

SUBJECT: CONSUMER PROTECTION — SALE OF VACATION PACKAGES
ATTORNEY GENERAL — PUBLIC PROTECTION UNIT

PROPOSED PURSUANT TO 9 V.S.A. § 2453(c)

RULE CP 116

Effective Date: 10/1/98

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CP 116.01 Definitions

The following definitions apply to this rule:

(a) “Clear and conspicuous” means that the required disclosures are presented in such a manner, given their size, color, contrast and proximity to any related information, as to be readily noticed and understood by consumers. A disclosure is not clear and conspicuous if, among other things, it is ambiguous or it is obscured by the background against which it appears, or by its location within a lengthy disclosure of non-material information. “Clear and conspicuous” also means in an oral communication that the information is presented in a manner that a consumer will hear and understand, at a normal speed in the same tone and volume as any offer made.

(b) “Consumer inquiry” means a communication initiated by a consumer with a seller, except that a communication from a consumer prompted by an earlier communication of an offer from a seller is not a consumer inquiry.

(c) “Consumer response vehicle” means a statement of the telephone number, address, or other method of responding to a solicitation or of indicating acceptance of an offer.

(d) “Mass communication” means a solicitation sent in writing or by electronic mail to more than 100 consumers, or posted on the Internet.

(e) “Material” means likely to affect a person’s choice of, or conduct regarding, goods or services.

(f) "Offer" means an offer of specific goods and/or services to one or more consumers, which goods and/or services include a vacation package.

(g) "Represent" and "representation" include any communication, whether made in writing, orally, electronically, on radio or television, or in any other manner.

(h) "Seller" means a person or entity, wherever located, that markets, offers, or sells vacation packages to consumers in the State of Vermont. The term includes any agent of a seller.

(i) "Solicitation" means any communication containing an offer of a vacation package, or designed to interest a consumer in such an offer, regardless of whether the communication is conveyed in writing, orally, electronically (including on the Internet), on radio or television, or in any other manner; except that a communication by a seller in response to a consumer inquiry is not a solicitation within the meaning of this rule. For the purposes of the disclosure requirements contained in this rule, "solicitation" does not include communications from a seller to a buyer of a vacation package which postdate the cancellation period following the consumer's purchase of the package. A solicitation is "written" if it appears in a written or other format capable of being read, including a mailing, print advertisement, or electronic communication. A solicitation is "oral" if it is capable of being heard, including a telephonic communication. Television and radio solicitations are addressed separately in this rule and are not considered to be either written or oral.

(j) "Time-share" means any arrangement whereby a purchaser receives a right to use accommodations for specific periods of time on a recurring basis. The term includes any vacation ownership interest or similar interest. A time-share tour or presentation is considered to be required if (1) the consumer must participate in the tour or presentation in order to obtain certain goods or services, or (2) any of the terms or conditions of the consumer's vacation package may be affected if the consumer does not participate in the tour or presentation.

(k) "Transient location" includes a booth, kiosk, table, or other temporary location used by, or on behalf of, a seller.

(i) "Vacation package" means goods and/or services which involve a stay in a location away from the consumer's home and include at least some accommodations and/or meals.

CP 116.02 Obligation to Comply With Rule

It shall constitute an unfair and deceptive act and practice in commerce under 9 V.S.A. § 2453(a) for any seller to solicit one or more consumers in the State of Vermont without complying with the requirements of this rule.

CP 116.03 General Disclosure Requirements

(a) All disclosures required by this rule shall be made clearly, conspicuously, in meaningful sequence, and in accordance with the further requirements of this section.

(b) Any information not required by this rule may be supplied with any disclosure required by this rule, but none shall be stated or placed in such a way as to cause the disclosures as a whole to be misleading or confusing, or to contradict, obscure, or detract attention from the required disclosures.

CP 116.04 Disclosures in Written Solicitations

In any written solicitation, a seller shall clearly and conspicuously disclose:

(a) That a purchase is required in order to take advantage of the offer or receive the vacation package, if that is the case, either by stating the total price of the vacation package, or by stating the words "Purchase Is Required" in immediate proximity to the first and the most prominent statement(s) of a consumer response vehicle in the offer. If the total price of the vacation package is not stated, and no consumer response vehicle appears in the solicitation, the words "Purchase Is Required" shall be stated in immediate proximity to the first material statement of the offer in the solicitation. The words "Purchase Is Required" shall be printed no less prominently than the consumer response vehicle or statement of the offer in immediate proximity to which they appear;

(b) That the consumer will or may be required or invited to attend a tour or sales presentation for the purpose of interesting the consumer in purchasing a time-share, if that is the case, by stating, as applicable, the words "You will [may] be required [invited] to attend a sales presentation to interest you in buying a time-share." This disclosure shall appear in immediate proximity to the first and the most prominent statement(s) of a consumer response vehicle in the offer, or if no consumer response vehicle appears in the solicitation, the disclosure shall be stated in immediate proximity to the first material statement of the offer in the solicitation; and

(c) Whether or not transportation to the site of the vacation package is included in the cost of the vacation package, and a general description of the accommodations, if any, which are included in the cost of the vacation package.

CP 116.05 Disclosures in Oral Solicitations

In any oral solicitation, a seller shall clearly and conspicuously disclose:

(a) That a purchase is required in order to take advantage of the offer or receive the vacation package, if that is the case, by stating the price of the vacation package, or by stating that the purpose of the call is to sell a vacation package. Such statement shall be made prior to the time that any substantive information about the vacation package is conveyed to the consumer;

(b) That the consumer will or may be required or invited to attend a tour or sales presentation for the purpose of interesting the consumer in purchasing a time-share, if that is the case, by stating, as applicable, the words "You will [may] be required [invited] to attend a sales presentation to interest you in buying a time-share." This disclosure shall be made before the consumer pays or authorizes payment for the vacation package; and

(c) Whether or not transportation to the site of the vacation package is included in the cost of the vacation package, and a general description of the accommodations, if any, which are included in the cost of the vacation package.

