backed by our 10 year warranty. *Write to us for a free copy at: (address).*''

B. ''ABC power tools are guaranteed. *Read about our limited 90 day warranty in this catalogue.*''

[1] In television advertising, the Commission will regard any disclosure of the pre-sale availability of warranties as complying with this Guide if the advertisement makes the necessary disclosure simultaneously with or immediately following the warranty claim and the disclosure is made in the audio portion, or, if in the video portion, it remains on the screen for at least five seconds.

[2] See note 1.

C. ''*Write to us for a free copy of our full warranty*. You'll be impressed how we stand behind our product.''

[50 FR 20899, May 21, 1985]

§ 239.3 "Satisfaction Guarantees" and similar representations in advertising; disclosure in advertising that mentions "satisfaction guarantees" or similar representations.

(a) A seller or manufacturer should use the terms ''Satisfaction Guarantee,'' ''Money Back Guarantee,'' ''Free Trial Offer,'' or similar representations in advertising only if the seller or manufacturer, as the case may be, refunds the full purchase price of the advertised product at the purchaser's request.

(b) An advertisement that mentions a ''Satisfaction Guarantee'' or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to the ''Satisfaction Guarantee'' or similar representation.

Examples: These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

Example A: (In an advertisement mentioning a satisfaction guarantee that is conditioned upon return of the unused portion within 30 days) ''We guarantee your satisfaction. If not completely satisfied with Acme Spot Remover, return the unused portion within 30 days for a full refund.''

Example B: (In an advertisement mentioning a money back guarantee that is conditioned upon return of the product in its original packaging) ''Money Back Guarantee! Just return the ABC watch in its original package and ABC will fully refund your money.''

§ 239.4 "Lifetime" and similar representations.

If an advertisement uses ''lifetime,'' ''life,'' or similar representations to describe the duration of a warranty or guarantee, then the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, the life to which the representation refers.

Examples: These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

Example A: (In an advertisement mentioning a lifetime guarantee on an automobile muffler where the duration of the guarantee is measured by the life of the car in which it is installed) ''Our lifetime guarantee on the Whisper Muffler protects you for as long as your car runs—even if you sell it, trade it, or give it away!''

Example B: (In an advertisement mentioning a lifetime guarantee on a battery where the duration of the warranty is for as long as the original purchaser owns the car in which it was installed) ''Our battery is backed by our lifetime guarantee. Good for as long as you own the car!''

§ 239.5 Performance of warranties or guarantees.

A seller or manufacturer should advertise that a product is warranted or guaranteed only if the seller or manufacturer, as the case may be, promptly and fully performs its obligations under the warranty or guarantee.

PART 240—GUIDES FOR ADVERTISING ALLOWANCES AND OTHER MERCHANDISING PAYMENTS AND SERVICES

Sec.

240.1 Purpose of the Guides.
240.2 Applicability of the law.
240.3 Definition of seller.
240.4 Definition of customer.
240.5 Definition of competing customers.
240.6 Interstate commerce.
240.7 Services or facilities.
240.8 Need for a plan.
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240.10 Availability to all competing customers.
240.11 Wholesaler or third party performance of seller's obligations.
240.12 Checking customer's use of payments.
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240.14 Meeting competition.
240.15 Cost justification.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46; 49 Stat. 1526; 15 U.S.C. 13, as amended.

SOURCE: 55 FR 33663, Aug. 17, 1990, unless otherwise noted.

§ 240.1 Purpose of the Guides.

The purpose of these Guides is to provide assistance to businesses seeking to comply with sections 2 (d) and (e) of the Robinson-Patman Act (the ''Act''). The guides are based on the language of the statute, the legislative history, administrative and court decisions, and the purposes of the Act. Although the