

DECEPTIVE TRADE PRACTICES

AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen D. Clark

Senate Sponsor: Scott K. Jenkins

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LONG TITLE

General Description:

This bill makes technical changes to provisions related to truth in advertising.

Highlighted Provisions:

This bill:

- ▶ makes technical changes related to defining when a deceptive trade practice occurs, including clarifying sentence structure.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

**13-11a-3**, as enacted by Chapter 205, Laws of Utah 1989

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **13-11a-3** is amended to read:

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

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

(a) [~~A person~~] passes off goods or services as those of another[-];

(b) [~~A person~~] causes likelihood of confusion or of misunderstanding as to the source,

30 sponsorship, approval, or certification of goods or services[-];

31 (c) [A person] causes likelihood of confusion or of misunderstanding as to affiliation,  
32 connection, association with, or certification by another[-];

33 (d) [A person] uses deceptive representations or designations of geographic origin in  
34 connection with goods or services[-];

35 (e) [A person] represents that goods or services have sponsorship, approval,  
36 characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has  
37 a sponsorship, approval, status, affiliation, or connection that [he] the person does not have[-];

38 (f) [A person] represents that goods are original or new if they are deteriorated, altered,  
39 reconditioned, reclaimed, used, or second-hand[-];

40 (g) [A person] represents that goods or services are of a particular standard, quality, or  
41 grade, or that goods are of a particular style or model, if they are of another[-];

42 (h) [A person] disparages the goods, services, or business of another by false or  
43 misleading representation of fact[-];

44 (i) [A person] advertises goods or services or the price of goods and services with  
45 intent not to sell them as advertised[. ~~If specific advertised prices will be in effect for less than~~  
46 ~~one week from the advertisement date, the advertisement must clearly and conspicuously~~  
47 ~~disclose the specific time period during which the prices will be in effect.];~~

48 (j) [A person] advertises goods or services with intent not to supply a reasonable  
49 expectable public demand, unless:

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

51 (ii) the person issues rainchecks for the advertised goods or services[-];

52 (k) [A person] makes false or misleading statements of fact concerning the reasons for,  
53 existence of, or amounts of price reductions[-];

54 (l) [A person] makes a comparison between [his] the person's own sale or discount  
55 price and a competitor's nondiscounted price without clearly and conspicuously disclosing that  
56 fact[-];

57 (m) [A person,] without clearly and conspicuously disclosing the date of the price

58 assessment makes a price comparison with the goods of another based upon a price assessment  
59 performed more than seven days prior to the date of the advertisement or uses in an  
60 advertisement the results of a price assessment performed more than seven days prior to the  
61 date of the advertisement without disclosing, in a print ad, the date of the price assessment, or  
62 in a radio or television ad, the time frame of the price assessment[-];

63 (n) ~~[A person]~~ advertises or uses in a price assessment or comparison a price that is not  
64 ~~[his] that person's own unless this fact is:~~

65 (i) clearly and conspicuously disclosed; and

66 (ii) the representation of the price is accurate~~[- With respect to the price of a~~  
67 ~~competitor, the price must be one at which the competitor offered the goods or services for sale~~  
68 ~~in the product area at the time of the price assessment, and must not be an isolated price.];~~

69 (o) ~~[A person]~~ represents as independent an audit, accounting, price assessment, or  
70 comparison of prices of goods or services, when ~~[such] the~~ audit, accounting, price assessment,  
71 or comparison is not independent~~[- Such audit, accounting, price assessment, or comparison~~  
72 ~~shall be independent if the price assessor randomly selects the goods to be compared, and the~~  
73 ~~time and place of such comparison, and no agreement or understanding exists between the~~  
74 ~~supplier and the price assessor that could cause the results of the assessment to be fraudulent or~~  
75 ~~deceptive. The independence of such audit, accounting, or price comparison is not invalidated~~  
76 ~~merely because the advertiser pays a fee therefor, but is invalidated if the audit, accounting, or~~  
77 ~~price comparison is done by a full or part time employee of the advertiser.];~~

78 (p) ~~[A person]~~ represents, in an advertisement of a reduction from the supplier's own  
79 prices, that the reduction is from a regular price, when the former price is not a regular price as  
80 defined in Subsection 13-11a-2(12)[-];