CP 116.06 Disclosures in Radio and Television Solicitations

In any solicitation over the radio or television, a seller shall clearly and conspicuously disclose:

(a) That a purchase is required in order to take advantage of the offer or receive the vacation package, if that is the case, by stating the total price of the vacation package, or by stating the words "Purchase Is Required";

(b) That the consumer will or may be required or invited to attend a tour or sales presentation for the purpose of interesting the consumer in purchasing a time-share, if that is the case, by stating, as applicable, the words "You will [may] be required [invited] to attend a sales presentation to interest you in buying a time-share"; and

(c) Whether or not transportation to the site of the vacation package is included in the cost of the vacation package, and a general description of the accommodations, if any, which are included in the cost of the vacation package.

CP 116.07 Disclosures at Transient Locations

In addition to all other disclosures required by this rule, a seller shall clearly and conspicuously disclose, at any transient location in Vermont where vacation packages are offered or advertised, that a purchase is required in order to take advantage of the offer or receive the vacation package, if that is the case, either by stating the total price of the vacation package, or by displaying the words "Purchase Is Required." The price of the vacation package, or the words "Purchase Is Required," shall be displayed in bold, capital letters no less than two inches high in a place readily seen by persons approaching the transient location.

CP 116.08 Additional Disclosures

In addition to the other disclosures required by this rule, a seller shall, prior to a consumer's paying or authorizing payment for a vacation package, clearly and conspicuously disclose to the consumer:

(a) The nature of all governmental charges, other than sales and use taxes, which apply to the vacation package and the actual or estimated amounts of such charges;

(b) The components of the vacation package which may be subject to sales and use taxes; and

(c) The existence of all optional and/or contingent charges (such as hotel upgrades and cancellation fees) which apply to the vacation package.

CP 116.09 Prohibited Representations

In any solicitation, a seller shall not:

(a) Represent, directly or by implication, that there exists some limitation on the availability of the vacation package, including, but not limited to, a representation that the consumer must contact the seller within a certain period of time, that the number of, vacation packages is limited, that only persons of a certain description are entitled to take advantage of the vacation package offer, or that a household is limited to one call to the seller, unless that is in fact the case; except that if the limitation relates to goods or services supplied by a person that is not affiliated with the seller, the seller may rely reasonably upon information provided by the supplier as to the limitation.

(b) Represent, directly or by implication, that a vacation package has been reserved for a consumer, including through the use of the term "reservation numbers" or similar wording, unless the consumer has already paid or authorized payment for the vacation package.

(c) Represent, directly or by implication, that the purpose of contacting a consumer or offering a vacation package is something other than to sell a vacation package or interest the consumer in purchasing a time-share, unless that is in fact the case.

(d) For more than six months in any 12-month period, represent, directly or by implication, that any goods or services are "free," "complimentary," a "bonus," or any similar wording implying that the goods or services will not cost the consumer anything. At least 30 days must elapse before another such offer is promoted; and no more than three such offers may be made in any 12-month period.

(e) Exclude from the stated price of its vacation packages any charges which the consumer is required to pay except amounts that in their entirety are directly passed on to a governmental entity (for example, taxes and visa fees).

(f) Misrepresent, directly or by implication, the nature of any costs associated with a vacation package, including, but not limited to, describing non-governmental charges as "port taxes," "port fees," or similar wording.

(g) Misrepresent, directly or by implication, the nature of any solicitation or offer, including, but not limited to, misrepresenting that the solicitation comprises or includes "booking passes," "credit vouchers," or any similar thing.

(h) Misrepresent, directly or by implication, the identity of the seller, including, but not limited to, representing that the seller is connected to a government agency by referring to documents as "registered" (unless they are sent by registered mail), citing the possibility of criminal penalties on the front of an envelope, or using the names of corporate departments that are non-existent or do not represent actual entities.

(i) Misrepresent any other material fact relating to the solicitation, the offer, or the vacation package.

CP 116.10 Other Requirements

(a) A seller shall comply with all statutes and regulations of the State of Vermont, including, as applicable, 9 V.S.A. § 2454 and CP 113, which relate to the right of a consumer to cancel a telephonic transaction, and which set forth requirements as to giving notice of that right, and CP 109, which prohibits certain representations of special selection.

(b) If under the law of some other state a seller is required to provide to Vermont residents a more extensive right (or notice of right) to cancel, than does the law of the State of Vermont, that more extensive right (or notice) shall be clearly and conspicuously disclosed in connection with, and at the same time as, the notice of the right to cancel required by Vermont law.

(c) A seller shall comply with the Federal Trade Commission's Telemarketing Sales Rule, 16 C. F. R. part 310, as applicable.

CP 116.11 Preservation of Solicitations

A seller that solicits in or into the State of Vermont shall preserve examples of all newspaper and periodical solicitations, mass communications, and television solicitations, and of all telephonic scripts and rebuttals, for a period of not less than three years after the date the document or advertisement was last used. In the case of electronic solicitations, it shall be sufficient to preserve a hard copy of the communication. In the case of television advertisements, it shall be sufficient to preserve a copy of the storyboard.

CP 116.12 Effective Date

This rule shall take effect on October 1, 1998.