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REGULATION AGAINST DECEPTIVE PRACTICES AND ADVERTISEMENTS

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REGULATION AGAINST DECEPTIVE PRACTICES AND ADVERTISEMENTS

RULE 1 - AUTHORITY

This Regulation is adopted and issued pursuant to the authority bestowed upon the Department of Consumer Affairs by virtue of Acts No. 5 of April 23, 1973, No. 148 of June 27, 1968, No. 97 of June 19, 1953, No. 228 of May 12, 1942, No. 95 of May 16, 2006, No. 42 of January 27, 2006, and Act No. 96 of May 16, 2006, all as amended.

RULE 2 – GENERAL PURPOSES

This Regulation has the purpose of protecting consumers from practices and advertisements that create or have the tendency to create a false or deceptive appearance about goods or services offered in commerce. Moreover, it prohibits deceptive practices and advertisements, with the objective of establishing a climate of trust and respect between merchants and consumers.

RULE 3 – SCOPE AND APPLICATION

This Regulation shall apply to every natural or juridical person dedicated in a permanent or incidental way to offering goods or services to consumers, by himself or through a representative, agent, intermediary or as a representative agent of another or as a middleman, in the jurisdiction of the Commonwealth of Puerto Rico. It shall also apply to all natural or juridical persons engaged in the advertising business or other similar activity.

RULE 4 – INTERPRETATION

This Regulation should be interpreted liberally in favor of the consumer and with the purpose of complying with the legal sources established in Rule 1, among them article 6(j) of

Act No. 5 of April 23, 1973. In case of discrepancies between the original text in Spanish and its translation to English, the Spanish text shall prevail.

RULE 5 – DEFINITIONS

The words and phrases used in this regulation shall be interpreted according to the context in which they are used and shall have the meaning accepted by common and current use. In applicable cases, the words utilized in present tense also include the future; those used in the masculine gender include the feminine; the singular includes the plural and the plural includes the singular.

The following terms used in this regulation shall have the following expressed meaning:

- A. **Advertiser** – a provider of goods and services that has commissioned the public diffusion of a publicity message or advertisement or any type of information concerning its goods and services.
- B. **Advertisement** – any oral, written, graphic, pictorial, electronic manifestation or otherwise presented, made with the purpose of offering, describing or otherwise representing a good or service or some aspect of a good or service.
- C. **Deceptive advertisement** – any type of advertisement which constitutes or tends to constitute fraud, deceit or communicates or tends to communicate a false or incorrect idea with respect to the advertised good or service. Any advertisement that omits relevant facts of the product, good or service, limiting the consumer's ability to make informed and intelligent decisions.
- D. **Substitute article** – a substitute article shall be understood as a similar article, for the same use and destination, of equal or superior quality to an announced article on sale,

and whose regular price is equal or superior but no more than 50% of the sale price of the announced article.

- E. **Good** - any movable or non-movable good, merchandise, article or product capable of being the subject of a sale, rent or any other type of commercial transaction.
- F. **Clear and adequately** - an easily perceptible representation, free of ambiguity and of a size, contrast of color and hearing that when presented can be quickly grasped and understood without difficulty.
- G. **Merchant** - a provider of goods and services; any person that offers for sale, rent or carries out commercial transactions in Puerto Rico of goods and services to consumers. It includes, without limitation, the following: any officer, agent, employee, salesperson or sales representative.
- H. **Commerce** - a commercial establishment that carries out commercial transactions of goods and services with persons that acquire them for their own personal use or disposition without the intention of reselling. "Establishment" shall mean any structure, building, locality, warehouse, lot or analogous place in which any type of sales operation, outlay or distribution of goods and services to consumers takes place.
- I. **Price comparison** - a direct or indirect comparison of the sale price of a good or service, expressed in terms of dollars and cents, fractions, percentages or any other manner, with any other price or expression of value. It includes, without limitation, any reduction or savings claim in relation to the good or service's regular price.
- J. **Consumer** - every natural person that acquires or utilizes products or services as a final destination. It includes every other person, association, or entity that by designation of law is empowered to present its claim in the Department.

- K. **Re-stocking fee** - an amount charged by some commercial establishments, at the moment the consumer returns merchandise under the establishment's return policy, which represents a percentage of the price paid for by the consumer.
- L. **Relevant fact** - that which, if disclosed, could influence consumers to acquire or not the advertised good or service; or to carry out or not the act that the advertisement or practice indicates or appears to indicate.
- M. **Reasonably anticipated demand** - that future projection in a given article's inventory, utilizing as basis the registered quantities in the business books, in relation to that article, during the previous year. Understood to be of the same nature, characteristics and price, as they have been sold, in an equal or similar period to that aimed to be offered to the consumer again.
- N. **Department** - Department of Consumer Affairs.
- O. **Food establishments** - includes restaurants, all fast food establishments, every food establishment that operates as part of a franchise or that share a standard food menu, food home delivery service, every type of mobile unit in which food is prepared and served, regional and artisan food businesses, or any other type of business dedicated to the sale of food served for immediate consumption. It shall be understood as a regional and artisan food establishment, all establishments where typical or autochthonic food of Puerto Rico is served or sold, including, but not limited to kiosks located on the coastal zones of the island and those which are traditionally placed in the patron saint festivities of the municipalities.
- P. **Free** - a product, good or service, shall be understood to be free when it does not have any direct or indirect cost for its obtainment.

