§ 237.5 Trade status.

In collecting or attempting to collect debts due him, an industry member shall not, through the use of any designation or by any other means, create the impression that he is a collection agency, unless he is such as defined in this part. [Guide 5]

§ 237.6 Services.

In the solicitation of accounts for collection or for ascertainment of credit status, an industry member shall not directly, or by implication, misrepresent the services he renders.

NOTE: § 237.6 is general in nature since the varied misrepresentations used in connection with the solicitation of accounts for collection are numerous. Listed below are a few specific examples of representations which have been prohibited by the Commission because they were false or deceptive:

1. That the industry member's organization is separated into functional divisions, such as credit reporting, analytical, tracing, and collecting.
2. That the industry member employs local representatives, regional investigators, and lawyers on his personnel staff in various States and throughout the world.
3. That collection fees are less than what the industry member actually charges.
4. That no charges will be made for accounts unless they are collected.
5. That the industry member makes personal calls on debtors to collect accounts.
6. That the industry member will furnish credit reports to parties who assign accounts to him for collection.

[Guide 6]

Dated: November 7, 1967.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-13198; Filed, Nov. 7, 1967; 8:47 a.m.]

PART 17—APPLICATION AND DEFINITIONS

Application of Guides and Trade Practice Rules in Preventing Unlawful Competitive Restraints

Section 17.1 has been amended to read as follows:

§ 17.1 Application of guides and trade practice rules in preventing unlawful competitive restraints.

(a) Industry guides are administrative interpretations of laws administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. They provide the basis for voluntary and simultaneous abandonment of unlawful practices by members of industry. Failure to comply with the guides may result in corrective action by the Commission under applicable statutory provisions. Guides may relate to a practice common to many industries or to specific practices of a particular industry.

(b) Trade practice rules promulgated by the Commission are designed to foster and promote the maintenance of fair competitive conditions in the interest of protecting industry, trade, and the public. It is to this end, and to the exclusion of any act or practice which suppresses competition, restrains trade, fixes or controls price through combination or agreement, or which otherwise injures, destroys, or prevents competition, that the rules are to be applied.

(Sec. 6(g), 38 Stat. 722; 15 U.S.C. 46(g))

Issued: November 7, 1967.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-13197; Filed, Nov. 7, 1967; 8:47 a.m.]

PART 238—GUIDES AGAINST BAIT ADVERTISING

The following guides were adopted by the Federal Trade Commission on November 24, 1959, for the use of its staff in the evaluation of bait advertising[1] and related switch practices. While the guides do not purport to be all inclusive, they enumerate the major indications of bait and switch schemes. They were released to the public in the interest of consumer education and to obtain voluntary, simultaneous, and prompt cooperation by those whose practices are subject to the jurisdiction of the Federal Trade Commission.

Adversary actions against those who [F.R. Doc. 67-13199; Filed, Nov. 7, 1967; engage in bait advertising and whose practices are subject to Commission jurisdiction, are brought under the Federal Trade Commission Act (15 U.S.C. secs. 41-58). Section 5 of the Act declares unlawful, "unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce."

Sec.
238.0 Bait advertising defined.
238.1 Bait advertisement.
238.2 Initial offer.
238.3 Discouragement of purchase of advertised merchandise.
238.4 Switch after sale.

AUTHORITY: The provisions of this Part 238 issued under Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 238.0 Bait advertising defined.[1]

Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying merchandise of the type so advertised.

§ 238.1 Bait advertisement.

No advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product. (Guide 1.)

[1] For the purpose of this part "advertising" includes any form of public notice however disseminated or utilized.

§ 238.2 Initial offer.

(a) No statement or illustration should be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which 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.

Nothing contained in these Guides relieves any party subject to a Commission cease and desist order or stipulation from complying with the provisions of such order or stipulation. The Guides do not constitute a finding in and will not affect the disposition of any formal or informal matter before the Commission.

Adopted: November 24, 1959.

By direction of the Commission.

[SEAL] JOSEPH W. SHEA, *Secretary.*

[F.R. Doc. 67-13199; Filed, Nov. 7, 1967; 8:47 a.m.]

PART 239—GUIDES AGAINST DECEPTIVE ADVERTISING OF GUARANTEES

The following guides were adopted by the Federal Trade Commission April 26, 1960 for the use of its staff in evaluation of the advertising of guarantees. They were released to the public in the interest of education of the businessman and the consumer and to obtain voluntary, simultaneous, and prompt cooperation by those whose practices are subject to the jurisdiction of the Federal Trade Commission.

The guides enumerate the major principles applicable to the advertising of guarantees although they do not purport to be all-inclusive and do not attempt to define the exact border lines between compliance with and violation of the law.

