13-11a-3 Deceptive trade practices enumerated -- Records to be kept -- Defenses.

(1) Deceptive trade practices occur when, in the course of a person's business, vocation, or occupation that person:

(a) passes off goods or services as those of another;

(b) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(c) causes likelihood of confusion or of misunderstanding as to affiliation, connection, association with, or certification by another;

(d) uses deceptive representations or designations of geographic origin in connection with goods or services;

(e) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(f) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or second-hand;

(g) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(h) disparages the goods, services, or business of another by false or misleading representation of fact;

(i) advertises goods or services or the price of goods and services with intent not to sell them as advertised;

(j) advertises goods or services with intent not to supply a reasonable expectable public demand, unless:

(i) the advertisement clearly and conspicuously discloses a limitation of quantity; or

(ii) the person issues rainchecks for the advertised goods or services;

(k) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions, including the false use of any of the following expressions in an advertisement:

(i) "going out of business";

(ii) "bankruptcy sale";

(iii) "lost our lease";

(iv) "building coming down";

(v) "forced out of business";

(vi) "final days";

(vii) "liquidation sale";

(viii) "fire sale";

(ix) "quitting business"; or

(x) an expression similar to any of the expressions in Subsections (1)(k)(i) through (ix);

(l) makes a comparison between the person's own sale or discount price and a competitor's nondiscounted price without clearly and conspicuously disclosing that fact;

(m) without clearly and conspicuously disclosing the date of the price assessment makes a price comparison with the goods of another based upon a price assessment performed more than seven days prior to the date of the advertisement or uses in an advertisement the results of a price assessment performed more than seven days prior to the date of the advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio or television ad, the time frame of the price assessment;

(n) advertises or uses in a price assessment or comparison a price that is not that person's own unless this fact is:

(i) clearly and conspicuously disclosed; and
(ii) the representation of the price is accurate;
(o) represents as independent an audit, accounting, price assessment, or comparison of prices of goods or services, when the audit, accounting, price assessment, or comparison is not independent;
(p) represents, in an advertisement of a reduction from the supplier's own prices, that the reduction is from a regular price, when the former price is not a regular price as defined in Subsection 13-11a-2(14);
(q) advertises a price comparison or the result of a price assessment or comparison that uses, in any way, an identified competitor's price without clearly and conspicuously disclosing the identity of the price assessor and any relationship between the price assessor and the supplier;
(r) makes a price comparison between a category of the supplier's goods and the same category of the goods of another, without randomly selecting the individual goods or services upon whose prices the comparison is based;
(s) makes a comparison between similar but nonidentical goods or services unless the nonidentical goods or services are of essentially similar quality to the advertised goods or services or the dissimilar aspects are clearly and conspicuously disclosed in the advertisements; or
(t) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

(2)
(a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect for less than one week from the advertisement date, the advertisement shall clearly and conspicuously disclose the specific time period during which the price will be in effect.
(b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the price shall be one at which the competitor offered the goods or services for sale in the product area at the time of the price assessment, and may not be an isolated price.
(c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or comparison shall be independent if the price assessor randomly selects the goods to be compared, and the time and place of the comparison, and no agreement or understanding exists between the supplier and the price assessor that could cause the results of the assessment to be fraudulent or deceptive. The independence of an audit, accounting, or price comparison is not invalidated merely because the advertiser pays a fee for the audit, accounting, or price comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or part-time employee of the advertiser.
(d) Examples of a disclosure that complies with Subsection (1)(q) are:
(i) "Price assessment performed by Store Z";
(ii) "Price assessment performed by a certified public accounting firm"; or
(iii) "Price assessment performed by employee of Store Y".
(e) For the purposes of Subsection (1)(r), goods or services are randomly selected when the supplier has no advance knowledge of what goods and services will be surveyed by the price assessor, and when the supplier certifies its lack of advance knowledge by an affidavit to be retained in the supplier's records for one year.
(f)
(i) It is prima facie evidence of compliance with Subsection (1)(s) if:
(A) the goods compared are substantially the same size; and

(B) the goods compared are of substantially the same quality, which may include similar models of competing brands of goods, or goods made of substantially the same materials and made with substantially the same workmanship.

(ii) It is prima facie evidence of a deceptive comparison under this section when the prices of brand name goods and generic goods are compared.

(3) Any supplier who makes a comparison with a competitor's price in advertising shall maintain for a period of one year records that disclose the factual basis for such price comparisons and from which the validity of such claim can be established.

(4) It is a defense to any claim of false or deceptive price representations under this chapter that a person:

(a) has no knowledge that the represented price is not genuine; and

(b) has made reasonable efforts to determine whether the represented price is genuine.

(5) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs in which a supplier compares the price of a single item of its goods or services with those of another.

(6) To prevail in an action under this chapter, a complainant need not prove competition between the parties or actual confusion or misunderstanding.

(7) This chapter does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

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