- Q. **Initial publication date** - the date in which for the first occasion an advertisement is published, diffused, distributed, circulated, presented, displayed, exhibited or in any other way disseminated in Puerto Rico.
- R. **Personal information** - any non-public information about a person, name or number that can be utilized, by itself or along with any other information, including but not limited to: name and last names; social security number; date and/or place of birth; civil status; gender; physical or postal address; postal code; email address; telephone number; driver's license number; passport number; fingerprint(s); voice recordings; retinal images; and any other non-public information that permits physical or electronic identification of a natural person.
- S. **Middleman** - the person that mediates between the advertiser and the communication media. It includes, but is not limited to, any advertising agency or its representative.
- T. **Warranty** - a written or printed document on durable materials, meaning ink or permanent paper, that guarantee the preservation of the printed information for a time period greater than one (1) year or for the period that the acquired good and/or rendered service's warranty is extended, whichever is greater - that is issued in an establishment affirming the suitability and quality of the sold goods or rendered services to consumers, and where there exists a commitment of reimbursement, repair, substitution or any other adequate remedy to correct faults, defects or deficiencies that have been identified in those goods and services during a specific time period through the establishment and/or product manufacturer.

- U. **Communication Media** – includes television, radio, movie theater, postal service, newspapers, magazines, leaflets, handouts, signs, Internet, wireless cell phones, digital phones, or any other media that has as its objective publishing or diffusing an advertisement as defined by this regulation, specifically in the Puerto Rico market.
- V. **Person** – any natural or juridical person.
- W. **Deceptive practice** – any act, practice, course of conduct, persuasion mechanism, offer, information or promise made, apparently made or suggested, that is deceptive, false, fraudulent or that in any way tends to deceive, or through which the real facts of things are distorted or may be misinterpreted.
- X. **Price** – the price representing the acquisition cost of the good or service, excluding the municipal and/or state tax over the selling price of the article or service, if any.
- Y. **Point of sale** – place where one or various cash registers are situated.
- Z. **Rebate** – discount or reimbursement of part of the selling price.
- AA. **Secretary** – Secretary of the Department of Consumer Affairs.
- BB. **Service** – any labor, activity, work or service promised, supplied, rendered, sold, made or susceptible to being offered to the consuming public.
- CC. **Rain check** – password, receipt or ticket issued by the merchant to the consumer when a good advertised on sale is not available.
- DD. **Special sale** – any act of selling goods and services by offering an inferior price to the regular price, which is the subject of divulgation and publicity. This definition expressly excludes articles whose regular price has not been reduced, articles on clearance and articles advertised at regular price that are not part of the store's regular inventory.

- EE. **Clearance sale** – any act of selling goods whose purpose is to eliminate merchandise from the store's inventory motivated by the anticipation that the merchandise will not sell in the future, that the merchandise is seasonal or that the model has been changed for one more updated. When an article is sold on clearance, it shall clearly and adequately express it, also indicating that the sale will end once the properly identified merchandise is sold out.
- FF. **Tips** – an amount of money that is given as a remuneration, gift or prize for excellence in service.
- GG. **Purchase receipt** – shall mean the written document or receipt of a transaction issued by the merchant to the consumer, once payment has been made by any means. In the receipt the hour and date of the transaction, the nature of the product or service, the person or entity that receives the payment, the quantity of the payment, and the payment method used must appear legibly. The purchase receipt must have all characters written or printed on durable materials, meaning ink or permanent paper, that guarantee the preservation of the printed information for a time period greater than one (1) year or for the period that the acquired good and/or rendered service's warranty is extended, whichever is greater.

RULE 6 – BASIC PRINCIPLES

- A. The merchant must be in position to sustain and prove all the claims and offers that he/she proposes to make, before manifesting or publishing them.
- B. An advertisement may be deceptive taken as a whole, even when each expression taken independently is true.

- C. The falseness could result not only from the direct expressions and the inferences it reasonably creates, but also from omitting or obscuring relevant facts.
- D. Any affirmation in an advertisement that lends itself to different interpretations, one of which is deceptive, shall be interpreted in an adverse way to the advertiser.

RULE 7 – DECEPTIVE PRACTICES AND ADVERTISEMENTS

- A. Deceptive practices and advertisements are prohibited.
- B. The term deceptive practice includes, among others, the following acts:
 - 1. Represent or express a fact or an offer if such declaration is deceptive or false, or possesses the tendency or capacity to confuse, or if it does not have sufficient information to sustain the fact or offer, or if a relevant fact is concealed.
 - 2. Induce or try to induce a person to act in exchange for any benefit that later turns out to be less, false, inexistent, illicit or illegal.
 - 3. Advertise or offer a given good or service as bait, consciously knowing that it is not available, to attract the consumer and attempt to sell him/her another good or service; discourage the purchase of an advertised good or service and offer another in substitution.
 - 4. Advertise, show, sell or offer a given good as new when the same is used or rebuilt.
 - 5. Retain pieces or parts of a good that has been repaired, without deducting their value from the price of the work or without notifying it to the consumer before commencing the repair work.
 - 6. Show, sell or offer for sale products packaged in such a way that those damaged, defective, of a worse appearance or of inferior quality remain totally or partially

hidden behind or under those that are in good state, of good appearance or of superior quality.

