

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

RULE CP 110

Effective Date: 1/28/74

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**CP 110.01 Prohibited Acts**

It shall constitute an unfair and deceptive trade act and practice in commerce under 9 V.S.A. Section 2453(a) for a seller or solicitor to solicit purchases of goods or services through the use of former price comparisons, retail price comparisons, comparable value comparisons, or other miscellaneous price comparisons which are false or deceptive.

**CP 110.02 Former Price Comparisons**

(a) A former price comparison shall be considered deceptive if the amount declared to be the former price is not the actual price at which the article was offered to the public for a reasonably substantial period of time in the recent regular course of the solicitor's business, unless an earlier time period is clearly specified;

(1) A former price is not an actual price if it is set at a specific amount for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based;

(2) A former price is not an actual price unless:

(A) the item was offered for sale for a reasonably substantial period of time at that price and a substantial quantity of sales were made at that price; or

(B) the item was openly offered for sale to the public for a reasonably substantial period of time, displayed in a reasonable manner, consistent with the display of items of similar type, and priced at a level established in good faith;

(b) A former price comparison shall be considered deceptive if the seller or solicitor uses the words "sale", "reduced to", or words of similar import in a solicitation when the reduction from the actual former price is less than 10% of the actual former price, unless the solicitation clearly specifies the actual former price and the current sales price, or clearly specifies the percentage by which the actual former price is reduced.

**CP 110.03 Retail Price Comparisons**

(a) A retail price comparison shall be considered deceptive if the seller or solicitor declares or suggests that his sales price is a bargain price compared to other sellers in the trade area or a price which is substantially less than the prices being charged by other sellers in the trade area unless:

(1) his price is at least 5% lower than the price at which substantial sales of the item are being made in the trade area; or

(2) he sets forth at the time he makes his retail price comparison both his price for the item and the price or prices being charged by the seller or sellers with whom he is comparing prices;

(b) A retail price comparison shall be considered deceptive if the seller or solicitor declares or suggests that his price is less than list price, regular price, or manufacturer's suggested price unless:

(1) A substantial number of sales of the item are being made in the trade area at the list price, regular price, or manufacturer's suggested price; or

(2) If the seller is the only person in the trade area selling the particular item, the list price, regular price, or manufacturer's suggested price meets the qualifications of an "actual former price" as defined in CP 110.02; or

(3) If the particular item has never been sold in the area, the list price is that figure at which the seller or solicitor expects to make a substantial number of sales. At the end of three months, the list price must meet the qualifications of CP 110.03 (b)(1) or CP 110.03 (b)(2).

#### **CP 110.04 Comparable Value Comparisons**

A comparable value comparison shall be considered deceptive if the seller or solicitor declares or suggests that his price is a bargain price compared to the price of another item of similar grade and quality unless:

(a) the other item is in fact of similar grade and quality; and

(b) (1) his price is at least 5% lower than the price at which substantial sales of the similar item are being made in the trade area; or

(2) he sets forth at the time he makes the comparable value comparison both his price or prices and the price or prices being charged by other sellers in the trade area for the item of similar grade and quality.

#### **CP 110.05 Miscellaneous Price Comparisons**

A price comparison shall be deceptive if it contains statements which declare or suggest conditions which are not true.

Examples of such deceptive price comparisons include:

(a) Advertising a retail price as a wholesale price; and

(b) Representing prices to be factory prices when they are not selling at the prices paid by those purchasing directly from the factory.