

employers or principals to purchase or contract to purchase products manufactured or sold by such industry member or the maker of such gift or offer, or to influence such employers or principals to refrain from dealing in the products of competitors or from dealing or contracting to deal with competitors. [Guide 12]

§ 250.13 Other parts in this title 16 applicable to this industry.

The Commission has adopted Guides Against Deceptive Pricing, part 233, Guides Against Deceptive Advertising of Guarantees, part 239, and Guides Against Bait Advertising, part 238, all of which have general application and furnish additional guidance for members of the Household Furniture Industry. Members of this industry should comply with those parts.

PART 251—GUIDE CONCERNING USE OF THE WORD “FREE” AND SIMILAR REPRESENTATIONS

§ 251.1 The guide.

(a) *General.* (1) The offer of “Free” merchandise or service is a promotional device frequently used to attract customers. Providing such merchandise or service with the purchase of some other article or service has often been found to be a useful and valuable marketing tool.

(2) Because the purchasing public continually searches for the best buy, and regards the offer of “Free” merchandise or service to be a special bargain, all such offers must be made with extreme care so as to avoid any possibility that consumers will be misled or deceived. Representative of the language frequently used in such offers are “Free”, “Buy 1-Get 1 Free”, “2-for-1 Sale”, “50% off with purchase of Two”, “1¢ Sale”, etc. (Related representations that raise many of the same questions include “___ Cents-Off”, “Half-Price Sale”, “½ Off”, etc. See the Commission’s “Fair Packaging and Labeling Regulation Regarding ‘Cents-Off’ and Guides Against Deceptive Pricing.”)

(b) *Meaning of “Free”.* (1) The public understands that, except in the case of introductory offers in connection with

the sale of a product or service (See paragraph (f) of this section), an offer of “Free” merchandise or service is based upon a regular price for the merchandise or service which must be purchased by consumers in order to avail themselves of that which is represented to be “Free”. In other words, when the purchaser is told that an article is “Free” to him if another article is purchased, the word “Free” indicates that he is paying nothing for that article and no more than the regular price for the other. Thus, a purchaser has a right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise.

(2) The term *regular* when used with the term *price*, means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service in the geographic market or trade area in which he is making a “Free” or similar offer in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period. For consumer products or services which fluctuate in price, the “regular” price shall be the lowest price at which any substantial sales were made during the aforesaid 30-day period. Except in the case of introductory offers, if no substantial sales were made, in fact, at the “regular” price, a “Free” or similar offer would not be proper.

(c) *Disclosure of conditions.* When making “Free” or similar offers all the terms, conditions and obligations upon which receipt and retention of the “Free” item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood. Stated differently, all of the terms, conditions and obligations should appear in close conjunction with the offer of “Free” merchandise or service. For example, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made