

# The Consumer Ombudsman's guidelines

## PRICE EXPRESSIONS AS A MARKETING METHOD

The Consumer Ombudsman in collaboration with the Federation of Finnish Commerce and Trade has drawn up marketing guidelines concerning the way prices are expressed. The purpose of the guidelines is to clarify the use of the price as a marketing method. The Federation of Finnish Commerce and Trade recommends that the guidelines be followed. The Consumer Ombudsman also regards the guidelines as a basis for marketing surveillance.

Price reduction advertising, price comparisons and various price expressions are assessed according to the Consumer Protection Act, Chapter 2, Sections 1,2,3,4 and 4a and the Decree on the indication of the prices in marketing consumer products.

### SALE

A sale is an offer containing a price reduction that is valid for a limited period of time. A sale must apply to a considerable part of the product range in a shop, unless limited or specified in the marketing. If the intention is to limit the sale to cover only a certain part of the shop's product range, the product or product groups included in the sale must be indicated so clearly that someone reading the advertisement can establish this by a casual glance at the advertisement.

The Decree on the indication of the prices in marketing consumer products (1359/1999) requires the selling price of individual goods and services to be stated clearly and visibly if the advertiser is selling the products direct to the consumers. See the instruction Price to be clearly displayed. The most important aspect is to indicate the final selling price. As regards

a sale, this refers to the new, reduced price. This means that it is not enough just to display a product's original price and the discount percentage. It is not at all necessary to display the previously charged price in conjunction with the sale price.

### The size of the discount

According to the Consumer Protection Act, the price of a consumer good may not be advertised as being reduced by more than the amount by which it is actually lower than the price previously charged by the trader. A discount may not, for example, be based on the price charged by a competitor or on the general price level. The discount must be calculated on the price previously charged for the product by the same trader in the same shop immediately prior to the sale. (Market Court 1989:14, 1991:19). Prices may not be artificially increased immediately prior to the commencement of the sale.

The advertising of discounts and sales gives buyers the impression that they can buy something at a particularly low price. A discount of less than 10% does not usually correspond to the general perception of what discounts ought to be, unless the consumers are specifically told the amount of discount or the discount percentage. If the price of a product is further reduced during the sale, the amount of the additional reduction should be calculated on the already discounted price.

It is misleading to advertise major discounts which, in reality, only apply to a small proportion of the products. If the seller wishes to advertise certain larger than average discounts, the seller can avoid giving misleading

information by stating which products are subject to these large discounts and the quantity of these products on offer.

### Duration

A sale that continues for a long time means, in effect, that the discount prices become the normal shop prices, and thus the continuous advertising of a sale is not possible.

During one calendar year a shop may hold sales for a maximum total of three months. The maximum consecutive period of any one sale is two months.

The acceptable duration of a sale may to some extent vary according to the branch and the product. According to the ruling praxis of the Marketing Court, conditions such as seasonal changes can also affect the acceptable duration. The reduced prices must be genuine, however, and they may not become the normal shop prices.

### Restrictions

It is not permitted to hold a sale in conjunction with occasional selling events or the opening of a shop.

Used products may not be sold at a reduced price. According to Market Court ruling 1981:15 a used product is always a unique item whose price is determined by factors such as the age and condition. Because a used product is a unique item, the said product has not actually been sold at any price prior to the price advertised as being reduced. Another consequence of the requirement concerning a previously charged price is that not even new products that are unique, such as paintings or rugs, can be sold at a

discount, because exactly the same product has not been sold previously.

This does not however mean that the lowness of the prices may not be referred to in any way in the marketing of used or unique products. For example, the expressions “reduced price level” or “we have revised the prices” may be used if the claim about the lowness of the price is genuine.

Products that have a very short, seasonal sales period may not be sold at a discount. Fireworks are typical examples of such products. Fireworks are not sold for a long enough period to establish a price that would have been charged just before they begin to be sold at a reduced price. On the other hand, the price of food products changes so frequently that for their part a sale would not generally come into question.

## CLEARANCE SALES

Consumers expect particularly low prices from a clearance sale. The expression “clearance sale” must not be used in a misleading manner, the expression must be based on a genuine situation – either the closing down of a place of business or that the selling of a certain product group or model will end, or a sales location will be closed.

The reasons for a clearance sale could also be special circumstances such as, for example, the danger of products spoiling, renovation of premises, a fire or water damage. A clearance sale may be arranged due to such circumstances only if this reason has a detrimental effect on the shop's operating conditions. In cases such as these the reason for the clearance sale must also be clearly indicated in the marketing material. The reason for a clearance sale should also be stated in the marketing material when the clearance sale is for some other reason than the whole shop closing down.

The use of the term “clearance sale” in any other meaning or situation, such as at occasional selling events, is misleading.

## Coverage

Unless the clearance sale is limited or specified in the marketing, a considerable part of a shop's product range must be reduced. If the intention is to limit the clearance sale to only cover a certain part of a shop's product range, the products or product groups included in the clearance sale must be clearly indicated in the marketing.

If the clearance sale does not apply to all the products in the shop, the products which are reduced must be clearly marked or displayed separately from the other products in the shop that are not included in the sale.

