

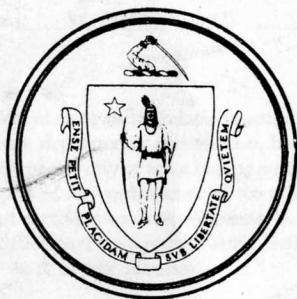
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Vol 4

CONSUMER PROTECTION ACT

OF THE SECRETARY
STATE HOUSE BOSTON MASS.

MASSACHUSETTS GENERAL LAWS CHAPTER 93A RULES AND REGULATIONS



ATTORNEY GENERAL, ROBERT H. QUINN

DEPARTMENT OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION
STATE HOUSE BOSTON

MASSACHUSETTS

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The Commonwealth of Massachusetts

**OFFICE OF THE SECRETARY
STATE HOUSE, BOSTON, MASS.**

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Agency DEPARTMENT OF THE ATTORNEY GENERAL
CONSUMER PROTECTION ACT CHAPTER 93A MASSACHUSETTS GENERAL
LAWS INCLUDING RULES AND REGULATIONS

Date Published DECEMBER 21, 1971

Chapter 233, sec. 75

Printed copies of rules and regulations purporting to be issued by authority of any department, commission, board or Officer of the Commonwealth or any city or town having authority to adopt them, or printed copies of any ordinances or town by-laws, shall be admitted without certification or attestations, but if this genuineness is questioned, the court may require such certifications or attestations thereof as it deems necessary.

Attested as a true copy
JOHN F. X. DAVOREN

John F. X. Davoren

SECRETARY OF THE COMMONWEALTH



To the People of Massachusetts:

In the vital, changing, challenging area of protecting the consumer against unfair and deceptive business practices, Massachusetts has been a leader. Landmark legislation enacted in recent years outlaws fraudulent advertising, selling, and credit methods and provides legal recourse against them.

Vigorous enforcement of these consumer protection laws has enabled thousands of consumers to recover money and property losses and has forced many unethical tradesmen out of competition with honest, legitimate businessmen.

The Consumer Protection Act reprinted here is the keystone of our consumer legislation. It is a law which affects every citizen — we are all buyers, after all — and it is a people's law in many respects. Laymen can read and understand its non-technical terminology; private citizens are empowered by it to prosecute businessmen who may have cheated them.

All residents of the Commonwealth share the responsibility to make this Consumer Protection Act a strong, effective law. It is my hope that public awareness and application of this law, along with diligent enforcement by the Department of the Attorney General, will assure every careful consumer that he can spend his money with confidence.

ROBERT H. QUINN
Attorney General

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The outline form of the Rules and Regulations has been standardized, and in some cases the numbering and punctuation may differ from that in previous printings. However, none of the substance of these regulations has been altered.

CHAPTER 93A.

REGULATION OF BUSINESS PRACTICES FOR CONSUMERS
PROTECTION.

SECTION 1. The following words, as used in this chapter unless the text otherwise requires or a different meaning is specifically required, shall mean:—

(a) "Person" shall include, where applicable, natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity.

(b) "Trade" and "commerce" shall include the advertising, offering for sale, sale, or distribution of any services and any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, and shall include any trade or commerce directly or indirectly affecting the people of this commonwealth.

(c) "Documentary material" shall include the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate.

(d) "Examination of documentary material", the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment in respect of any such documentary material.

SECTION 2. (a) Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

(b) It is the intent of the legislature that in construing paragraph (a) of this section the courts will be guided by the interpretations given by the Federal Trade Commission and the Federal Courts to section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)), as from time to time amended.

(c) The attorney general may make rules and regulations interpreting the provisions of subsection 2(a) of this chapter. Such rules and regulations shall not be inconsistent with the rules, regulations and decisions of the Federal Trade Commission and the Federal Courts interpreting the provisions of 15 U.S.C. 45(a)(1) (The Federal Trade Commission Act), as from time to time amended.

SECTION 3. (1) Nothing in this chapter shall apply to

(a) transactions or actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the commonwealth or of the United States; or

(b) trade or commerce of any person of whose gross revenue at least twenty per cent is derived from transactions in interstate commerce, excepting however transactions and actions which (i) occur primarily and substantially within the commonwealth, and (ii) as to which the Federal Trade Commission or its designated representative has failed to assert in writing within fourteen days of notice to it and to said person by the attorney general its objection to action proposed by him and set forth in said notice; or

(c) transactions or actions of any person who shows that he has had served upon him by the Federal Trade Commission a complaint pursuant to 15 U.S.C. 45(b) relating to said transactions or actions until the Federal Trade Commission has either dismissed said complaint, secured an assurance of voluntary compliance, or issued a cease and desist order relating to said complaint pursuant to 15 U.S.C. 45(b).

