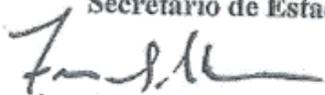




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## REGULATIONS AGAINST MISLEADING PRACTICES AND ADVERTISEMENT

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# REGULATIONS AGAINST MISLEADING PRACTICES AND ADVERTISEMENT

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## **REGULATIONS AGAINST MISLEADING PRACTICES AND ADVERTISEMENT**

### **Rule 1- Authority**

These Bylaws are put in force by the power bestowed upon the Consumer Affairs Department by virtue of Acts Num. 5 of April 23, 1973, Num. 148 of June 27 1968, Num. 97 of June 19, 1953, Num. 228 of May 12, 1942, Num. 95 of May 16, 2006, Num. 42 of January 27, 2006, and Num. 96 of May 16, 2006, as amended.

### **Rule 2- General Purposes**

These Bylaws have the purpose of protecting consumers against practices or advertisement that create or tend to create the appearance of being false or misleading, about goods or services offered as part of commerce. Moreover, it forbids misleading practices and advertisement, with the object of establishing a climate of trust and respect among merchants and consumers.

### **Rule 3- Reach and Application**

These Bylaws will apply to any natural person or legal entity devoted to offering goods or services to consumers in a permanent or incidental manner in the jurisdiction of the Commonwealth of Puerto Rico, either by him or herself, or through a representative, or as an intermediary. They also apply to every natural person or legal entity devoted to the advertisement business or a similar activity.

### **Rule 4- Interpretation**

These Bylaws must be liberally interpreted in favor of the consumer and with the purpose of fulfilling the obligations stated by sources consigned in Rule 1, among them Article 6(j) of Act Num. 5 of April 23, 1973. In the case of a discrepancy between the text in Spanish and the text in English, the Spanish text will prevail. Words and phrases used in these Bylaws will be interpreted according to the context in which they are used, and their meaning will be the commonly and ordinarily accepted one. In those cases that apply, word used in present tense will also include the future tense; the ones whose gender is male are also meant to include the female gender; singular includes plural, and plural includes singular.

### **Rule 5- Definitions**

- A. Advertiser- the provider of goods or services who commissions the publication of a message, or a publicity ad, or any other form of information related to his goods or services.

- B. Ad- any oral, written, graphic, pictorial, electronic or any other form of manifestation, made with the purpose of offering, describing, or representing in any other form some good or service, or some aspect of a good or service.
- C. False Advertisement- any ad that constitutes or tends to constitute fraud, hoax, or that communicates or tends to communicate a false, confusing, or incorrect idea about an advertised good or service. Any ad that omits relevant facts about the product, good or service, thus limiting or depriving the consumer from taking informed and conscious decisions.
- D. Substitute Article- a substitute article will be understood as a similar article, for the same use or job, of equal or superior quality than the advertised sales article, and whose regular price is equal or superior to the sales article, but not over fifty percent (50%) of the advertised article's regular price.

The substitute article's price will be calculated in the following way:

**The sales article regular price + 50% of the article's regular price= top price for a substitute article.**

Included next is an example that illustrates how to calculate the top price for a substitute article that a merchant is obliged to provide.

Sales article- Television X, regular price \$400, sales price \$200

To calculate the top price that a merchant is obliged to provide for a substitute article:

The sales article regular price + 50% of the article's regular price= top price for a substitute article.

$$\mathbf{\$400 + \$200 = \$600}$$

- E. Good- any movable or immovable merchandise, article or product susceptible to be the object of a contract of purchase and sale, rent, or any other commercial transaction.
- F. Clearly and Adequately- an easily perceivable representation, unambiguous, and of a size, color contrast and audition that, once presented, can be rapidly grasped and understood without difficulty.
- G. Merchant- provider of goods and services; any natural person or legal entity that offers goods or services to consumers either for sale, rent, or any other commercial transaction. Without limiting, it includes the following: any official, agent, employee, salesperson or sales representative.

- H. Commerce- it is a commercial establishment in which commercial transactions take place regarding goods and services to consumers who acquire them for their use and personal disposition. "Establishment" will mean any structure, building, local, warehouse, lot, or analogous place in which any kind of sales, retailing, or distribution of goods and services to consumers takes place.
- I. Price Comparison- direct or indirect comparison of any good or service, expressed in terms of dollars and cents, fractions, percentages, or any other manner, with any other price or value expression. Without limiting, this includes any claim of reduction or savings with relation to the regular price of the good or service.
- J. Consumer- any natural person who acquires or uses products or services as their final destination. It includes any other person, association or entity appointed by Law who is authorized to present a claim to the Department.
- K. Re-stocking fee- amount charged by some commercial establishments at the moment a consumer returns merchandise according to the return policy of the establishment, which represents a percentage of the price paid by the consumer. This fee, if charged, must be clearly expressed in the commercial establishment's return policy. However, no establishment can require such fee when the merchandise is returned according to the guarantee policy, or by reason ascribed to the merchant or vendor.
- L. Relevant fact- is that which, if disclosed, may influence consumers to acquire or not some advertised good or service; or to do or not do the act that the ad or practice points out.
- M. Reasonably Anticipated Demand- is a future projection on a determined article's inventory, based on the amount registered in the business books regarding that same article during the previous year. Understood as being of the same nature, characteristics and price, as they were being sold, in a period of time equal or similar to the one in which the article is to be offered again to consumer.

In the case of a new commerce that does not have a sales record from the previous year and is part of a chain of commercial establishments that share the same name, the new commercial establishment may use the sales record from the nearest chain commerce as criteria to determine the reasonably anticipated demand. In that case, in order to determine future sales projections, the previous sales record from similar articles sold in an equal or similar period of time to the one in which the article is to be offered again to consumer.