The Federal Trade Commission Decisions, upon which these guides are based, indicate that the major difficulty with this type of advertising has been the failure to state adequately what the guarantee is. Concerning this, an appellate court stated: "Ordinarily the word, guarantee, or warrantee, is incomplete unless it is used in connection with other explanatory words. To say a * * * [product] or other subject is guaranteed is meaningless. What is the guarantee? The answer to this question gives meaning to the word, 'guaranteed'."

The guides have application not only to "guarantees" but also to "warranties", to purported "guarantees" and "warranties", and to any promise or representation in the nature of a "guarantee" or "warranty".

Adversary actions against those who engage in deceptive advertising of guarantees and whose practices are subject to Commission jurisdiction are brought under the Federal Trade Commission Act (15 U.S.C., secs. 41–58). Section 5 of the Act declares unlawful "unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce".

Sec.
239.0 Determining violations.
239.1 Guarantees in general.
239.2 Prorata adjustment of guarantees.
239.3 "Satisfaction or Your Money Back" representations.
239.4 Lifetime guarantees.
239.5 Savings guarantees.
239.6 Guarantees under which the guarantor does not or cannot perform.
239.7 Guarantee as a misrepresentation.

AUTHORITY: The provisions of this Part 239 issued under secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

§ 239.0 Determining violations.

In determining whether terminology and direct or implied representations concerning guarantees, however made, i.e., in advertising or otherwise, in connection with the sale or offering for sale of a product, may be in violation of the Federal Trade Commission Act, the following general principles will be used:

§ 239.1 Guarantees in general.

In general, any guarantee in advertising shall clearly and conspicuously disclose—

(a) *The nature and extent of the guarantee.* This includes disclosure of—product is guaranteed,

(1) What product or part of the product is guaranteed,

(2) What characteristics or properties of the designated product or part thereof are covered by, or excluded from, the guarantee,

(3) What is the duration of the guarantee,

(4) What, if anything, any one claiming under the guarantee must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges; and

(b) *The manner in which the guarantor will perform.* This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement, refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out; and

(c) *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. (Guide 1.)

§ 239.2 Prorata adjustment of guarantees.

(a) Many guarantees are adjusted by the guarantor on a prorata basis. The advertising of these guarantees should clearly disclose this fact, the basis on which they will be prorated, e.g., the time for which the guaranteed product has been used, and the manner in which the guarantor will perform.

(b) If these guarantees are to be adjusted on the basis of a price other than that paid by the purchaser, this price should be clearly and conspicuously disclosed.

Example: "A" sells a tire with list price of $48 to "B" for $24, with a 12 months guarantee. After 6 months use the tire proves defective. If "A" adjusts on the basis of the price "B" paid, $24, "B" will only have to pay one-half of $24, or $12, for a new tire. If "A" instead adjusts on the basis of list price, "B" will owe one-half of $48, of $24, for a new tire. The guarantor would be required to disclose here the following: That this was a 12 months guarantee, that a list price of $48 would be used in the adjustment, that there would be an adjustment on the basis of the time that the tire was used, and that he would not pay the adjusted amount in cash, but would make an adjustment on a new tire.

NOTE: Guarantees which provide for an adjustment based on a fictitious list price should not be used even where adequate disclosure of the price used is made. (Guide 2.)

§ 239.3 "Satisfaction or Your Money Back" representations.

(a) "Satisfaction or Your Money Back", "10 Day Free Trial", or similar representations will be construed as a guarantee that the full purchase price will be refunded at the option of the purchaser.

(b) If this guarantee is subject to any conditions or limitations whatsoever, they shall be set forth as provided for in § 239.1.

Example: A rose bush is advertised under the representation "Satisfaction or Your Money Back". The guarantor requires return of the product within 1 year of purchase date before he will make refund. These limitations, i.e., "return" and "time" shall be clearly and conspicuously disclosed in the ad. (Guide 3.)

§ 239.4 Lifetime guarantees.

If the words "Life", "Lifetime", or the like, are used in advertising to show the duration of a guarantee, and they relate to any life other than that of the purchaser or original user, the life referred to shall be clearly and conspicuously disclosed.

Example: "A" advertised that his carburetor was guaranteed for life, whereas his guarantee ran for the life of the car in which the carburetor was originally installed. The advertisement is ambiguous and deceptive and should be modified to disclose the "life" referred to. (Guide 4.)

§ 239.5 Savings guarantees.

(a) Advertisements frequently contain representations of guarantees that assure prospective purchasers that savings may be realized in the purchase of the advertiser's products.

(b) Some typical advertisements of this type are "Guaranteed to save you 50%", "Guaranteed never to be undersold", "Guaranteed lowest price in town".

(c) These advertisements should include a clear and conspicuous disclosure of what the guarantor will do if the savings are not realized, together with any time or other limitations that he may impose.