



Canadian
Consumer Initiative

L'Initiative canadienne
des consommateurs

Parliamentary Briefing Note

Prepared by Option consommateurs for the Canadian Consumer Initiative

March 2013

Ensuring Sales Are Genuine Sales

Sale prices influence consumers

Merchants regularly offer sales to consumers. These sales are attractive, especially for consumers who need the item advertised and who believe that they are getting it at a reduced price. Sales incite consumers to choose one supplier over another, to choose one model over another, to buy at one moment rather than another. In other words, they influence consumer choice and behaviour.

But what is a “sale”?

When consumers benefit from a sale when buying a product or service, they are under the impression that they are getting a good deal. This may be true if the item or service they are buying is truly reduced in price. In order for this to be the case, according to section 74.01(3) of the Competition Act, most of the time, the product or service offered at a reduced price must be offered at an ordinary selling price (or higher) within a reasonable period of time before the sale. By contrast, an item which is always or almost always offered “on sale” may not be considered as having its price reduced from the ordinary selling price.

The situation in the market

Nowadays, sales are very popular, especially in the furniture industry. In order to find out whether the low prices advertised were truly “sale prices,” Option consommateurs kept track of eight merchants’ prices for one year (from September 2009 to October 2010), checking the prices in these department stores and furniture retail stores every two weeks.

Option consommateurs’ study detected some commercial practices that appeared to be deceptive, among them the following:

- In several stores, certain items were on sale during most visits; the sale price thus appeared to be the ordinary selling price.
- In certain stores, certain items were always on sale, but the offer made to the consumer varied from one visit to the next. For example, two sale prices were proposed alternately for the same mattress and box spring set. Sometimes the consumer could get this set on sale; sometimes the box spring was free when the mattress was purchased at the regular price.
- In one store, an introductory price was advertised for an item that had been for sale in-store for a long period of time.

THE CANADIAN CONSUMER INITIATIVE is a coalition of four major Canadian consumer organizations: Consumers Council of Canada, Option consommateurs, Public Interest Advocacy Centre and Union des consommateurs.

L'INITIATIVE CANADIENNE DES CONSOMMATEURS est une coalition formée des plus importantes associations de consommateurs au Canada, soit le Conseil des consommateurs, le Centre pour la défense de l'intérêt public, Option consommateurs et l'Union des consommateurs.

CONTACT: Sandra Boisvert, Consultant/Consultante, Public Response/Réponse citoyenne, 63 Sparks, Suite 608, Ottawa, ON K1P 5A6 CANADA
t. 613-565-9449 ext/poste 22 fax/télécopieur 613-249-7091 e. sboisvert@publicresponse.ca/sboisvert@reponsecitoyenne.ca

Fake “sale prices” impact consumers

A product’s price is not trivial. It gives consumers information, specifically about the quality of the product. It also allows them to compare products of the same value in various stores.

By advertising fake sale prices, merchants mislead consumers. They prevent them from knowing the true market value of a product. They also prevent them from making an informed choice by allowing them to choose the most appropriate product at the best possible price.

Fake “sale prices” impact competition

Merchants who advertise fake sale prices attract consumers to their store who are likely to purchase not only the items advertised as on sale, but also other products. In so doing, they reduce their competitors’ clientele. In addition, they prevent fair competition, not only for the sale items, but also for all items sold in the store.

Deceptive practices

Advertising items as being “on sale” when they are not is a deceptive trade practice. In Canada, the Competition Act prohibits deceptive marketing practices. In certain provinces, marketing practices are also regulated by provincial laws. In Quebec and Ontario, such practices are prohibited by the *Loi sur la protection du consommateur* and by the Consumer Protection Act, respectively.

Option consommateurs has lodged complaints against several merchants

Following its study, in September 2011, Option consommateurs lodged complaints with the Competition Bureau, the *Office de la protection du consommateur* and the Ministry of Consumer Services of Ontario against eight large furniture retailers.

Complaints were lodged against the following retailers: The Bay, Brault and Martineau, The Brick (including Brick Liquidation Centre), Germain Larivière, Leon’s, Mattress Mart and Sears. So far, only the *Office de la protection du consommateur* has followed up on the request and prosecuted one merchant.

Our recommendations

For improvements to occur, the Competition Act could be amended in order to require merchants to indicate, on the price label and in their advertising, the prices at which the product was sold over the previous six months, as well as the duration of the sales advertised during that period. This amendment would be useful both to the consumer (who would be making informed choices) and to the competition.

Other solutions could be considered. For example, the Competition Bureau could inform consumers, by any appropriate means, of the existence of Section 9 of the Competition Act, which provides that any six residents of Canada aged eighteen years or over may ask the Commissioner of Competition to conduct an inquiry when, for example, they believe that a company has contravened the laws respecting misleading marketing practices. The Competition Bureau could also include a tool on its website to provide information on formal complaints filed against merchants. This tool would allow consumers to find out how many such complaints have been filed against a merchant, and what these complaints entail.

For more information:

Maryse Guénette, *Head of Representation and Research*

Option consommateurs

tel.: (514) 598-7288, ext. 240 • guenette@option-consommateurs.org

Option consommateurs received funding from Industry Canada’s Contributions Program for Non-profit Consumer and Voluntary Organizations. The views expressed in this report are not necessarily those of Industry Canada or of the Government of Canada.