- N. Department- Consumer Affairs Department.
- O. Food Establishment- any natural person or legal entity dedicated to serve prepared food.
- P. Initial Publication Date- the date in which and ad is published, transmitted, circulated, presented, displayed, exhibited or disseminated in any other fashion for the first time in Puerto Rico.
- Q. Guarantee- printed document or written in long-lasting materials, meaning ink and permanent paper, which guarantees the preservation of the written or printed information for the term of one (1) year, or for the term in which the obtained good or service is guaranteed, whichever is greater, that affirms to consumers the aptness and the quality of the sold goods or offered services, issued by the merchant or the product's manufacturer, and in which the merchant or manufacturer makes a pledge of reimbursement, repair, substitution, or any other adequate means offered to correct faults, defects, or deficiencies identified in these goods or services during a specific period of time.
- R. Free- a product, good or service will be understood to be free when it has no direct or indirect cost to obtain it.
- S. Personal Information- any information, name, or number of a consumer, by itself or together with any other information, including but without being limited to: name and last names; Social Security number; date and/or place of birth; civil state; gender; physical or postal address; zip code; email; telephone number; driver's license; passport number; finger prints; voice recordings; retina images; or any other information that allows the physical or electronic identification of a natural person.
- T. Middlemen- a natural person or legal entity that comes between the advertiser and the media. Includes, but is not limited to, any advertisement agency or its representative.
- U. Media- includes television, radio, cinema, postal services, newspapers, magazines, flyers, loose leaves, billboards, "Internet", wireless cellular telephones, digital telephones, or any other means whose object is to publicate an ad as defined in these Bylaws, if its exhibited in Puerto Rico.
- V. Monroney Label- a sticker demanded by the Automobile Information Disclosure Act, a Federal Law that demands that it be placed in all new motor vehicles, with the following information: manufacturer's suggested price, the car's standard and optional equipment, information about

guarantee, motor and transmission, fuel performance in miles per gallon, among others.

- W. Person- refers to a natural person, unless it is specifically indicated that it refers to a legal entity.
- X. Misleading Practices- any act, practice, conduct, persuasion mechanism, offering, information, or pledge made, or apparently made or suggested, that is misleading, confusing, false, deceitful, or that in any way tends towards falsehood, or tends to distort or may allow the misinterpretation of true facts.
- Y. Price- the article or service's value, excluding the sales tax on the article or service, if applicable.
- Z. Sales spot- a place where one or more cash registers is placed.
- AA. Tips- an amount of money given away as stipend, gift, or prize for an excellent service.
- BB. Rebate- discount or reimbursement of part of the sales price.
- CC. Sales receipt- a written document or voucher issued by the merchant for the consumer in a transaction at the moment of payment. The time and date of the transaction, the nature of the product or service, the person or entity that receives the payment, the amount paid, and the method of payment, must all be clearly legible in the receipt. The sales receipt must be printed or written in long-lasting materials, meaning ink and permanent paper, that will guarantee the preservation of the printed information for the term of one (1) year, or for the term in which the obtained good and/or service is guaranteed, whichever is greater.
- DD. Secretary- The Secretary of the Consumer Affairs Department.
- EE. Service- is any labor, work, job, or action promised, supplied, offered, sold, done or susceptible to be publicly offered to consumers.
- FF. Rain Check- is a password, receipt, or voucher issued by the merchant to the consumer when an advertised good in a special sales is not available.
- GG. Motor Vehicle- means every vehicle, truck, pick-up, or bus that is moved by a force other than muscular.
- HH. Special Sales- is any sales act of goods and services by means of an inferior price from the regular price that is the object of publication and advertisement, including promotions and offers that require

membership. This definition excludes articles whose regular price have not been lowered, articles in clearance sales, and articles advertised at regular price which are not part of the commerce's regular inventory.

- II. Clearance Sales- is any sales act of goods with the purpose of eliminating merchandise from the store's inventory, either because it is anticipated that the merchandise will not be sold in the future, is seasonal merchandise, or has been updated by a latest model. When an article is been sold at a clearance sale, it must be clearly and adequately stated, besides complying with the requisites established in Rule 13 (C).

### **Rule 6- Basic Principles**

- A. The merchant must hand over or diligently render the good or service as advertised or offered.
- B. The merchant must be in a position to uphold and prove all claims and offers that he intends to make, before printing or declaring them.
- C. An ad can be false or misleading in its entirety, even if each one of its expressions, taken separately, is true.
- D. Falsity can result not only from direct expressions or from inferences reasonably created, but also from the omission or obscuring of relevant facts.
- E. Any affirmation or graphic representation in an ad that lends itself to different interpretations, one of which is misleading or confusing, will be judged against the advertiser.
- F. The consumer to whom an ad is directed must easily comprehend it. The criteria will be that of a reasonable consumer, from the perspective of the group to which the ad is directed.

### **Rule 7- Misleading Practices and Advertisement**

- A. False or misleading ads or practices are banned.
- B. The term misleading practices includes, among others, the following cases:
  - 1. Representing or expressing an act or an offer if such declaration is misleading or false, or has the tendency or capacity of creating confusion, or does not have the sufficient information to support itself, or hides a relevant fact. It includes, in turn, advertising a

good or service for sale and not having it available or in the announced quantities.

2. Inducing or attempting to induce a person to act in exchange of any benefit that will later turn out to be less, false, inexistent, illicit, or illegal.
3. Advertising or offering a good or service as bait, conscious of the fact that is not available, or is not available in enough quantities, in order to attract the consumer and attempt to sell him another good or service; discouraging the sale of a good or service advertised, and offer a substitute one.
4. Advertising, exposing, selling, or offering a good as new when it is actually used or reconstructed.
5. Retaining pieces or parts of a good that is being repaired, without deducting its value from the reparation price, or without notifying the consumer prior to start repairing.
6. Exposing, selling, or offering products for sale which are packaged in such a way that those that are damaged, defective, of worst appearance, or of inferior quality are totally or partially hidden behind or under those products that are in good shape, have good appearance, or are of superior quality.
7. Exposing, selling, or offering a product for sale that is of a different category, condition, classification, or inferior quality to the one advertised one, or of different classification or quality of a same package under the same price.
8. Exposing, selling, or offering previously frozen goods as if they were fresh
9. Exposing, selling, or offering imported goods for sale as if they were produced in Puerto Rico.
10. Exposing, selling, or offering drugs, cosmetics, beverages, pills, among others, without having the veracity of its alleged benefits being scientifically proven, and without the proper authorization by the Food and Drug Administration (FDA).
11. Exposing, selling, or offering food, or diet supplements and novel diets which have not been proven, or that have no justification; or ineffective medical artifacts, without establishing, by means of scientific studies, the veracity of its alleged benefits.