7. Show, sell or offer for sale products of different categories, conditions, classifications or of inferior quality to the one advertised or of different classifications or qualities in one same package under one same price.
8. Show, sell or offer for sale products that have been frozen as if they were fresh.
9. Show, sell or offer for sale imported products as if they had been produced in Puerto Rico.
10. Show, sell or offer for sale drugs, cosmetics, drinks, pills, among others, without having scientifically demonstrated the truthfulness of their alleged benefits and without the proper Federal Food and Drug Administration Agency (FDA) authorization.
11. Show, sell or offer for sale food or diet supplements and novel diets that have not been tested or that do not have justification; or ineffective medical devices, without establishing, through scientific studies, the truthfulness of their alleged benefits.
12. Advertise or express in an advertisement or publication that a certain company, store or enterprise is endorsed or in any other way insured, by the Department, giving the impression that the agency is related with said company or enterprise.
13. Not informing in writing to the consumer that paying with a credit or debit card entails a minimum purchase quantity, if required.
14. Charge an amount of money on account of service charges, when said services are inexistent or not susceptible of being corroborated. Basic accessorial services that

are offered, cannot be tacked on with additional charges separate from the price – when said services are necessary and not optional – for the consumer to receive the principal good or service that is offered.

15. Not announcing to the consumer that a certain specific amount of money (service charges) will be charged when tickets for an activity are sold.
16. Not issuing to all consumers who acquire goods or services a sales receipt when said receipt is required as a condition for changes or returns.
17. Not issuing a written warranty, over goods sold or services rendered, when said goods or services have a warranty.
18. Clauses that establish that the consumer's silence shall be understood as an acceptance of any offer, modification, restriction, expansion, condition or extension of what was agreed to in the contract. The consumer's consent must be express and affirmatively appear when accepting an offer.
19. Using the concept of "accord and satisfaction" in the relations between consumers and merchants bound by an adhesion contract when, faced with a merchant's failure to comply, a consumer claims specific performance of the contract or its resolution.
20. The merchant's omission to hand over or diligently render the good or service as advertised or offered.
21. Automatic renewal clauses and charges for said concept are prohibited, except express consent of the consumer.

C. The Secretary may issue official interpretations of facts, acts or situations that in light of this regulation constitute deceptive practices or advertisements. These interpretations

shall be in writing and will be a part of the official interpretations relative to this regulation.

RULE 8 – ADVERTISEMENTS FORMAT

- A. Every advertisement must be drawn up, expressed or presented in such a manner as to bring to the mind of the consumer all information which is essential and necessary to understand the qualities, quality, payment methods, price, size, quantity, uses or any other characteristic of the good or service advertised, free of all ambiguity which might tend to confuse him/her.
- B. The smallest print in a printed, written or graphic advertisement shall not be smaller than 8 points.
- C. No advertisement shall use incomprehensible signs, abbreviations, or initials, or techniques that may have the tendency to create in the consumer an erroneous image of the price, sale terms, or any other characteristic of the advertised good or service.
- D. Every expression that clarifies, conditions or offers details of the information contained in the advertisement shall appear in a box located at the bottom part of the advertisement. In television transmissions or any other audiovisual media, the clarifications, conditions or details shall be presented in visual, as well as audio form.
- E. In advertisements that are transmitted by radio, television or any other audio or audiovisual media, words, sound effects or any other method that conceals, confuses or distracts the attention, or demerits the sense, meaning or importance of expressions that clarify, modify or condition an offer shall not be utilized.
- F. Every expression that clarifies, modifies or conditions an offer, in a television transmission or in any other audiovisual media, shall be projected in a manner clearly

legible in the screen's safety zone, for a sufficient time for a prudent and reasonable person to be able to comprehend it. The letters of an expression that establish a modification, clarification or condition shall be of a color that contrasts with the background. The background shall not have colors or images that conceal or distract the attention from the clarification, modification or condition or that undermine its sense, meaning or importance.

G. Provisions applicable to the Publicity and Promotion of Games of Chance:

1. This provision shall be applicable to every government agency, public corporation, instrumentality, advertising agency, television station, radio station, newspaper, movie theater or film company that places, produces, publishes, transmits or diffuses an advertisement in press, radio or television or through any other communication media or expression, for the purpose of promoting any game of chance authorized under the Laws of Puerto Rico, including the Traditional Lottery, the Additional Lottery and any other game of chance, as defined by Law, promoted by the Government of Puerto Rico or the private sector, whose advertisement or promotion is distributed within the jurisdiction of Puerto Rico.
2. Excepted from this clause are advertisements produced outside of Puerto Rico over which the communications media have no interference to compel compliance with this provision, as well as promotions exclusively directed to the overseas market according to the provisions of Act No. 221 of May 15, 1948, as amended.
3. Every advertisement that is produced at the request of a government agency, public corporation, instrumentality, advertising agency, television station, radio station, newspaper, movie theater or film company that places, produces,

publishes, transmits or diffuses an advertisement in press, radio or television or through any other communications media or expression, for the purpose of promoting in Puerto Rico any game of chance under the Laws of Puerto Rico, including the Traditional Lottery, the Additional Lottery and any other game of chance, as defined by Law, promoted by the Government of Puerto Rico or the private sector shall include a message exhorting players to do so in a responsible manner and warning about the risks of compulsive gambling.

