

SUBJECT: CONSUMER PROTECTION – BAIT ADVERTISING
ATTORNEY GENERAL – PUBLIC PROTECTION UNIT
ADOPTED PURSUANT TO 9 V.S.A SECTION 2453(c)

RULE CP 103
Effective Date: 1/28/74

CP 103.01 Offers Which Are Not Bona Fide
CP 103.02 “Unselling” Advertised Goods
CP 103.03 Limitations of Advertised Offers

CP 103.01 Offers Which are Not Bona Fide

The solicitation of consumers to purchase goods or services when the solicitation is not a bona fide effort to sell the advertised goods or services constitutes an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a).

(a) A solicitation is not bona fide when the seller or solicitor uses a statement or illustration in any advertisement which would create in the mind of a reasonable consumer a false impression of the grade, quality, quantity, make, value, model year, size, color, usability or origin of the goods or services offered or which otherwise misrepresents the goods or services in such a manner that, on subsequent disclosure or discovery of the true facts, the consumer may be switched from the advertised goods or services to other goods or services.

(b) A solicitation is not bona fide if a seller or solicitor discourages the purchase of the advertised goods or services in order to sell other goods or services. Examples of acts or practices which usually tend to discourage the purchase of the advertised goods are:

- (1) The failure to reasonably display the advertised goods at the advertised prices, if the goods are advertised for sale in a retail store;
- (2) The refusal to show, demonstrate, or sell the goods or services advertised in accordance with the terms of the advertisement;
- (3) Disparagement by the seller or solicitor either by acts or words of:
 - (A) The advertised goods or services; or
 - (B) The guarantee, warranty, credit terms, availability of service, repairs, or parts or any other aspect of the goods or services; switching of the consumer to higher priced goods or services;
- (4) The showing or demonstrating of goods or services which are defective, unusable, or impractical for the purposes represented in the advertisement;

(5) The use of a sales plan or method of compensation for salesmen (or penalizing salesmen) designed to prevent or discourage them from selling the advertised goods or services.

(c) A solicitation is not bona fide if a seller or solicitor fails to have available at all outlets listed in the advertisement a sufficient quantity of the advertised goods or services at the advertised price to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses the approximate quantity of advertised goods or services available and/or that the goods or services are available only at the designated outlets;

(d) Notwithstanding the fact that a seller or solicitor does have "sufficient quantities" as described in CP 103.01(c), a solicitation is still not bona fide if the seller or solicitor refuses, after the original quantity of goods is exhausted, to take orders for the advertised goods at the advertised price during the period of the sale or, if no period is stated, for a reasonable period of time after the solicitation appears, to be delivered within a reasonable period of time; provided, however, that a solicitation would be bona fide if the seller or solicitor has clearly and adequately disclosed the approximate quantity of advertised goods available or if he cannot obtain the advertised goods within a reasonable period of time at or below the former price to him.

CP 103.02 "Unselling" Advertised Goods

In the event of sale to the consumer of the advertised goods or services, to "unsell" the consumer in conjunction with the sale or attempt to sell other higher priced goods or services in their stead constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a). Examples of acts or practices which violate CP 103.02 are:

(a) Acceptance of a deposit for the advertised goods or services, then switching of the consumer to higher priced goods or services;

(b) Failure to make delivery of the advertised goods or services, or substituted goods or services of equal or greater value, within a reasonable time, or to make a refund;

(c) Disparagement by the seller or solicitor either by acts or words of:

(1) The advertised goods or services:

(2) The guarantee, warranty, credit terms, availability of service, repairs, or parts, or any other aspects of the goods or services;

(d) The delivery of advertised goods or services which are defective, unusable, or impractical for the purposes represented in the advertisement in conjunction with the sale or attempt to sell other higher priced goods or services in their stead.

CP 103.03 Limitations of Advertised Offers

The solicitation of consumers through written or printed advertising, promotional literature, or through radio or television advertising to purchase goods or services when the solicitation does not fully disclose any material exclusions, reservations, limitations, modifications, or conditions constitutes an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a).

(a) Examples of material exclusions, reservations, limitations, modifications, or conditions include the following:

(1) That in order to purchase the advertised goods at the advertised price, other goods must also be purchased;

(2) That the advertised goods, except in unusual circumstances, would not be capable of being picked up by the purchaser at the store, or as a storage area in reasonably close proximity to the store, on the same day that the solicitation is effective;

(b) Such material exclusions, reservations, limitations, modifications, or conditions of written or printed solicitations shall be stated clearly and conspicuously in close proximity to the words stating the offer.

(c) Such material exclusions, reservations, limitations, modifications or conditions of radio or television solicitations shall be disclosed clearly in conjunction with the solicitation.