12. Advertising or expressing, through an ad or publication, that a certain company, commerce, or business is endorsed by the Department, giving the impression that the Agency is related to the said company or business.
13. Not informing the consumer by writing that, if he pays with credit or debit card, a minimum amount of sale is required, in case of such requirement.
14. Charging an amount of money as service charge when such services are inexistent or are not susceptible of being corroborated. Additional charges from the regular price cannot be imposed when accessory basic services—whenever such services are necessary and not operational—are offered to the consumer so that he can receive the main good or service that is being offered.
15. Not telling the consumer that a certain amount of money (service charge) will be charged when selling tickets for some activity.
16. Not issuing a sales receipt to every consumer acquiring a good or service, as demanded by Rule 5 (dd), when such receipt is required for changes or returns.
17. Not issuing a written guarantee, as demanded by Rule 5 (Q), regarding the sold goods or rendered services, when such goods or services have a guarantee.
18. Clauses that establish that a consumer's silence is indicative of acceptance of any offer, modification, restriction, amplification, condition, or time extension from the one established in the contract. The consumer's consent must be clear and affirmative when accepting an offer.
19. Using the accord and satisfaction payment figure in the relationships between consumers and merchants who are tied by an adhesion contract when, at a merchant's breach of contract, the consumer demands the specific compliance with the contract or its resolution.
20. The merchant's omission to diligently deliver or offer the good or service as advertised or offered.

21. Automatic renewal clauses that charge money for it are forbidden, unless it has the consumer's clear consent. Such consent must be stated in a contract clause that attends only this particular matter and that provides a space for the consumer's initials.
  22. To label a product, good, or service with a price that differs from the price registered by the cash register's code bar reader.
  23. It will constitute a misleading practice or advertisement to use the term "extended guarantee" in a service contract, regulated by Act Num. 392 of September 8, 2000, or an analogous contract, when the terms and conditions of the original guarantee are not extended.
- C. The Secretary may issue official interpretations of deeds, acts, or situations that in the light of these Bylaws constitute misleading practices or advertisement. These interpretations will be issued in a written form, and will become part of the official interpretations related to these Bylaws.

#### **Rule 8- Ad Form**

- A. Every ad must be written, expressed, and presented in such a way as to bring to the consumer's mind all the essential and necessary information needed to know about the qualities, quality, forms of payment, price, size, quantity, use, or any other characteristic announced for the said good or service, free of any ambiguity that might tend to confuse him.
- B. The fine print in a printed, written, or graphic ad will not be smaller than eight (8) points. Moreover, the publication of fine print in an ad must comply with the following parameters:
  1. Prominence: Besides complying with the minimum size requirement, the publication must be done in a background color that makes for strong contrast, emphasizing the text and making it more noticeable.
  2. Presentation: The consumer must easily understand the ad's language and format.
  3. Placing and Proximity: The text must be placed at the bottom of the page of the ad being qualified.
- C. No ad will use incomprehensible signs, abbreviations or abbreviation by initials, or techniques that might tend to create in the consumer a wrong

image regarding the price, the sales conditions, or any other characteristic of the advertised good or service.

- D. Any expression that clears, conditions, or offers details about the information contained in the ad must appear inside a box at the bottom of the ad. For television or any other form of audiovisual media, the clarifications, conditions, or details must be presented both in visual and audible form. In all cases, the publication or clarification cannot contradict the declarations or affirmations made in the rest of the ad, nor can it be used to clarify false impressions made by the ad.
- E. For any ad transmitted by radio, television, or any other audible or audiovisual form, no words, sound effects, or any other method will be used that might obscure, confuse, or distract the attention, or spoil the sense, meaning, or importance of expressions that clarify, modify, or condition an offer.
- F. Any expression that clarifies, modifies, or conditions an offer in a televised transmission or any other audiovisual form, will be clearly and legibly projected on the screen's safety zone during a period of time enough for a prudent and reasonable person to understand it. The letters of the expression that establish a modification, clarification, or condition must be of a color that contrast with the background. The background will have no colors or images that obscure or distract the attention from the clarification, modification, or conditioning, or which may lead to undervalue its sense, meaning, or importance.
- G. Any printing, clarification, or modification in all kinds of ads must be clear and conspicuous. Important information must not be hidden in fine print.
- H. Applicable resolutions regarding Publicity and Promotion of Games of Chance:
  - 1. This resolution will apply to every government agency, public corporation, instrumentality, public agency, television station, radio station, newspaper, cinema, and film company that posts, produces, publishes, transmits, or presents a press slut in either newspaper, radio or television, or through any other means of communication or expression, with the purpose of promoting games of chance as authorized by the Laws of Puerto Rico, including the Traditional Lottery, the Additional Lottery, and any other game of chance, as defined by Law, either promoted by the Commonwealth Government or by the private sector, whose advertisement or promotion is distributed within Puerto Rico's jurisdiction.

