

MARKETING GUIDELINES FOR ELECTRONIC RETAILERS

The Electronic Retailing Association (“ERA”) believes that consumer confidence is the key to the continued growth and success of the electronic retailing industry. In order to encourage fair, ethical, and responsible marketing practices that will promote consumer confidence in electronic retailing, ERA has adopted the following “Marketing Guidelines for Electronic Retailers,” which apply to all television or radio advertisements produced or disseminated by ERA members.

GENERAL PRINCIPLES

ERA members should be aware of the laws and regulations that govern advertising and marketing practices, and conduct their business in compliance with those laws and regulations. ERA members should encourage the companies or individuals with whom they do business to follow the principles set forth in these Marketing Guidelines, and should not do business with firms that engage in dishonest or unethical business practices. Most importantly, ERA members should tell the truth, the whole truth, and nothing but the truth to consumers.

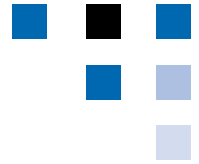
GENERAL GUIDELINES FOR ADVERTISING

No ERA member shall produce or disseminate any television or radio advertisement that has a deceptive format (i.e., that appears to be a bona fide information or entertainment program created by a disinterested party solely for the purpose of providing information or entertainment) or that otherwise purports to be something other than an advertisement.

Each television or radio advertisement that is more than 15 minutes long must be preceded and concluded with clear and prominent audio or video disclosures that the program is a paid advertisement for [name of product or service]. Similar disclosures also should be made prior to each ordering opportunity. In addition, each such advertisement should include a clear and prominent audio or video disclosure identifying the name of the party who sponsored, paid for or furnished the program.

All statements made in an advertisement shall be truthful and not misleading, whether or not they are specifically made with respect to the product or service being marketed. Advertisements must not contain deceptive implied claims, nor omit material information, the disclosure of which is necessary to prevent the advertisement from being deceptive. Any necessary qualifying disclosures should be legible (or audible) and understandable.

Comparative advertising should inform buyers of the benefits of the advertiser’s product, and not run down a competitor’s product. Comparisons should be presented fairly and accurately rather than in a contemptuous manner intended to degrade the competitive product.



All statements regarding prices and costs must be truthful and substantiated. For example, if an advertiser claims that the current price for an advertised product is less than a former price, the former price must be a bona fide price at which the product actually was offered for sale. Comparative price advertising should compare only actual prices for comparable products and must not be otherwise misleading. When “free” or similar representations are made, any conditions or obligations upon which receipt of the “free” item are contingent should be disclosed, and the cost of the “free” merchandise should not be recovered by marking up the regular price of the product that must be purchased in order to receive the “free” product, or by lowering the quality or quantity of the product that must be purchased.

Advertising should not disparage any person or group on the grounds of race, religion, national origin, gender, age, or sexual orientation, or include indecent or offensive content.

Particular care shall be taken in advertisements for products designed for use by children. Any such advertising should comply with ERA’s “Guidelines for Marketing Children’s Products” and with the “Self-Regulatory Guidelines for Children’s Advertising” issued by the Council of Better Business Bureaus’ Children’s Advertising Review Unit. No program-length commercial shall be produced primarily for an audience of children twelve years old and under.

CLAIMS SUBSTANTIATION

There must be a reasonable basis, consisting of competent and reliable evidence, for all express or implied objective claims made for a product or service.

If the programming contains an express or implied representation that a claim’s truth has been scientifically established or proven, the advertiser must possess a sufficient level of evidence to convince the relevant scientific community of the claim’s truthfulness. At a minimum, an advertiser should always have the amount and kind of substantiation that it claims it has.

Particular care should be taken to substantiate health or safety claims for products such as dietary supplements, drugs, diet and exercise products, and medical devices. All representations regarding the safety or efficacy of such products or services must be substantiated by competent and reliable scientific evidence.

Demonstrations of the product being marketed or a competing product must not misrepresent any material feature of that product or the product’s actual performance in real-life conditions. All demonstrations must actually take place as represented or the details of the demonstration (such as the actual elapsed time) must be disclosed.



Comparative advertising claims, whether about a competing product or the advertiser's own product, must be truthful and substantiated in the same manner as any other objective claim. Comparative tests and demonstrations of competing products must take into account the purpose for which the products are intended, the manner in which they are normally used by the consumer, and the instructions for use that accompany the products.

TESTIMONIALS AND ENDORSEMENTS

Testimonials and endorsements may not make representations that would be deceptive or could not be substantiated if the advertiser made them directly.

All testimonials from consumers shall reflect the honest opinions, findings, beliefs or experiences of the consumer and be generally representative of the results to be expected by the average consumer. Alternatively, the advertiser may clearly and prominently disclaim that the experiences of the consumer offering the testimonial are not representative of the results to be expected by the average consumer, or disclose what results the average consumer can expect.

