Don’t Be Naughty! Be Nice With Holiday Bargain Prices

By Lori Beam ‘Tis the season when you’ll start seeing sale tags shouting “Buy One, Get a Free Xbox,” “Now $100.99, regularly $200.99,” “20% off next week only” and “Lowest prices of the year!” As you plan your company’s holiday promotions, make sure your bargain advertising complies with the FTC’s Guides Against Deceptive Pricing. Don’t inadvertently advertise offers that will dash customers’ holiday cheer – or generate lumps of coal in the form of an FTC complaint or consumer class-action claim. FTC enforcement is active. The agency is currently investigating a complaint brought by the advocacy group Consumer Watchdog alleging Amazon misleads customers about its pricing discounts. And, consumers are continuing to file deceptive pricing class-action lawsuits, including ones against Wayfair, Stein Mart, Kohl’s and many others in the last few years. Before engaging in bargain advertising, ask yourself –

- Is the bargain offer genuine, truthful and not misleading?
- Are all of the terms and conditions of the offer clearly and conspicuously disclosed?

Here are additional tips from the FTC’s Guides Against Deceptive Pricing:

- Use the term “Sale” only when offering meaningful price reductions and the sale is for a limited time period. When advertising a storewide “Sale,”, both the number of sale items and the price reductions must be meaningful. If sale exceeds 30 days, you need to be able to substantiate that the offering price is a valid price reduction and has not become its regular price.
- *Former Price vs Sale Price.* Don’t advertise a price as a reduction off a regular price unless the former price was the actual bona fide price the company offered on a regular basis for a reasonably substantial period of time. “Reasonably substantial period of time” generally means the former price was offered either during the 30-day period immediately preceding the sale or during at least 6 months out of the preceding 12 months.
- *Buy One Get One Free or Buy One Get One Half Off.* Use only when the “regular” price of the item the consumer must purchase to participate in the “free” offer is based on the company’s regular prices during the 30-day period immediately before the sale. If the item’s regular price fluctuates, the “regular” price is the lowest price at which any substantial sales were made in the 30-day period immediately before the sale. Do not increase the regular price of the item required to be bought or decrease its size, quantity or quality.
- *Manufacturer’s List Price or Suggested Retail Price.* Advertise price comparisons to Manufacturer’s List Price, Retail Price or MSRP only when it is in fact the price regularly charged by a number of principal outlets in the area where your company does business. Do not compare to the Manufacturer’s List Price or MSRP if this price is being used only by an insubstantial number of area stores.

Other loaded words offering bargains also require careful consideration, such as *Advance Sale, Introductory Offer, Clearance Sale, Discount Price* and *Limited Offer*. Lori Beam chairs the firm’s Advertising, Marketing and Promotions practice group. Contact her at lbeam@sb-kc.com or 816-421-4460. *This article is general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.