2. Excluded from this clause are commercials produced outside Puerto Rico, over which the media has no power to comply with this regulations, as well as promotions directed exclusively to a foreign market, as arranged by Act Num. 221 of May 15, 1948, as amended.
3. Any ad produced by the request of a government agency, public corporation, instrumentality, public agency, television station, radio station, newspaper, cinema, and film company, which posts, produces, publishes, transmits or publicizes a press slut in either newspaper, radio or television, or through any other means of communication or expression, with the purpose of promoting any game of chance in Puerto Rico as authorized by the Laws of Puerto Rico, including the Traditional Lottery, the Additional Lottery, and any other game of chance, as defined by Law, either promoted by the Commonwealth Government or the private sector, must include a message exhorting gamblers to gamble responsibly, and warning them about the risk of compulsive gambling.
4. Every casino, cockfighting coop, gambling room, race track operator, horse racing agency, as well as every establishment in which Electronic Lottery is sold, will show a warning in the form of a legible and visible sign to the people using their facilities, exhorting gamblers to gamble responsibly, and warning them about the risk of compulsive gambling.
5. The public advise or warning will be written in the following way:

“Warning: Games of chance can create addiction. If gambling causes you economic, family, and occupational problems, call your mental health provider.”
6. The sign will be no less that eight and a half (8 ½) inches by eleven (11) inches, with letters no less than fourteen (14) points, in a color that creates contrast with the background. The background will have no color or images that might obscure or distract attention from the text, or undermine its sense, meaning, or importance.
7. The advise or warning will be exhibited in a visible place in the entrance area, as well as everywhere where tickets, chips, tokens, or similar articles are being sold for the purpose of gambling.

8. The font size of letters in ads for written press will not be less than twelve (12) points, and they must be in a color that creates contrast with the background. The background will have no color or images that might obscure or distract attention from the text, or undermine its sense, meaning, or importance.
9. In ads for radio, television, or any other form of audible or audiovisual communication, no words, sound effects, or any other method will be used to obscure, confuse, or distract the attention, or undermine the sense, meaning, or importance of the advice or warning.
10. When the ad is made for audible media, the advice or warning must be clearly and adequately divulged at the end of the ad.
11. In commercials for television or any other audiovisual media, the advice or warning will be projected clearly and legible, enough time for it to be read and understood, in the screen's safety zone.
12. Any ad contract to promote games of chance, or activities that include games of chance, in which a government agency, public corporation, or government instrumentality take part, or that is sponsored by public funds, must contain a clause that prohibits the publication of any ad in the written press, radio, or television, or through any other media or means of expression, without including the advice or warning required by this Rule. Moreover, it will also contain a penal clause that imposes a penalty of one thousand dollars (\$1,000) for every ad transmitted in violation of this prohibition. Such noncompliance will be reason enough to break up that contract.

### **Rule 9- Disclosure of Relevant Facts**

The merchant will publish clearly and adequately all relevant facts, before the sales is done or offered, free of ambiguities that might confuse the consumer. Likewise, every ad will publish in writing, clearly and adequately, the relevant facts.

Relevant facts are, among others, the following:

- A. The total price of a good or service.
- B. That the advertised good is used, imperfect or irregular, or is broken, or has been repaired or reconstructed.

- C. That the manufacturer has discontinued the advertised good.
- D. That the advertised good lacks the safety improvements of later models.
- E. That there exists a significant possibility that there will not be spare parts available for the advertised good during its average time of usefulness.
- F. That the advertised good or service contains compounds, chemical agents, formulas, or any other substance whose normal and day to day use causes or may cause physiological, or psychological, or any other reaction which alters the organism. This information does not have to appear in the ad, as long as it appears clearly and adequately on the good or service's wrapping or label, but the ad will clearly and adequately indicate the need to read the label.
- G. That the advertised good does not include parts, accessories, or equipment necessary for its adequate functioning, appearance, or use.
- H. That parts or pieces susceptible to be repaired, or which have some other economic value besides the price paid for the good or service, will be retained.
- I. Terms and conditions of financing, if offered.
- J. Specifications, including: model, year, components, characteristics, or guarantees, as long as the advertised or offered good or service, because of its nature, makes it necessary to know this information.

#### **Rule 10- Visual Representations**

- A. Any visual representation used in an ad must correspond to the good or service' real characteristics.
- B. The use of phrases indicating that the offered product or model "is not the same as the one depicted" in order to justify the incompilance of clause (A) of this rule.

#### **Rule 11- Price Advertisement**

- A. The prices of goods and services must be advertised clearly and adequately.
- B. The ad will express the price of a good or service without requiring additional calculations.

- C. The merchant will place discount charts or any electronic mean like a price checker, visible and well signaled, in an area close to that in which the sales goods and the cash registers are, so that the consumer can know the price of the good or service on sale.
- D. When a good or service is labeled, announced, or scanned by the prize checker with more than one price, the lowest price will be taken as the correct one.
- E. When the product is labeled with one price and the scanner scans a different one, the lowest price will be taken as the correct one.
- F. When a determined good or service is advertised to be in a sale special, the regular price and the sales price must be clearly and adequately indicated. In those cases where the sales special consists of a percent discount, and given that the high number of articles included in the sales makes it impossible to identify them individually, the regular prices and the sales prices will be indicated as a range from the lowest price to the highest price, respectively.
- G. No other article or sales price may be included in fine print inside the same chart or box, causing the wrong impression among consumers that the highest sales price is the one that applies to all other articles. Each specific article with a sales price must be expressed separately, in a different label or box.
- H. In every ad of good or service, price or quantity fractions will be half the size of whole numbers preceding them.
- I. An article is exempt of labeling its price on it when an employee or clerk from the commercial establishment is attending it, and there is a sign in the available sales area that clearly and adequately shows the price.

**Rule 11 (A)- Relevant Facts in Motor Vehicle Advertisements**

- A. The advertised price of a motor vehicle, even if its used, must reflect the total price. If what is advertised as the price balance to be financed, then the ad has to include the amount required as down payment in order to obtain such price, with letters or numbers no smaller than half the size of those that advertise the price.
- B. Inside dealers or places for car exhibits and motor vehicle sales, new and used, the price to be paid by the consumer must be clearly and unambiguously labeled.