4. All operators of casinos, cock fighting rings, game of chance halls, race tracks and horse racing agencies in the Island, as well as in all establishments that sell Electronic Lottery tickets, shall exhibit a notice or warning in a legible sign and visible to all persons who use their facilities, exhorting players to do so in a responsible manner and warning about the risks of compulsive gambling.

5. The notice or warning to the public shall be written in the following manner:

“Warning: Games of chance can create addiction. If playing causes you economic, family and occupational problems, please call your mental health provider.”

6. The sign shall be no smaller than eight and a half (8½) inches by eleven (11) inches, with a font type no smaller than fourteen (14) points, in a color that contrasts with the background. The background shall not have colors or images that conceal or distract the attention from the sign, or that may lead to undermining its sense, meaning or importance.

7. The notice or warning shall be displayed in a visible place at the entrance area, as well as in all other places where tickets, chips, tokens or similar articles are sold for the purpose of the game.
8. In written press advertisements, the size of the print shall be no smaller than twelve (12) points and the same shall be of a color that contrasts with the background. The background shall not have colors or images that conceal or distract the attention from the notice or warning nor lead to undermining its sense, meaning or importance.
9. Words, sound effects or any other method that conceals, confuses or distracts the attention, or demerits the sense, meaning or importance of the notice or warning, shall not be used in advertisements placed in radio, television or any other audio or audiovisual communications media.
10. When the advertisement is placed through audio communications media, the notice or warning shall be divulged clearly and adequately in the final part of the advertisement.
11. Advertisements placed in television or any other audiovisual communications media shall project the notice or warning in the screen's safety zone in a clearly legible manner and for sufficient time to be read and comprehended.
12. Every publicity contract to promote games of chance or activities that include games of chance, in which a government agency, public corporation or governmental instrumentality is a part of, or that is carried out under its auspice or with the use of public funds, shall contain a clause that provides that no advertisement shall be placed in press, radio or television or through any other

communications media or expression without including the notice or warning required in this Rule. In addition, it shall contain a penalty clause with the purpose of imposing a penalty of one thousand (\$1,000) dollars for each governmental advertisement transmitted in violation of this prohibition. Such non-compliance shall be sufficient cause to terminate said contract.

RULE 9 – DIVULGATION OF RELEVANT FACTS

Every time that because of the nature of the good or service advertised or offered for sale, it is necessary to know its specifications, model, year, components, characteristics, or warranties, these must appear in the advertisement and be divulged clear and adequately to the consumer before the sale.

The merchant shall divulge clear and adequately the relevant facts, before effectuating the sale or offer for sale, free of ambiguities that could confuse the consumer. Likewise, all advertisements shall divulge clearly and adequately in writing, the relevant facts.

Relevant facts are, among others, the following:

- A. Total price of the good or service.
- B. That the advertised good is used, imperfect or irregular, broken, or that it has been repaired or rebuilt.
- C. That the advertised good has been discontinued by the manufacturer.
- D. That the advertised good lacks security improvements that subsequent models have.
- E. That there exists a significant probability that there may not be replacement parts available during the average useful life of the advertised good.
- F. That the advertised good or service contains compounds or chemical agents, formulas or any substance whose normal and usual use causes or may cause physiological or

psychological reactions or any other alteration of the organism. This information need not be expressed in the advertisement if it appears in clear and adequate form in the wrapping or label of the good or service, but the advertisement shall clearly and adequately indicate the need to read the label.

- G. That the advertised good does not include parts, accessories or necessary equipment for its adequate functioning, appearance or use.
- H. That pieces or parts susceptible of being repaired, or that have some other economic value, shall be retained as part of the price of a good or service.
- I. The financing terms and conditions, if any, offered.
- J. In cases of toys, the age of the child for whom it is recommended.

RULE 10 – VISUAL REPRESENTATIONS

- A. Every visual representation that is used in an advertisement shall correspond to the real characteristics of the good or service.
- B. The use of phrases indicating that the product or model offered “is not the same as the one illustrated” shall not be permitted to justify non-compliance with clause (A) of this Rule.

RULE 11 – PRICE ADVERTISEMENT

- A. The prices shall be advertised clearly and adequately.
- B. The advertisement shall express the final price of the good or service, without it being necessary to effect additional calculations.
- C. The merchant shall place signs or discount tables, or any other electronic media such as *price checkers*, that are visible and labeled, in an area near the place where the goods on

sale and the cash register are located, so as to allow the consumer to know the total or final price of the good or service on sale.