If an advertisement represents that an endorser uses the endorsed product, then the endorser must have been a bona fide user of the product at the time the endorsement was made. The advertiser should not continue to use an endorsement without reason to believe that the endorser remains a bona fide user of the product.

When an advertisement represents that an endorser is an expert, the endorser's qualifications must in fact give him or her the expertise that he or she is represented as possessing. An expert's endorsement must be supported by an actual evaluation, examination or testing of the product or service he or she is endorsing that is at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the endorsement. An advertiser should not continue to use an expert endorsement without reason to believe that the views expressed in the expert's endorsement continue to represent his or her views.

Any "material connection" between an advertiser and an endorser that is not reasonably expected by the audience and that would have a significant effect on the weight or credibility given to the endorsement by that audience – e.g., a family or business relationship – must be disclosed. (Audiences expect expert or celebrity endorsers to be compensated, so payments to expert or celebrity endorsers need not be disclosed.)

DISCLOSURE OF COSTS AND OTHER MATERIAL TERMS OF AN OFFER

The terms of an advertised offer should be sufficiently clear and complete so that the average consumer will understand what is being offered, what it costs, and what his or her ongoing commitments or obligations are, if any, prior to purchase of the advertised product or service.



The advertiser should make it clear if accessories or other items depicted or mentioned in an advertisement are optional and not included in the advertised price. All costs related to an offer (including postage and handling, taxes, etc.) must be disclosed.

Offers involving continuity programs should comply with ERA's "Guidelines for Continuity Programs." The material terms and conditions of a continuity program must be conveyed to consumers before their orders are accepted.

The cost of calling an advertised 900 number or an audiotext service must be clearly and prominently disclosed in advertising. Callers to a pay-per-call service should hear an introductory disclosure message, or "preamble," at the beginning of their calls that discloses the cost of the call and contains the other disclosures prescribed by law, and should be given the opportunity to terminate the call during the preamble without incurring any charge. Members should not place any charges on telephone bills when they know or should have known that the charge was not authorized by the consumer responsible for paying the telephone bill.

WARRANTIES

Advertising claims relating to a product warranty must be truthful and consistent with the terms of that warranty, and the advertiser should disclose any material conditions, limitations, or charges relating to the warranty. Any warranty offered with a consumer product should be properly designated as "full" or "limited," and should contain the basic information required by law (e.g., what the warranty covers and does not cover, what the period of coverage is, what the warrantor will do to correct problems, how the customer can obtain warranty service, and how state law affects the customer's rights under the warranty). Any requests for repairs, replacement products, or refunds under the terms of a warranty should be honored promptly.

A copy of the warranty must be made available free of charge to any consumer who requests one in writing, and advertisements that mention a warranty should tell consumers how to obtain a copy of that warranty.

ORDER FULFILLMENT, MONEY-BACK REFUNDS, AND COLLECTION AND USE OF PERSONAL INFORMATION

An ERA member should not advertise and offer merchandise for sale unless it has a reasonable basis to believe that it will be able to ship that merchandise within the time specified in the offer (or, if no time is specified in the offer, within 30 days after receipt of an order). A member should not charge a customer's credit card account, debit a customer's checking account, or cash a customer's check or money order unless it has shipped or otherwise provided the goods ordered, or is prepared to ship or otherwise provide those goods immediately. If after receiving an order the marketer learns that the product cannot be shipped on a timely basis, it should notify its customers of that fact, allow them to cancel their orders if they wish, and make any



necessary refunds promptly. A marketer should not substitute merchandise that materially differs from that ordered by a customer unless the customer agrees to the substitution.

A marketer who offers a satisfaction or “money-back” guarantee to its customers should honor valid refund requests promptly. Any advertisement that mentions a money-back guarantee should disclose any material limitations or exceptions that may apply to that guarantee (e.g., “less shipping and handling”). Any marketer who offers a money-back guarantee should maintain an adequate reserve or otherwise ensure the availability of funds to satisfy refund requests.

An ERA member who offers consumers a “free trial” of an advertised product should not charge the customer’s credit card, debit his or her checking account, or cash his or her check or money order until the free trial period has expired.

A marketer should provide its customers with an address and/or telephone number to use to communicate any complaints, inquiries, or refund requests, and should take all reasonable steps to respond to such complaints, inquiries, or refund requests promptly and courteously.

ERA members who collect personal information from consumers should not misrepresent the purposes to which that information may be put. If a consumer requests that his or her personal information not be rented, sold, or exchanged by a member, that request should be honored. A member should not rent, sell, or otherwise provide a consumer’s credit card number, checking account number, or similar information to a third party (other than a third party who assists the member to process or complete authorized purchases or other transactions) without the consumer’s express authorization.

SELF-CERTIFICATION/ENFORCEMENT

Subscription to these Marketing Guidelines is a condition of ERA membership. Members shall have the right to certify their compliance with these guidelines to members of the general public and the media. Willful violation of the Marketing Guidelines is a basis for expulsion from the Association.