- C. In business of purchase and sale where a motor vehicle with standing debt is traded-in, and the determined value of the vehicle were less than its debt, the purchase and sale contract will clearly break-down this difference.
- D. Every new motor vehicle must have the Monroney Label attached, as defined in Rule 5 (w), as well as Hacienda Department's Suggested Sale Price Indication Tag. Only the consumer can remove both labels.
- E. Every new car ad must include, in a size no less than one quarter (1/4) the size of its name or its price, its yield in miles per gallon, both in the city and in highway, as determined by the Environmental Protection Agency (EPA) and the Federal Department of Energy.
- F. Expenses for the motor vehicle's registration in any purchase and sale must not exceed the amount established for such transaction by the Department of Transportation and Public Works. Any expense derived from such transaction must be clearly broken down by the seller in the purchase and sale contract. It is forbidden to charge twice for the same transaction.
- G. The compliance with this Rule does not exonerate the compliance with what has been instructed in Rules 8 to 11.

### **Rule 12- Price Comparison**

A merchant can advertise that he is offering discounts based on price comparison, or that the product that he is selling is cheaper than his competitor's, as long as the basis for comparison are clearly and adequately stated, and the compared products are of the same brand. He must have at hand all available facts and evidence that show the price comparison, and must be ready to prove his claim at all times.

Price comparison based of falsehood, arbitrariness, or inflated prices is forbidden. Merchants will publish, free of ambiguity, the compared prices, together with all the necessary information needed to know about the features, guarantee, quality, security, price, size, quantity, use, or any other characteristic of the good or service in order for the consumers to clearly understand the price comparison.

When a merchant uses the terms "previously", "regularly", or similar terms, it will be understood that he is referring to the previous price for the same good or service. In any other circumstance, the merchant must specify the higher price's origin.

- A. Previous price comparisons- the merchant may compare the previous price of a determined good or service with the sale price to be published. The previous price to be advertised must not exceed the following:

1. the price publicly and in good faith offered in Puerto Rico by the merchant himself, at least during thirty (30) out of the forty five (45) natural days previous to the initial publishing date; or
2. the price at which no less than thirty percent (30%) of the total sales in Puerto Rico for a good or service, during the twelve (12) month period previous to the initial publishing date, were done.

In the case of a chain store, the comparison will use the lowest previous regular price in any of the stores located in Puerto Rico.

- B. Comparing future prices- the merchant may advertise introductory offers, or compare his present prices with his future prices, as long as:
  1. The advertised future price takes effect immediately at the end of the special offer, but no more than sixty (60) natural days after the initial publishing date; and
  2. the advertised future price must withstand for at least twice the time that the introductory price was in effect.
- C. The use of terms that imply discount- as long as the good or service with discount is clearly and adequately identified, the merchant may use terms that indicate or imply a price reduction.
- D. Price comparison of tags or labels- No merchant can print, glue, or attach any tag or label with a false or inflated price that may be used to offer false discount prices.
- E. Discount fluctuations- The merchant may include in one ad progressive price discount fluctuations on several products, as long as the highest price and the lowest discount is clearly and adequately published, in numbers at least the same size as those announcing the lowest price and the highest discount.
- F. The use of sales terms such as "wholesale", "at cost", or "at manufacture's cost"- The merchant may advertise that he is selling at "wholesale" prices, "at cost", "at manufacture's cost", or some other similar term, as long as such claim is true, and the good is not defective or is missing any element or content.

- G. The use of terms such as “two for the price of one”, “buy one and get one free”, “buy one and get the second at half price”- The merchant may advertise that he is offering some good or service at regular price, and that he is adding some good, service, accessory benefit, as long as:
1. All the conditions are published clearly and adequately;
  2. the indicated regular price is true; and
  3. the main good or service is substantially of the same quality, grade and material as the one being offered by the merchant before publishing the ad.
- H. Unit prices that are part of a system- The merchant may not advertise the price of some good that is usually sold as part of a system, without clearly and adequately publishing that the indicated price is the price per unit and not the price for the whole system.

### **Rule 13- Availability of advertised goods**

- A. The merchant will have available for sale at the store enough of the advertised special sales goods to be able to provide an anticipated reasonable demand for the whole special sales period. If the goods are going to be available at the warehouse, the ad must indicate so, as well as the period and delivery conditions.
- B. The quantities of the advertised sales goods can only be limited when the following requirements are met:
1. The sales ad must clearly and adequately show the available number of each article per store or warehouse;
  2. the termination date for the sale, or for the sale of a particular product is conditioned to its running out of inventory, using for the ad language such as “until the existing ones run out” or “while they last”, and if a termination date is used simultaneously, it must be clear that the sales will end either when the articles run out or when the termination date is due, whichever happens before; and
  3. publish the minimum time of his offer during which he anticipates and guarantees that such inventory will be available according to the reasonable

anticipated demand, and such minimum guaranteed time will be expressed in hours or days, next to the advertised article or at the bottom of the ad.

Example:

Article X

Reg. \$3.99 Sales \$1.99

Available: 100 per store while they last (Minimum guaranteed time: 4 days)

If the limited inventory runs out before the minimum guaranteed time period published by the merchant is due, he is obliged to offer a substitute article or rain check for such sales product. If the product runs out once the minimum time period guaranteed by the merchant is due, the merchant is not obliged to substitute the sold out product nor offer a rain check for its future purchase.

4. The minimum guaranteed time period would not be less than three (3) days for articles in a seven (7) day sales period (shoppers). In sales with other determined time periods, the minimum guaranteed time period couldn't be less than fifty percent (50%) of the sales time period.
- C. Rule 13 does not apply to goods advertised in a clearance sale, nor does it apply to articles advertised at regular price that are not part of the store's regular inventory, or to articles advertised at regular price in publications that include other sales categories. In such cases, the ad must comply with the following requirements:
1. Ads for products on clearance sale, and for products at regular price that are not part of the store's regular inventory, must prominently highlight these conditions, and not in the fine print. In case of an article at regular price that is part of the store's inventory, the ad must specify that the article's price is a regular price.
  2. The ad must detail the amount available for each store, and must explain that they products will be available until they run out. If a limit exists of articles per person, the ad must clearly express so.