- D. When there is more than one price labeled, advertised or in the price check, for a good or service, the lowest price shall be understood to be the correct one.
- E. When the product is labeled with one price and another price appears in the scanner, the lowest price shall be understood to be the correct one.
- F. When a certain good or service is advertised on a special sale, it shall clearly and adequately indicate its regular price and its sale price.
- G. No other article or sale price shall be included in smaller letters in the same space or box causing the erroneous impression in consumers that the sale price in the larger size is the one that applies to the other articles. Each specific article with its sale price shall be expressed in separate form, in a different space or box.
- H. In every advertisement of goods or services, the numbers in fractions, of prices or quantities, shall be half the size of the whole numbers that precede them.
- I. Labeling the price on the article is exempted when the same is dispatched by an employee or dependent of the commercial establishment and there exists a sign with the price that is clearly and adequately displayed in the available area for the sale.
- J. Every new automobile advertisement shall include, in a size no less than one fourth ($\frac{1}{4}$) a part in proportion to the prominence of the name, or price of the model, the mileage performance per gallon yield, in the city as well as in the highway, as determined by the Environmental Protection Agency (EPA) and the Federal Department of Energy.

RULE 12 – PRICE COMPARISONS

The merchant may advertise that it offers discounts in the sale of goods or services through price comparisons, or that the product that it sells is cheaper than its competitor's provided that it clearly and adequately describes the basis for comparison and the products it compares are of the same brand. It shall have available the facts that demonstrate the compared prices and be able to sustain the difference at all times.

Price comparisons which are based on falseness, arbitrariness or price inflation are prohibited. Merchants shall divulge, free of ambiguity, the compared prices, with the expression of all information that may be necessary and essential to know about the quality, warranty, price, size, quantity, uses or any other characteristic of the good or service so that the consumers can clearly understand the price comparison.

When the merchant uses the terms "previously", "regularly", or other similar ones, it shall be understood that it is making reference to the previous price for the same good or service. In any other circumstance, the merchant shall specify the origin of the higher price.

A. Comparisons with previous prices

The merchant may compare its regular previous price for a specific good or service with its sale price to be published. The previous regular price that is advertised shall not exceed:

1. the price publicly offered by the merchant itself and in good faith in Puerto Rico, for at least during thirty (30) of the forty-five (45) natural days previous to the date of the initial publication; or
2. the price at which it has made at least thirty percent (30%) of the sales of the good or service in Puerto Rico during the twelve (12) months that precede the date of the initial publication.

In the case of chain stores, the comparison shall use the previously lowest regular price in any of its stores located in Puerto Rico.

B. Comparison with future prices

The merchant may advertise introductory offers or compare its actual prices with its future prices, provided that:

1. the future price advertised becomes effective immediately after the offer ends, but no later than the sixty (60) natural days following the date of initial publication; and
2. the price that was advertised as a future price prevails for at least double the effective time period of the introductory price.

C. Use of terms that imply discount

The merchant may use terms that indicate or imply a reduction in prices provided that the good or service with the discount is clearly and adequately identified.

D. Price comparisons in labels or signs

No merchant shall print, stick or attach any label or sign that contains a fictitious or inflated price that may be used to offer reductions of false prices.

E. Discount fluctuations

The merchant may include in a same advertisement progressive fluctuations of discounts in the prices of various products, provided that it clearly and adequately divulges the highest price and the lowest discount, in numbers that have at least the same size as those utilized to divulge the lowest price and the highest discount.

F. Use of terms such as "wholesale", "at cost" or "factory price".

The merchant may advertise that it sells at a price at "wholesale", "at cost", "factory price" or use any similar term, provided that said affirmation is true and that the good has no defect or be missing any element or content.

G. Use of terms such as "*two for the price of one*", "*buy one and get one free*", "*buy one and take another at half the price*"

The merchant may advertise that it offers any good or service at regular price and that it adds any good or service or accessory benefit, provided that:

1. clearly and adequately divulges all of the conditions;
2. the indicated regular price is true; and
3. the principal good or service is substantially of the same quality, grade and material as the one offered by the merchant before the advertisement.

H. Prices of units that form part of systems

The merchant may not advertise the price of a good that is normally sold as part of a system, without clearly and adequately divulging that the indicated price is the price for the unit and not the price for the system.

RULE 13 – AVAILABILITY OF THE ADVERTISED GOOD

A. The merchant shall have available for sale, in the store or in the warehouse, the goods advertised on sale, in sufficient quantities to respond to the reasonably anticipated demand during the whole effective period of the advertised special sale.

B. The quantities of the goods advertised on sale may only be limited when the following requirements are met:

1. The advertisement of the good on sale clearly and adequately indicates the available quantity for each one of the available articles per store or warehouse; and
2. conditions the termination date of such sale or sale of any particular product, to when said announced inventory runs out, using language such as “until stocks run out” or “while supplies last”, provided that if it simultaneously indicates a date of termination, it shall clarify that between said time period and the time inventory runs out, the first one to occur shall prevail; and
3. it divulges the minimum time, within the duration time of the offer, in which it anticipates and guarantees that said limited inventory shall be available according to its reasonably anticipated demand, whose minimum guaranteed time shall be expressed in days and hours in proximity to the advertised article or at the end of the advertisement.

Example:

Article X

Reg. \$3.99 Sale \$1.99

Avail. 100 per store while they last (Min. guaranteed time: 2 hours)

If the limited inventory runs out before the minimum time guaranteed and divulged by the merchant, the merchant is obligated to offer a substitute article or rain check for said product on sale. If the product runs out once the minimum time period guaranteed by the merchant has passed, the merchant shall not be obligated to substitute the product on sale that ran out nor offer a rain check for its future obtainment.