The purpose of a clearance sale is specifically to dispose of a certain existing stock or product consignment. For this reason stocks that are the subject of the clearance sale may not be replenished during the time of the sale, nor after the decision to hold a clearance sale has been made

If a business has many shops in the same town or in several towns and it closes down the business at one location, products may not be transferred to the clearance sale from other shops in the chain that are to continue their operations.

## Size of the discount

The rules concerning the size of the discount in clearance sales are the same as for ordinary sales (Market Court 2002:4).

## Duration

A clearance sale may last a maximum of two months. The closing down of a shop or a company is an exception, and in this case a clearance sale can last a maximum of six months.

## Other expressions

In marketing, a clearance sale may also go under other names. Other expressions comparable with clearance sale include renovation sale, liquidation sale, moving sale and fire sale. The guidelines for clearance sales apply to all sales methods such as these.

The marketing of seasonal clearance sales (end-of-season sales) is subject to the same guidelines as for the marketing of sales.

When a trader has bought the stock of goods from a bankruptcy estate, ownership of the goods transfers to the trader. The sale of the stock of goods bought from a bankruptcy estate of this kind may not be called a clearance sale. (Market Court 1980:3, 1980:10).

## SPECIAL OFFERS

A “special offer” is a product offer that is of a limited duration, the main content of which is a price reduction, a particularly low price or the promise of some other economic benefit.

### Special price

When the low price of an offer is emphasised, the special offer price must be clearly lower than the price that the seller normally charges for the same product. If the product in question is one that has been purchased for the purpose of making a special offer and which the shop has not hitherto sold, the low price must be substantiated by, for example, the shop not selling this product at a special offer price in the future.

The special offer price in shop-opening offers or in other introductory offers must also be substantially less than the trader's own future selling price. If the future selling price is determined only on the basis of the test marketing of the new product extreme caution must be observed when making claims about the lowness of the price.

The consumer may not be misled as regards the lowness of the price also when products are sold at the normal selling price. A consumer may be misled, for example, if the marketing for the normal-priced products uses adverts, price expressions or posters that have earlier been used in the said shop specifically for the advertising of special offers. It is also misleading if the word “offer” is stated on every price tag in the shop.

## Picture, product information and advert layout

The picture and the price and other information given in the advertising of a special offer must correspond with each other. The picture of a more expensive product may not be used in the special offer advertising in a misleading manner. It should be borne in mind that the general impression given by the advert is the decisive factor when assessing the degree to which an advertisement is misleading.

## Additional benefits

In the marketing of additional benefits, for add-on benefits as well as combined offers, the value of the offer must be stated. In combined offers, the value of the offer is the difference between the total price for the product package and the separate prices of the products included in the package. In offers such as these the total price of the package must be stated as well as the price of each element of the package when purchased separately. If a product cannot be purchased separately, its calculatory retail price must be stated.

It is an add-on benefit if the purchaser of a product is offered another product at a reduced price or for a nominal charge. The value of the offer is stated in the same way as for a combined offer. If the price of the good purchased separately is less than EUR 10, there is no need to state the value in the marketing.

Under a general clause of the Consumer Protection Act, the promised benefit or its value may not dominate an advertisement at the expense of the product itself or its terms of supply. The product being advertised must therefore be the main message even in an offer of an additional benefit. With regard to add-on benefits, the expressions “free of charge”, “free gift” or “free” may not be used because the purchase of another good is always required in order to receive the add-on benefit.

## Restrictions applying to special offers

The special offer products must be available to the consumer for the entire duration of the special offer. It may be difficult to forecast with certainty the sufficiency of the products during the period of the special offer. The period for which the special offer is valid may be limited by resorting to limitations on quantities such as a certain number of products per customer.

The enticement of customers with an exceptionally small consignment of goods using powerful marketing methods may be misleading. Powerful marketing methods should be in proportion to the quantity of products on special offer and the size of the shop.

The duration of the special offer must be clearly indicated in the advertising outside the shop and also, if possible, inside the shop. The duration of a special offer must be short, a maximum of one month. In branches where there is little variation in prices and where stock turnover is slow, the duration of the special offer period may be longer, a maximum, however, of two months.

The consumers must get clear information from the marketing as to the time, how to act and what other conditions apply for them to be able to get the offer product or other benefit. For this reason, expressions such as “limited quantity” or “as long as stocks last” may not be used as a general limitation and one which covers all marketing concerning offers. From expressions such as these consumers are unable to actually establish the time when they can get the offer product or additional benefit.

Qualifying statements such as “limited offer” can only be used in individual cases, where a small quantity of a product has been bought or is left over, and it is probable that stocks will quickly be exhausted. If the availability of a product being marketed on special offer is so limited that stocks will probably be exhausted during the period of validity of the special offer, the number of products available, or some similar expression, should be

mentioned in the advertising, to enable a consumer to estimate the duration of the offer.

Joint marketing should also clearly state any limitations as regards any specific shops or type of shop.