(2) For the purpose of this section the burden of proving exemption from the provisions of this chapter shall be upon the person claiming the exemption.

SECTION 4. Whenever the attorney general has reason to believe that any person is using or is about to use any method, act, or practice declared by section two to be unlawful, and that proceedings would be in the public interest, he may, upon notice given in accordance with this section, bring an action in the name of the commonwealth against such person to restrain by temporary or permanent injunction the use of such method, act or practice. The action may be brought in the superior court of the county in which such person resides or has his principal place of business, or the action may be brought in the superior court of Suffolk county with the consent of the parties or if the person has no place of business within the commonwealth. Said court may issue temporary or permanent injunctions and make such other orders or judgments as may be necessary to restore to any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice any monies or property, real or personal, which may have been acquired by means of such method, act or practice; provided, however, that no such temporary or permanent injunction or other order shall issue except upon notice and an opportunity to be heard.

At least five days prior to the commencement of any action brought under this section, the attorney general shall notify the person of his intended action, and give the person an opportunity to confer with the attorney general in person or by counsel or other representative as to the proposed action. Such notice shall be given the person by mail, postage prepaid, to his usual place of business, or, if he has no usual place of business, to his last known address.

Any district attorney or law enforcement officer receiving notice of any alleged violation of this chapter or of any violation of an injunction or order issued in an action brought under this section shall immediately for-

ward written notice of the same together with any information that he may have to the office of the attorney general.

Any person who violates the terms of an injunction or other order issued under this section shall forfeit and pay to the commonwealth a civil penalty of not more than ten thousand dollars for each violation.

For the purposes of this section, the court issuing such an injunction or order shall retain jurisdiction, and the cause shall be continued, and in such case the attorney general acting in the name of the commonwealth may petition for recovery of such civil penalty.

SECTION 5. In any case where the attorney general has authority to institute an action or proceeding under section four, in lieu thereof he may accept an assurance of discontinuance of any method, act or practice in violation of this chapter from any person alleged to be engaged or to have been engaged in such method, act or practice. Such assurance may, among other terms, include a stipulation for the voluntary payment by such person of the costs of investigation, or of an amount to be held in escrow pending the outcome of an action or as restitution to aggrieved buyers, or both. Any such assurance of discontinuance shall be in writing and be filed with the superior court of Suffolk county. Matters thus closed may at any time be reopened by the attorney general for further proceedings in the public interest. Evidence of a violation of such assurance shall be prima facie evidence of a violation of section two in any subsequent proceeding brought by the attorney general.

SECTION 6. (1) The attorney general, whenever he believes a person has engaged in or is engaging in any method, act or practice declared to be unlawful by this chapter, may conduct an investigation to ascertain whether in fact such person has engaged in or is engaging in such method, act or practice. In conducting such investigation he may (a) take testimony under oath concerning such alleged unlawful method, act or practice; (b) examine or cause to be examined any documentary material of whatever nature relevant to such alleged unlawful method, act or practice; and (c) require attendance during such examination of documentary material of any person having knowledge of the documentary material and take testimony under oath or acknowledgment in respect of any such documentary material. Such testimony and examination shall take place in the county where such person resides or has a place of business or, if the parties consent or such person is a nonresident or has no place of business within the commonwealth, in Suffolk county.

(2) Notice of the time, place and cause of such taking of testimony, examination or attendance shall be given by the attorney general at least ten days prior to the date of such taking of testimony or examination.

(3) Service of any such notice may be made by (a) delivering a duly executed copy thereof to the person to be served or to a partner or to any officer or agent authorized by appointment or by law to receive service

of process on behalf of such person; (b) delivering a duly executed copy thereof to the principal place of business in the commonwealth of the person to be served; or (c) mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in the commonwealth or, if said person has no place of business in the commonwealth, to his principal office or place of business.

(4) Each such notice shall (a) state the time and place for the taking of testimony or the examination and the name and address of each person to be examined, if known, and, if the name is not known, a general description sufficient to identify him or the particular class or group to which he belongs; (b) state the statute and section thereof, the alleged violation of which is under investigation and the general subject matter of the investigation; (c) describe the class or classes of documentary material to be produced thereunder with reasonable specificity, so as fairly to indicate the material demanded; (d) prescribe a return date within which the documentary material is to be produced; and (e) identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying.

(5) No such notice shall contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the commonwealth; or require the disclosure of any documentary material which would be privileged, or which contains trade secret information, or which for any other reason would not be required by a subpoena duces tecum issued by a court of the commonwealth.

(6) Any documentary material or other information produced by any person pursuant to this section shall not, unless otherwise ordered by a court of the commonwealth for good cause shown, be disclosed to any person other than the authorized agent or representative of the attorney general, unless with the consent of the person producing the same.