3. The ad will also highlight that the consumer will not have the right to a rain check or substitute article.
4. When different types of sales, such as special sales, clearance sales, articles that are not part of the inventory, are published in the same ad, each category must be defined. The definition cannot be located in the fine print area. If the ad has several pages, it will be included in no less than the first page. In publications that include different kinds of sales all mixed up together, they must be grouped by type, making it easier to distinguish them. Emblems or boxes that establish the difference between the type of sales being referred to will be used in order to avoid consumer's confusion.

#### **Rule 14- Substitute Articles and Rain Checks**

- A. Without limiting what already has been expressed in Rule 13 (B), when the advertised sales good is not available for sale, the merchant is obliged to offer the consumer a substitute article for the same price as the advertised sales good.
- B. If the consumer prefers to buy the advertised sales good, the merchant must offer him a rain check, fulfilling the following requirements:
  1. provide the consumer with the sales good within the next thirty calendar days (30); in the case of the Early Riser Sale, the term will be no longer than fifteen (15) calendar days;
  2. within the thirty (30) or fifteen (15) (Early Riser Sale) day period, must notify consumer either by telephone, regular mail, or electronic mail that the good is ready to be picked up;
  3. must have the good available for the consumer during fifteen (15) calendar days after notifying the consumer; and
  4. having passed the thirty (30) day term, or the fifteen (15) day term in the case of the Early Riser Sale, the consumer may choose to buy a substitute article, or extend the period for another thirty (30) days, or fifteen (15) (Early Riser Sale). In case the consumer chose to extend his voucher for the extended term, if

the merchant does not have the product available at the end of the term, he must offer the consumer a substitute article. If there is no substitute article available, and the consumer does not wish to extend his voucher or rain check, the store must provide the consumer an equivalent discount in any other product of the consumer's choice equal to the difference in price between the product's regular price and the special sales price in which it was advertised. The regular price of the product chosen by the consumer can be equal or higher than the regular price of the product advertised on the special sales. The merchant may choose to offer the discount in an article of less value, in case the consumer picks it.

Example:

Special sales article, a television whose regular price is \$400.00, at a sales price of \$200.00. Applying Rule 14 (B) (4) means the discount that must be offered to the consumer for other product would be \$200.00, the regular price of that other article being equal or more than \$400.00 (which is the regular price of the article advertised in the special sale). With this formula, the consumer may not benefit from the \$200.00 discount if he chooses an article whose regular price is \$250.00.

- C. This voucher constitutes an irrevocable offer on the merchant's part to provide the consumer with the advertised sales good at the advertised price and under the specified conditions.
- D. The voucher must have clearly printed or written:
  - 1. The store's name, address, and telephone number.
  - 2. The good's name, description, model number, series or identification, size, color, if applicable, and any other characteristic necessary or convenient that may help identify it without doubt;
  - 3. The good's regular price and its advertised sales price, or just its advertised price, in cases where the product was advertised with one price without making any reference that it is a special sale;

4. The consumer's name, postal address, telephone number, electronic mail address, if he has one.;
5. Date of dispatch;
6. The name and signature of the person who dispatched it;
7. A warning that:
  - a. The merchant has pledged to obtain the previously described good within thirty (30) days from the voucher's dispatch date, or fifteen (15) days in the case of the Early Riser Sale;
  - b. The merchant will notify the consumer by telephone, regular mail, or electronic mail when the good is available;
  - c. The merchant will keep the good at the consumer's disposition for a period of fifteen (15) calendar days from the date of notification;
  - d. The merchant must notify the consumer in the voucher about his rights, protected under article B(1-4) of this Rule.

#### **Rule 15- Publication of Special Sales Ads**

- A. Any special sales ad must contain the following information:
  1. The identification of the sales article;
  2. localization of the establishment where the articles will be available; being understood that it is forbidden to advertise a special sales if the product is not available in Puerto Rico, with the exception that the product's image in the ad is crossed over with a legend that says "not available in Puerto Rico", in case is an ad (printed or digital) prepared for more than one market.

3. The special sales' starting and ending dates, whose term cannot be less than four (4) hours, may only be conditioned if Rule 13 B' s demands are met. In the case of special sales ads printed in a general circulation newspaper, including its supplements, loose leaves, or shoppers, where the sale's term has not been included, or the end date has not been specified, the shop will honor the special sales on the date the consumer brings him the loose leaf, supplement, or shopper.
- B. When a special sales' ad does not get published in a general circulation newspaper, and only appears in a sign inside de store, the special sales will last for as long as the sign is exposed, unless the sign establishes a sales period with starting and ending dates.

### **Rule 16- Gifts and Prizes**

Free gifts or prizes with the purchase of some good or service, or with the compliance of certain conditions, can be advertised as long as:

- A. The good or service price does not increase;
- B. The merchant clearly and adequately identifies the prize or gift and publishes all imposed conditions and limitations for its acquisition.
- C. The merchant clearly and adequately identifies and publishes the prize or gift, as well as its worth.
- D. The prize or gift is handled to the consumer once he meets the advertised conditions.

If not all the people who meet the promotion's conditions receive a gift or prize and chance must intervene, the Consumer Affairs Department's Riffle Bylaws will apply to these cases.

### **Rule 17- Rebate**

- A. The final price of an article may not be advertised with the rebate discount if the rebate discount does not apply directly to the price at the moment of purchase. If the rebate discount is not included at the moment of purchase, the article's regular price will be advertised, which will be the amount the consumer would pay if he buys it that same day. The rebate discount must be advertised in a separate spot in the ad, with letters an numbers that will never be larger than half the size of those

which advertise the price that the consumer would pay if he buys it that same day.