RULE 14 – SUBSTITUTE ARTICLES AND RAIN CHECKS

- A. Without limiting what is expressed in Rule 13 (B), when the good advertised on sale is not available for sale, the merchant shall be obligated to offer the consumer a substitute article for the price of the good advertised on sale.
- B. If the consumer prefers purchasing the good advertised on sale, the merchant shall offer a rain check, complying with the following requirements:
1. get for the consumer the good on sale within the following thirty (30) calendar days;
 2. within the thirty (30) days notify the consumer, by telephone, by regular mail, or by electronic mail, that the good is available for pick up;
 3. preserve the good at the disposal of the consumer for fifteen (15) calendar days counted from the notification to the consumer; and
 4. once the thirty (30) day term has passed, the consumer may opt between a substitute article or extending the rain check for an additional term of thirty (30) days. In the case of opting for the substitute article, the price shall be the same as the good advertised on sale. In the case of opting for extending the rain check for the additional term, if when the term culminates the merchant does not have it available, it shall have to hand over to the consumer a substitute article whose price shall be the same as the good advertised on sale.
- C. This rain check shall constitute an irrevocable offer by the merchant to supply the consumer the good advertised on sale for the advertised price and within the specified conditions.
- D. In the rain check, the following shall appear clearly printed or written:
1. the name, address and telephone of the store;

2. the name of the good, its description, model number, series or identification, size, color, if applicable, and/or any other characteristic that is necessary and convenient to undoubtedly identify it;
3. the regular and sale price of the advertised good;
4. the name, postal address, telephone number, and electronic mail address, if any, of the consumer;
5. its issue date;
6. the name and signature of the person that issues it; and
7. a warning that:
 - a. the merchant has committed to getting the good previously described within thirty (30) days from the issue date of the rain check;
 - b. the merchant shall notify the consumer, by telephone, by regular mail or electronic mail, when the good becomes available;
 - c. the merchant shall preserve the good at the disposal of the consumer for fifteen (15) calendar days counted from the notification;
 - d. once the thirty (30) day time period has passed, the consumer may opt between the substitute article or extend the rain check for an additional term of thirty (30) days;
 - e. in case of opting for the substitute article, the price shall be the same as the good advertised on sale; and
 - f. the Department has jurisdiction to address any claim in case of non-compliance by the merchant with the conditions of the rain check

- E. Compliance with what is required by this Rule exempts the merchant from fines for the lack of availability of the goods announced on sale.

RULE 15 – DIVULGATION OF INFORMATION ABOUT SPECIAL SALE IN ADVERTISEMENTS

A. Every advertisement of special sales shall contain the following information:

1. the identification of the article object of the sale;
2. the location of the establishment(s) where the advertised goods will be available; provided that the advertisement of special sales is prohibited when the good is not available in Puerto Rico, unless the image that is published in the advertisement is covered with a caption that indicates language such as “not available in Puerto Rico” in those cases that involve advertisements prepared (printed or digital) for more than one market on a national level.
3. the start and end dates of the special offer, whose duration shall not be less than four (4) hours, the referred end date may only be conditioned if it complies with what is detailed in the previous Rule 13(B). In the case of advertisements of special sales placed in newspapers of general circulation, including their supplements, loose-leafs, and shoppers, it shall be understood that an advertisement of this nature shall come into effect on the initial publication date in those cases in which the start date is not stated in it. When the duration term of the special sale has not been set, it shall be understood that the special sale shall extend for a term of thirty (30) days, counted from the last advertisement made.

B. When an advertisement of a special sale is not published in a newspaper of general circulation and only results from a sign in the store, the special sale shall last the term the

sign remains exposed, except for when the sign establishes a start and end term of the special.

RULE 16 – GIFTS AND PRIZES

The gratuitous offer of prizes or gifts with the purchase of any good or service, or with the fulfillment of specified conditions, may be advertised, provided that:

- A. The price of the good or service is not increased;
- B. The merchant clearly and adequately identifies the prize or gift, and divulges all the conditions and limitations imposed for its acquisition.
- C. The merchant clearly and adequately divulges the value of the prize or gift.
- D. The prize or gift is delivered to the consumer as soon as he/she complies with the advertised conditions.

When not all of the persons who comply with the conditions of the promotion receive a gift or prize and chance intervenes, in these cases the Department of Consumer Affairs' Regulation on Raffles shall apply.

RULE 17 – REBATE

- A. The final price of an article may not be advertised applying the rebate discount, if the rebate discount is not instantaneously applied to the price at the time of making the payment. If the rebate discount is not applied at the time of payment, the regular price of the article shall be advertised, which shall be the amount the consumer will pay should the purchase be made that day. In a separate place, the rebate discount shall be indicated in print of equal size to that of the advertisement of the price the consumer will pay should the purchase be made that day.

B. The advertiser of the rebate or discount in Puerto Rico and the salesperson of the establishment where the product object of the rebate or discount is acquired shall be jointly liable to the consumer when he/she claims that the obligated person did not honor the rebate or discount. In this case, the consumer may directly claim said rebate in the commercial establishment or opt for returning the good object of the rebate and obtain the total sum of money paid for it, in the same method of payment effectuated by the consumer.