## Special offer products being sold out during the special offer period.

If, despite precautions being taken, a product is sold out during the special offer period, the seller must be prepared to compensate the consumer for the inconvenience caused. The consumer can, for example, be given a corresponding product on the terms of the special offer or the consumer can be given the opportunity to buy the offer product at a later date. Negligent actions in the marketing may also lead to a liability to compensation, for the consumer’s travel expenses for a wasted journey, for example. Separate Consumer Ombudsman’s guidelines concerning the validity of offers are under preparation.

A special offer must be planned carefully. The flow of communication between those within the firm participating in planning the offer and the advertising agency should be checked in case of any mistakes or other unexpected situations. Before publication of the special offer the delivery of the offer products to the sales locations should be checked. Steps should be taken to correct mistakes, a wrong price for example, as soon as the mistake has been discovered.

The correction must be in proportion to the strength and extent of the marketing and to the inconvenience caused to the consumers by the mistake. The mistake is corrected for those consumers to whom the faulty advert was targeted. Generally, the mistake must be corrected using the same channel through which the incorrect advert was placed. The mistake must also be corrected by means of a notice in the shop. A wrong price in the shop should of course be removed as soon as it is noticed.

A mistake in an offer valid for a short period must be clearly corrected already in the shop window or by means

of a notice close to the entrance, in the final instance, however, in the shop department in question. The notice must state the mistake and the way in which it is rectified.

A mistake concerning a special offer that is valid for at least one week must be corrected, as a general rule, through a new newspaper advertisement. A newspaper advertisement can also be used to correct a mistake that has been made in direct marketing, if correcting the mistake with new direct advertising would be unreasonably difficult.

If a company publishes repeated adverts in a daily newspaper or in another newspaper, the mistake must be corrected in the next newspaper advert published during the period for which the special offer is valid. If at the time the newspaper is published there is so little time left for the special offer that a correction would lose any practical significance, a correction does not need to be published.

If products that can be ordered are displayed on an Internet website, the consumer should also be able to assume that he would get them. Having a website that is not updated is not an adequate reason for not supplying the product.

## OTHER PRICE EXPRESSIONS

### Recommended retail price (RRP)

The recommended retail price means the price that the manufacturer or a previous level in the supply chain recommends and that the consumer is generally charged for the same product. (Market Court 1982:19, 1989:7)

### Comparison with the general price level

When a retail shop compares its own prices with the recommended retail price, it is a question of comparing its own prices with the general price level. It is misleading for a retail shop to call its own selling prices the recommended retail prices.

When it is not a case of advertising a reduced price, a retail shop may only compare its own sales price with the product's recommended retail price if a consumer is actually charged the recommended retail price for a similar good in another retail shop (Market Court 1982:19, 1989:7).

If a retail shop uses a comparison of this kind, it must be able, if necessary, to demonstrate by means of a price survey, at local level at a minimum, that consumers are genuinely charged the recommended retail price, and that it corresponds to the general price level.

### Normal price

The normal price refers to the price earlier charged for the same good in the shop, unless it is stated in the marketing what else is meant by the normal price.

### "From" price

If a product has been specified in the marketing its final selling price must be stated. "From" prices can be used in the marketing for a product group.

If the product group only includes a few products at the "price from ..." price, and the number of items is not stated in the marketing, the marketing is deemed to be misleading.

When using a range of prices, it should be similarly taken into account that an offer may not be constructed in such a way that only a few product items are on sale at the lowest price in the price range, as far as the whole product group is concerned.

Also in "prices from ..." marketing it should be taken into account that the marketing message should be in proportion to the size of the product consignment and the number of products at the "price from ..." price.

### Factory shops and outlet stores

Under a Market Court ruling (1981:17) the term "factory outlet" may, as a general rule, only be used for a shop located in the locality of the

production facility, when the prices of the products are lower than average due to, for example, the reduced storage and transportation costs. The use of the term "factory shop" also requires that the range of products for sale is predominantly produced by the company's own factory.

Outlet stores may not sell job lots at decreased prices because the products have not been on sale at the outlet store at the pre-decrease prices.

### Wholesale price

There are two requirements for the use of the term "wholesale price" in marketing: the prices must genuinely be lower than the prices that other enterprises charge for the same products, and the prices must be the same as the prices at which the products are sold to retail shops. If the term "wholesale price" is used in the marketing, the trader must be able to show, if necessary, that these conditions are fulfilled.

## PRICE GUARANTEE

A price guarantee, a promise to pay the price difference if a consumer finds the purchased product on sale elsewhere at a lower price, may not be used in marketing. According to a ruling by the Market Court, the promise of a price guarantee is already as such a claim of having lower prices of the kind that must be proved, by price comparison, for example. By lowering the price only when a lower price has been found in a competitor's shop, the company is actually leaving the task of comparing prices up to the customer. (Market Court 1997:2, 1999:017 and 2002:005).

In these rulings the view of the Market Court is that a price guarantee is not a question of a price expression, but of comparative advertising. Comparative advertising is only allowed if it complies with the requirements of the Consumer Protection Act, Chapter 2, Section 4a concerning truthfulness, impartiality and objectivity. Separate Consumer Ombudsman's guidelines concerning comparative advertising are under preparation.