- B. The advertiser of a rebate or discount in Puerto Rico, and the establishment's vendor where the rebated object is purchased, will have to show solidary responsibility towards the consumer when he claims that the obliged person did not honor the rebate or discount. In such a case, the consumer may claim directly to the commercial establishment the said rebate, or decide to return the good that has been the object of the rebate or discount and obtain in return the total amount of money paid for it, in the same form of payment that was used by the consumer.

### **Rule 18- Gathering the Consumer's Personal Information**

No personal information may be obtained from any consumer that is not voluntarily provided by the consumer, and without divulging or explaining what this information will be used for. The information offered voluntarily by the consumer may not be used to promote telemarketing offers, unless the consumer has expressly consented by writing for the use of his personal information for that purpose. Merchants will take all necessary measures to protect the personal information's privacy, confidentiality, and integrity offered by the consumer.

Personal information, understood as any information that identifies an individual, includes, but is not limited to the following:

- A. Name and last names;
- B. Physical or post address;
- C. Electronic mail address;
- D. Telephone number;
- E. Birth date;
- F. Credit or debit card information, including the card's number and expiration date;
- G. License number;
- H. Any other information, such as occupation or academic degrees, extracurricular interests, civil state, or religious affiliation that may identify an individual.

### **Rule 19- Purchase Receipt**

Every transaction of purchase and sale of products, articles, or services requires that every merchant issue a purchase receipt to the consumer. Neither the consumer nor the merchant may condition the acceptance or issuing of a receipt with false information. The document as a receipt must comply with Rule 5 (CC).

### **Rule 20- Financing**

A merchant, who expresses or implies that he provides financing, must offer it to the general public and indicate the interest rate, or clearly and adequately divulge any special condition, term, or criteria that the consumer must meet to qualify. He will advertise the interest rate percentage to be charged in terms of the annual percentage rate (APR).

### **Rule 21- Compliance with the TRUTH-IN-LENDING-ACT**

Any merchant who advertises financing terms and does not comply with the TRUTH-IN-LENDING-ACT, 15 USC 1601, *et seq.* and the prescribed resolutions proclaimed under its authority, will incur in a misleading practice.

### **Rule 22- Guarantees**

- A. Any guarantee issued or sold on a product or service, either being the manufacturer's original or repair services offered through a service contract as established by Act Num. 392 of September 8, 2000, must be recorded in a document that clearly states its terms and conditions.
- B. Any commercial ad that expresses that a good or service has a guarantee will specify its terms and conditions. Prior to the purchase, the consumer may inspect the guarantee's text, which should be available at the place where the good or service is being sold.
- C. Any ad that uses the phrase "guaranteed for life" or other similar phrases, must express its terms, conditions, and cannot limit the title transfer to another consumer.
- D. Any ad that claims the consumer will obtain some benefit from the acquisition of a good or service, must clearly and adequately establish in which way the merchant will respond in case the advertised benefit is not obtained. In its absence, the merchant is obliged to the consumer for not receiving the benefit.
- E. The merchant may not advertise nor offer for sale goods or services for personal, family, or domestic use that contain words or phrases which indicate or imply limitations or the inexistence of the guarantee that he is obliged to offer by legal disposition.

- F. The merchant will hand over to the consumer a certificate of guarantee, together with the good or service offered.
- G. The guarantee cannot establish that the returned equipment will have to be in its original package in order for the guarantee to be honored or return the consumer the money he paid for it. No commercial establishment may condition a product's guarantee to it being returned in its original package or that the consumer pay a re-stocking fee.

### **Rule 23- Corrections**

- A. Any merchant who discovers a mistake in one of his ads before publishing it, must correct it immediately. Orthographic and grammatical faults are considered mistakes, and so are errors with the regular or the sales price, or about product specifications, including the available quantity (example: "600" when it should have been "60").
- B. If the mistake is discovered after the commercial ad has been published, the correct information must be published in a clear and adequate manner, in the same media in which the original ad was published. Moreover, a copy of the correction must be placed next to the spot where the sale is taking place, or where the good or service that is the object of the correction is, on the establishment's entrance door, and on every cash register. The clarification must be done in colors if the original ad was in colors, and the size of the letters cannot be smaller than the ones used in the original ad. If the original ad included the product's illustration, it must also be included in the correction.
- C. The merchant will honor the offer to consumers who act motivated by the mistaken ad, if its before the correct information gets published in the same media where the original ad was published, as well as in a visible place, on the establishment's entrance door, and on all cash registers.
- D. Complying with the demands of this Rule while exempt the merchant from incurring in a violation for lack of available advertised goods, if he includes, together with the copy of the correction, a warning note to the consumer regarding the articles or services which are not available and the remedies that are available, at the place where the sale takes place or where the good or service which is the object of the correction is, on the establishment's entrance door, and on every cash register.

### **Rule 24- Publishing an error**

Each time a certain article, good, or service does not express its correct price in an ad, at the scanner, in a sign, board, box, or any other form, the Department may use its discretion to place on the establishment's entrance door a sign or sticker which

indicates that that commerce was caught in a violation. The sign or sticker will also indicate the period of time during which it would be exhibited. The sign's content will be determined by the Secretary, including, without limiting: the conduct that caused the Bylaws infraction; the Bylaws' resolution that have been infringed; the amount of the fine imposed, if any; and the number of times that the establishment has violated such resolution or/and the Bylaws.