RULE 18 – OBTAINING OF THE CONSUMER’S PERSONAL INFORMATION

No personal information of any consumer may be obtained that it is not voluntarily supplied by the consumer, and without divulging or explaining the use that will be given to the information. The information voluntarily offered by the consumer shall not be used to promote telemarketing offers, unless the consumer has expressly consented in writing to the use of his/her personal information to those effects. The merchants must take the necessary measures to protect the privacy, confidentiality and integrity of the personal information offered by the consumer.

RULE 19 – RECEIPT

It is required that in every sales transaction of products, articles or services, every merchant issue a receipt to the consumer. Neither the consumer nor the merchant shall condition the acceptance or issuance of the receipt to it reflecting incorrect information.

RULE 20 – FINANCING

The merchant that expresses or implies that it provides financing shall offer it to the general public at the interest indicated or clearly and adequately divulge any special condition.

terms or criteria that the consumer must satisfy in order to qualify. The merchant shall advertise the percent of the interest to be charged in terms of the annual percentage rate (APR).

RULE 21 – COMPLIANCE WITH THE TRUTH-IN-LENDING ACT

Any merchant that advertises financing terms and does not comply with the provisions of the “TRUTH-IN-LENDING ACT”, 15 USC 1601, et seq. and the regulatory provisions promulgated under its authority, shall incur in a deceptive practice.

RULE 22 – WARRANTIES

- A. Every warranty that is granted or sold on a product or service, whether the manufacturer’s original or the repair services offered by means of service contracts, in accordance with Act No. 392 of September 8, 2000, shall be recorded in a document that clearly establishes its terms and conditions.
- B. It shall constitute a deceptive practice and advertisement the use of the term “*extended warranty*” in a service contract, regulated by Act No. 392, *supra*, or analogous contract when the same terms and conditions of the original warranty are not extended.
- C. Every advertisement that expresses that a good or service has a warranty, shall specify the terms and conditions of the same. Before the sale, the consumer shall be able to inspect the text of the warranty, which shall be available in the place where the good or service is sold.
- D. Every advertisement that uses the phrase “*life warranty*” or other similar ones, shall express its terms, conditions and shall not limit its title transfer to another consumer.
- E. Every advertisement that claim that benefits shall be obtain through the acquisition of a good or service, shall clearly and adequately establish the manner in which the merchant

shall respond in case the consumer does not obtain such benefit. In its defect, the merchant shall be bound before the consumer for the benefit that was not received.

- F. The merchant shall not advertise nor display for sale goods or services for personal, familiar or domestic use that contain words or phrases that indicate or imply limitations or the inexistence of warranties that it is obligated to grant by legal provision.
- G. The merchant will hand over to the consumer the warranty certificate simultaneously with the delivery of the good or service provided.
- H. The merchant shall not be able to refuse to return the price paid by the consumer when the sold good:
 - 1. suffers from some defect;
 - 2. does not comply with the representations that were divulged and that motivated the consumer to enter into contract with the merchant;
 - 3. does not work for the purpose for which it was acquired; or
 - 4. when in the contracting process or during the effectiveness of the warranty there is a failure to comply with the provisions of this Regulation.
- I. The warranty may not establish that the consumer will have to return the equipment in its original packaging in order to honor the warranty or return to the consumer the amount paid for the good.
- J. No commercial establishment shall require, as a part of its warranty policy, that the consumer pay re-packing changes or re-stocking fee, as a requirement for returning the merchandise, with or without the original packaging.

RULE 23 – CORRECTIONS

- A. Every merchant that discovers an error in one of its advertisements before it is published shall immediately correct it.
- B. If the error is discovered after the date of publication, the merchant shall include the correct information in a clear and adequate manner in the same communications media in which it published the original advertisement, or may use other more immediate mass communications media (radio, television, etc.) to correct the error, also placing a copy of the correction in the place where it exposes for sale or sells the good or service object of the correction and in a visible place on the entrance doors of the establishment and in all the cash registers.
- C. The merchant shall honor the offer to consumers who act motivated by the erroneous advertisement before the correct information is published in the same media in which it published the original advertisement or from the publication of the correction in a more immediate communications media (radio, television, etc.).

RULE 24 – ADVERTISING THE ERROR

On each occasion in which a specific article, good or service, does not express its correct price in an advertisement, in the scanner, sign, table, box or in any form, the Department may place, at its discretion in the establishment's entrance doors, a sign or sticker, indicating that said establishment was caught in said violation. The sign or sticker shall also indicate, the period of time for which it shall be displayed. The content of the sign shall be determined by the Secretary, including, without limitation: the conduct that constitutes an infraction to the Regulation; the provisions of the Regulation that have been infringed; the quantity of the fine

imposed, if any; the number of times that the establishment has violated said provision and/or the regulation.

