Chapter 11a
Truth in Advertising

13-11a-1 Purpose.

The purpose of this chapter is to prevent deceptive, misleading, and false advertising practices and forms in Utah. This chapter is to be construed to accomplish that purpose and not to prohibit any particular form of advertising so long as it is truthful and not otherwise misleading or deceptive.

Enacted by Chapter 205, 1989 General Session

13-11a-2 Definitions.

As used in this chapter:

(1) "Advertisement" means any written, oral, or graphic statement or representation made by a supplier in connection with the solicitation of business. It includes, but is not limited to, communication by noncable television systems, radio, printed brochures, newspapers, leaflets, flyers, circulars, billboards, banners, or signs. It does not include any oral, in person, representation made by a sales representative to a prospective purchaser.

(2) To "clearly and conspicuously disclose" means:

(a) in the print media:

(i) to state in typeface that is sufficiently bold to be obviously seen;

(ii) to state in type size of at least 10 point type for a 14" x 23" document, and, in larger documents, of a type size of proportionately the same size; and

(iii) to place in the text so as to be obviously seen;

(b) in radio advertising, to verbally state in the same volume as that used in the advertisement;

(c) in television advertising, the method for print media or radio advertising is acceptable unless contrary to other governing laws.

(3) "Generic good" means a product which is offered for sale under its common descriptive name rather than under a trademark, trade name, brand name, house brand, or other distinguishing appellation.

(4) "Goods and services" means all items which may be the subject of a sales transaction.

(5) "Nondiscounted price" means a price at which the goods or services are offered at the time of the price assessment without a temporary store reduction in price.

(6) "Performing group" means a vocal or instrumental group that performs live music for a paying audience.

(7) "Person" means an individual, including a consumer, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(8) "Price assessment" means the determination of the prices underlying a price comparison.

(9) "Price assessor" means a firm or individual that determines the prices, including the reference prices, underlying the price comparison, or who makes the price comparison.

(10) "Price comparison" means any express representation that a specific savings, reduction, or discount exists or will exist between the supplier's advertised price and another specific price. A representation which does not reasonably imply a comparison to identifiable prices or items does not express a price comparison. Language constituting mere sales "puffing" is not prohibited by this chapter.

(11) "Product area" means the geographical area in which the prospective purchasers to whom the advertisement is aimed could reasonably be expected to seek the goods or services in question.
(12) "Recording group" means a vocal or instrumental group at least one of the members of which has released a commercial sound recording under the group's name, if the member has a legal right to use of the group's name.
(13) "Reference price" means a higher price to which a supplier compares a lower price to indicate that a reduction in price exists or will exist.
(14) "Regular price" means the price at which a supplier has recently offered the goods or services for sale in good faith in the regular course of business. Every price represented in an advertisement is considered a regular price unless it is specifically represented as a price other than a regular price, such as a discount price or a manufacturer's suggested price. It is prima facie evidence that a price is other than a regular price when it was not offered as the nondiscount price of the goods or services for the 15 days immediately preceding an advertisement of the price, and the price change during the 15 day period was not due to price changes inherent in the pricing of seasonal or perishable goods, due to changes in cost of the goods or services to the supplier, or due to pricing changes made to match a competitor's price.
(15) "Sales transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance), to a person or business, or a solicitation or offer by a supplier with respect to any of these transfers or dispositions. It includes any offer or solicitation, any agreement, and any performance of an agreement with respect to any of these transfers or dispositions.
(16) "Sound recording" means a work resulting from the fixation on a material object, such as a disk, tape, or phono-record, of musical or instrumental sounds.
(17) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces sales transactions, whether or not he deals directly with the purchaser.

Amended by Chapter 133, 2009 General Session

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.

Amended by Chapter 54, 2010 General Session
Amended by Chapter 378, 2010 General Session

13-11a-4 Injunctive relief -- Damages -- Attorney fees -- Corrective advertising -- Notification required.

(1)
(a)
(i) Any person or the state may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to enjoin a continuance of any act in violation of this chapter and, if injured by the act, for the recovery of damages.
(ii) If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from continuance of the violation.
(iii) It is not necessary that actual damages be proven.
(b) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant the amount of actual damages sustained or $2,000, whichever is greater.
(c)
(i) Costs shall be allowed to the prevailing party unless the court otherwise directs.
(ii) The court shall award attorney fees to the prevailing party.
(2) The court may order the defendant to promulgate corrective advertising by the same media and with the same distribution and frequency as the advertising found to violate this chapter.
(3) The remedies of this section are in addition to remedies otherwise available for the same conduct under state or local law.
(4)
(a) No action for injunctive relief may be brought for a violation of this chapter unless the complaining person first gives notice of the alleged violation to the prospective defendant and provides the prospective defendant an opportunity to promulgate a correction notice by the same media as the allegedly violating advertisement.
(b) If the prospective defendant does not promulgate a correction notice within 10 days of receipt of the notice, the complaining person may file a lawsuit under this chapter.

Amended by Chapter 158, 2024 General Session

13-11a-5 Exemptions.

This chapter does not apply to:
(1) conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;
(2) publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast, or reproduce material without knowledge of its deceptive character; or
(3) actions or appeals pending on the effective date of this chapter.

Enacted by Chapter 205, 1989 General Session

13-11a-6 Truth in music advertising -- Exemptions -- Penalties.

(1) A person may not advertise or conduct a live musical performance by a performing group by using a false, deceptive, or otherwise misleading affiliation between a performing group and a recording group of the same name.

(2) This section does not apply to:
(a) a performing group that is the registrant and owner of a registered federal service mark for the group name;
(b) a performance by a performing group that is clearly identified in all advertising and promotional materials as a salute or tribute;
(c) a performing group at least one member of which was a member of the recording group and has a legal right to use of the group name;
(d) the advertising does not relate to a live musical performance occurring in this state; or
(e) a performance authorized in writing by the recording group.
(3)
(a) A person may enforce this section by bringing an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration.
(b) Notwithstanding Title 78B, Chapter 3a, Venue for Civil Actions, a person shall bring an action described in Subsection (3)(a) in the county in which the live musical performance is advertised or conducted if the person brings the action in the district court.
(c) A party injured by a violation of this section may obtain an injunction and recover actual damages.
(d) The prevailing party in an action under Subsection (3)(a) may be awarded costs and attorney fees.

Amended by Chapter 158, 2024 General Session