### **Rule 25-Ad Endorsement or Characterizations**

- A. If a good or service has received the endorsement, recommendation, or approval of an individual, group, private or public institution, or organization, or the conclusions of a study favors it, it cannot be declared or represented unless it has occurred in the alleged manner.
- B. Declarations or representations cannot be done out of context, nor can they vary or amplify the reach, significance, or real content of an endorsement or approval by third parties, or the findings or conclusions of a study.
- C. Spontaneous declarations or testimonies by consumers about apparent benefits from good or services may be used. When the declaration or representation is not spontaneous, it will be clearly and adequately informed that it is a simulation.
- D. For the purpose of these Bylaws, third party opinions expressed in an ad or commercial will be understood to represent the same as the merchant's and will have the same effect as if said by him.
- E. The media, including radio, television, written or electronic press, will clearly distinguish any affirmation said as part of its informative or entertainment function, from those done as a commercial ad, whenever its format is that of an informative program or section. The advertisers, in such cases, must unequivocally expose the publicity character of his ads, with a warning that expresses that the program, segment, or publication is an paid ad for the product or service advertised.

### **Rule 26- Media Responsibility**

Besides any other responsibility that may have under these Bylaws, all media, advertisement agency, or its equivalent or intermediaries who directly or indirectly are related to the publication of an ad, will be subject to the following norms:

- A. It will incur in an illegal practice under this Bylaws if the media does not comply with the Secretary's written requirement to offer the name and postal and residential address of the producer, distributor, seller, or person who induced the publication or transmission of an ad.

- B. It will incur in illegal practice if it insists on transmitting or publishing an ad after an order has been issued to stop transmitting or publishing it.
- C. If is proven by means of proper evidence and through a previous administrative hearing, that because of the medias exclusive fault or negligence terms, conditions, prices, guarantees, services or any other essential aspect that must appear in the ad, are omitted, altered, modified, or changed, it will be the media's responsibility to satisfy the consumer, in case he has suffered harm or detriment.

### **Rule 27- Files**

Every merchant must keep for a period of one (1) year the files that prove the veracity of his commercial ads, publications, expressions, representations, or claims, and the representative transactions that took place. The information must demonstrate the quantities available per store in special sales and how many were sold. This last aspect includes the ones that were sold afterwards, according to the rain checks issued, as well as the substitute articles that were offered, reason for which he must keep in the files copies of all documents that credit these instances. He must also keep in file a copy of every document that reflects the required analysis to commerce to determine the anticipated reasonable demand as defined in Rule 5 (n). The files can be kept in electronic format.

### **Rule 28- Return Policy**

- A. All commercial establishments must show in a visible spot, in clear and legible letters, signs that properly notify and inform consumers about the return policy of merchandise, both the way in which it is done as well as the consumer's term for returning the product.
- B. The merchant cannot refuse to refund the consumer for the sold good if the good:
  - 1. Has some defect;
  - 2. Does not match with the published representations that motivated the consumer to purchase from the merchant;
  - 3. Does not serve the purpose for which it was acquired; or if during the purchasing process or during the period of time covered by the guarantee, it does not comply with the resolutions of these Bylaws.

## **Rule 29- Signaling**

- A. The return policy contained in Rule 28 must be included in a sign that will have a size no less than eight and a half (8 ½) inches by eleven (11); with a letter font no less than fourteen (14) points. Moreover, the same sign must indicate the following: “The publication of false advertisement is illegal. Incurring in such practice will entail a maximum fine of \$10,000. The consumer may present a complaint at the Consumer Affairs Department (CAD), Act Num. 5 of April 23, 1973, as amended”.
- B. The sign must be exhibited in a visible place in each one of the sales spots. There can be as many signs in place as needed, so that the consumer can read them from any sales spot. This sign must not be placed farther than five (5) feet from the sale spot, where the consumer can have visual access to it. Furthermore, it must stand between four (4) and seven (7) feet from the ground. The signs will be placed in such a way so that the consumer can read it before doing the purchase.
- C. It will not be necessary to place these signs in the commercial establishment’s entrance or exit doors.
- D. Exempted from complying with this Rule are the professional services and food establishments, as defined in Rule 5(P). However, it is demandable that every commercial establishment operating in Puerto Rico place a sign in a visible place, in clear and legible letters, with the following warning: “The publication of false advertisement is illegal. Incurring in such practice will entail a maximum fine of \$10,000. The consumer may present a complaint at the Consumer Affairs Department (CAD), Act Num. 5 of April 23, 1973, as amended”.

## **Rule 30- Tips**

It is forbidden to impose charges related to tips as condition for offering a service or selling a good to a consumer. It will be the consumer’s option to give or not to give tips, as well as the tip’s amount.

## **Rule 31- Copy of Bylaws**

The merchant must have available in his shop a copy of these Bylaws for the consumer’s inspection at his request.

## **Rule 32- Penalties**

The Secretary is hereby authorized to issue warnings, to order doing or not doing, to cease and desist, and to impose sanctions and administrative fines to the maximum allowed by the Consumer Affairs Department Organic Law for infringement, for any

incompliance with the resolutions of these Bylaws, or for the orders and resolutions issued by them.

The imposition of penalties does not deprive the consumer from his right to exercise the independent actions that may come up under the regulations of these Bylaws, other bylaws, or the Law, including claims for damages.

### **Rule 33- Penal Sanctions**

Whenever the nature of the violation of these Bylaws and the law that justify them, the Secretary may refer the infringer to the Secretary of Justice for the proper course of action.

### **Rule 34- Exception**

If any of these Bylaws' regulations were declared unconstitutional or illegal by a competent Tribunal with proper jurisdiction, such determination will not affect or invalidate the rest of the Bylaws, but rather the effect will be limited to the part, article, paragraph, or clause that was declared unconstitutional or illegal.

### **Rule 35- Derogatory Clause**

The Bylaws against Misleading Practices and Advertisement, Bylaws Num. 7932, approved on October 15, 2010, is hereby derogated.

### **Rule 36- In effect**

These Bylaws will come in effect thirty (30) days after being submitted to the Office of the Secretary of State.

In San Juan, Puerto Rico, today, May 28, 2015

Nery E. Adames Soto  
Secretary

Date of approval: May 28, 2015

Submission date: May 29, 2015

Date of effect: June 28, 2015