RULE 25 – ENDORSEMENTS OR CHARACTERIZATIONS IN ADVERTISEMENTS

- A. No declaration or representation may be made, directly or indirectly, that a good or service has been endorsed, recommended or approved by an individual, group, institution or private or public organization, or that the discoveries or conclusions of a study favor it, if such has not occurred in the alleged manner.
- B. No declarations or representations may be made out of context or that vary or expand the scope, meaning or real content of an endorsement, recommendation or approval of third persons, or the discoveries or conclusions of a study.
- C. Declarations or spontaneous testimonies by consumers about the apparent benefits of goods and services may be utilized. When it involves a representation or a non-spontaneous statement, the advertisement shall clearly and adequately inform that it is a simulation.
- D. The opinions expressed by third persons in an advertisement shall be understood as being adopted by the merchant and shall have the same effect as if he/she had made them, for purposes of this Regulation.

RULE 26 – RESPONSIBILITY OF THE COMMUNICATIONS MEDIA

Besides any other responsibility that every communications media, advertising agency or its equivalents, or intermediaries that directly or indirectly can be linked to the diffusion of an advertisement may have under this Regulation, they shall be subject to the following standards:

- A. It shall incur in an illicit practice under this Regulation if it does not comply with the written request of the Secretary to offer the name and residential and postal address of the

producer, distributor, seller or person that induced it to transmit or publish an advertisement.

- B. It shall incur in illicit practice if it insists in transmitting or publishing an advertisement, after an order has been dictated to cease and desist from transmitting or publishing it.
- C. Whenever demonstrated, by due evidence or previous administrative hearing, that by its own fault or exclusive negligence it has omitted, altered, modified or changed the terms, conditions, prices, warranties, services or any other essential aspect that should appear in an advertisement, it shall be responsible for satisfying any damage or prejudice suffered by the consumer.

RULE 27 – FILES

All merchants shall maintain, for a minimum term of one (1) year, the files that demonstrate the truthfulness of the advertisements, divulgations, expressions, representations or claims and the representative transactions of the special sales that it conducted. The information shall demonstrate how many quantities were available per store in the special sale and how many were sold.

RULE 28 – RETURN OF GOODS POLICIES

- A. All merchants shall expose in a visible place and in clear and legible letters, a sign that adequately notifies and informs the consumer about the merchandise return policy, both the manner in which the same shall be carried out, as well as the time period that the consumer has to do the same.
- B. Said sign shall be of a size no less than eight and a half (8½) inches by eleven (11) inches; with a font no smaller than fourteen (14) points. Also, said sign shall state the

following: "Publishing deceptive advertisements is illegal. Incurring in said practice carries a fine up to a maximum of \$10,000. The consumer may file a complaint with the Department of Consumer Affairs (DACO), Act No. 5 of April 23, 1973, as amended."

- C. The sign shall be exhibited in a visible place in each of the points of sale. As many signs as necessary may be placed, so the consumer be able to read them from any of the points of sale. Said sign shall not be placed more than five (5) feet away from each point of sale, where the consumer shall have visual access to it. In addition, it shall be placed between four (4) to seven (7) feet from the floor. The signs shall be placed in such a way that the consumer is able to read them before making the purchase.
- D. It shall not be necessary to include these signs at the entrance and exit doors of the commercial establishments.
- E. Professional services and food establishments, as defined by Rule 5(O), are exempted from the application of this Rule. Nevertheless, it is required from every commercial establishment that is operating in Puerto Rico to display in a visible place, and in clear and legible letters, a sign that contains the following statement: "Publishing deceptive advertisements is illegal. Incurring in said practice carries a fine up to a maximum of \$10,000. The consumer may file a complaint with the Department of Consumer Affairs (DACO), Act No. 5 of April 23, 1973, as amended."

RULE 29 – TIPS

The imposition of charges related to tips as a condition for providing services or selling goods to consumers is prohibited. It shall be the consumer's option to give or not give a tip, as well as its amount.

RULE 30 – REGULATION COPY

The merchant shall have a copy of this Regulation available in the store for the examination of any consumer who so requests.

RULE 31 – PENALTIES

The Secretary is authorized to issue warnings, orders of what or what not to do, cease and desist, and impose administrative sanctions and fines for the maximum permitted by the Organic Law of the Department of Consumer Affairs for infringement, for any non-compliance with the provisions of this Regulation, or for the orders and resolutions issued under it.

The imposition of penalties shall not deprive consumers of their right to exercise the independent actions that may arise under other provisions of this Regulation, other regulations or the law, including tort claims.

RULE 32 – CRIMINAL SANCTIONS

When the nature of the violation of this Regulation or the law so justifies, the Secretary may refer the offender to the Secretary of Justice for the pertinent course of action.

RULE 33 – RESERVATION

If any provision of this Regulation is declared unconstitutional or illegal by a Court of competent jurisdiction, said determination shall not affect nor invalidate the rest of the regulation, but rather the effect shall remain limited to the portion, article, paragraph or clause that would have been declared unconstitutional or illegal.

RULE 34 – REPEALING CLAUSE

The Regulation on Deceptive Practices and Advertisements approved on September 24, 2009, record No. 7751 in the Department of State, is repealed.

RULE 35 – EFFECTIVENESS

This Regulation shall enter into force thirty (30) days after its filing in the Office of the Secretary of State.

In San Juan, Puerto Rico, this 15th day of October, 2010.

A handwritten signature in black ink, appearing to be 'Luis G. Rivera Marín', written over a horizontal line.

Luis G. Rivera Marín
Secretary

Approved: October 15, 2010

Filed: October 15, 2010

Effective: November 15, 2010