81 (q) ~~[A person]~~ advertises a price comparison ~~[or the result of a price assessment or~~  
82 ~~comparison that uses, in any way, an identified competitor's price without clearly and~~  
83 ~~conspicuously disclosing the identity of the price assessor and any relationship between the~~  
84 ~~price assessor and the supplier[- Examples of disclosure complying with this section are:~~  
85 ~~"Price assessment performed by Store Z"; "Price assessment performed by a certified public~~

86 accounting firm"; "Price assessment performed by employee of Store Y."];

87 (r) ~~[A person]~~ makes a price comparison between a category of the supplier's goods  
88 and the same category of the goods of another, without randomly selecting the individual goods  
89 or services upon whose prices the comparison is based~~[- For the purposes of this subsection,  
90 goods or services are randomly selected when the supplier has no advance knowledge of what  
91 goods and services will be surveyed by the price assessor, and when the supplier certifies its  
92 lack of advance knowledge by an affidavit to be retained in the supplier's records for one year.];~~

93 (s) ~~[A person]~~ makes a comparison between similar but nonidentical goods or services  
94 unless the nonidentical goods or services are of essentially similar quality to the advertised  
95 goods or services or the dissimilar aspects are clearly and conspicuously disclosed in the  
96 advertisements~~[- It is prima facie evidence of compliance with this subsection if:]; or~~

97 ~~[(i) the goods compared are substantially the same size; and]~~

98 ~~[(ii) the goods compared are of substantially the same quality, which may include  
99 similar models of competing brands of goods, or goods made of substantially the same  
100 materials and made with substantially the same workmanship. It is prima facie evidence of a  
101 deceptive comparison under this section when the prices of brand name goods and generic  
102 goods are compared.]~~

103 (t) ~~[A person]~~ engages in any other conduct which similarly creates a likelihood of  
104 confusion or of misunderstanding.

105 (2) (a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect  
106 for less than one week from the advertisement date, the advertisement must clearly and  
107 conspicuously disclose the specific time period during which the price will be in effect.

108 (b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the  
109 price must be one at which the competitor offered the goods or services for sale in the product  
110 area at the time of the price assessment, and must not be an isolated price.

111 (c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or  
112 comparison shall be independent if the price assessor randomly selects the goods to be  
113 compared, and the time and place of the comparison, and no agreement or understanding exists

114 between the supplier and the price assessor that could cause the results of the assessment to be  
115 fraudulent or deceptive. The independence of an audit, accounting, or price comparison is not  
116 invalidated merely because the advertiser pays a fee for the audit, accounting, or price  
117 comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or  
118 part-time employee of the advertiser.

119 (d) Examples of a disclosure that complies with Subsection (1)(q) are:

120 (i) "Price assessment performed by Store Z";

121 (ii) "Price assessment performed by a certified public accounting firm"; or

122 (iii) "Price assessment performed by employee of Store Y".

123 (e) For the purposes of Subsection (1)(r), goods or services are randomly selected when  
124 the supplier has no advance knowledge of what goods and services will be surveyed by the  
125 price assessor, and when the supplier certifies its lack of advance knowledge by an affidavit to  
126 be retained in the supplier's records for one year.

127 (f) (i) It is prima facie evidence of compliance with Subsection (1)(s) if:

128 (A) the goods compared are substantially the same size; and

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

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

134 ~~[(2)]~~ (3) Any supplier who makes a comparison with a competitor's price in advertising  
135 shall maintain for a period of one year records that disclose the factual basis for such price  
136 comparisons and from which the validity of such claim can be established.

137 ~~[(3)]~~ (4) It shall be a defense to any claim of false or deceptive price representations  
138 under this chapter that a person:

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

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

141 ~~[(4)]~~ (5) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs

142 in which a supplier compares the price of a single item of its goods or services with those of  
143 another.

144 ~~[(5) In order to]~~ (6) To prevail in an action under this chapter, a complainant need not  
145 prove competition between the parties or actual confusion or misunderstanding.

146 ~~[(6)]~~ (7) This chapter does not affect unfair trade practices otherwise actionable at  
147 common law or under other statutes of this state.