(7) At any time prior to the date specified in the notice, or within twenty-one days after the notice has been served, whichever period is shorter, the court may, upon motion for good cause shown, extend such reporting date or modify or set aside such demand. The motion may be filed in the superior court of the county in which the person served resides or has his usual place of business, or in Suffolk county. This section shall not be applicable to any criminal proceeding nor shall information obtained under the authority of this section be admissible in evidence in any criminal prosecution for substantially identical transactions.

SECTION 7. A person upon whom a notice is served pursuant to the provisions of section six shall comply with the terms thereof unless otherwise provided by the order of a court of the commonwealth. Any person who fails to appear, or with intent to avoid, evade, or prevent compliance, in whole or in part, with any civil investigation under this chapter, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies any documentary material in the possession, cus-

tody or control of any person subject to any such notice, or knowingly conceals any relevant information, shall be assessed a civil penalty of not more than five thousand dollars.

The attorney general may file in the superior court of the county in which such person resides or has his principal place of business, or of Suffolk county if such person is a nonresident or has no principal place of business in the commonwealth, and serve upon such person, in the same manner as provided in section six, a petition for an order of such court for the enforcement of this section and section six. Any disobedience of any final order entered under this section by any court shall be punished as a contempt thereof.

SECTION 8. Upon petition by the attorney general, the court may for habitual violation of injunctions issued pursuant to section four order the dissolution, or suspension or forfeiture of franchise of any corporation or the right of any foreign corporation to do business in the commonwealth.

SECTION 9. This act shall be known and designated as the "Regulation of Business Practice and Consumer Protection Act."

(1) Any person who purchases or leases goods, services or property, real or personal, primarily for personal, family or household purposes and thereby suffers any loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive act or practice declared unlawful by section two or by any rule or regulation issued under said section two C may, as hereinafter provided, bring an action in the superior court in equity for damages and such equitable relief, including an injunction, as the court deems to be necessary and proper.

(2) Any persons entitled to bring such action may, if the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and if the court finds in a preliminary hearing that he adequately and fairly represents such other persons, bring the action on behalf of himself and such other similarly injured and situated persons; the court shall require that notice of such action be given to unnamed petitioners in the most effective practicable manner. Such action shall not be dismissed, settled or compromised without the approval of the court, and notice of any proposed dismissal, settlement or compromise shall be given to all members of the class of petitioners in such manner as the court directs.

(3) At least thirty days prior to the filing of any such action, a written demand for relief, identifying the claimant and reasonably describing the unfair or deceptive act or practice relied upon and the injury suffered, shall be mailed or delivered to any prospective respondent. Any person receiving such a demand for relief who, within thirty days of the mailing or delivery of the demand for relief, makes a written tender of settlement which is rejected by the claimant may, in any subsequent action, file the written tender and an affidavit concerning its rejection and thereby limit

any recovery to the relief tendered if the court finds that the relief tendered was reasonable in relation to the injury actually suffered by the petitioner. In all other cases, if the court finds for the petitioner, recovery shall be in the amount of actual damages or twenty-five dollars, whichever is greater; or up to three but not less than two times such amount if the court finds that the use or employment of the act or practice was a willful or knowing violation of said section two or that the refusal to grant relief upon demand was made in bad faith with knowledge or reason to know that the act or practice complained of violated said section two. In addition, the court shall award such other equitable relief, including an injunction, as it deems to be necessary and proper. The demand requirements of this paragraph shall not apply if the prospective respondent does not maintain a place of business or does not keep assets within the commonwealth, but such respondent may otherwise employ the provisions of this section by making a written offer of relief and paying the rejected tender into court as soon as practicable after receiving notice of an action commenced under this section.

(4) If the court finds in any action commenced hereunder that there has been a violation of section two, the petitioner shall, in addition to other relief provided for by this section and irrespective of the amount in controversy, be awarded reasonable attorney's fees and costs incurred in connection with said action; provided, however, the court shall deny recovery of attorney's fees and costs which are incurred after the rejection of a reasonable written offer of settlement made within thirty days of the mailing or delivery of the written demand for relief required by this section.

SECTION 10. Upon commencement of any action brought under section nine, the clerk of the court shall mail a copy of the bill in equity to the attorney general and, upon entry of any judgment or decree in the action, the clerk of the court shall mail a copy of such judgment or decree to the attorney general.

Any permanent injunction or order of the court made under section four shall be prima facie evidence in an action brought under section nine that the respondent used or employed an unfair or deceptive act or practice declared unlawful by section two.

RULES AND REGULATIONS

The following Rules and Regulations are promulgated pursuant to Section 2(c) of General Laws, Chapter 93A for purposes of determining whether conduct, terminology or representations involve unfair methods of competition or unfair or deceptive acts or practices, in violation of Section 2(a) of General Laws, Chapter 93A. These Rules and Regulations are not intended to be all inclusive as to the types of activities declared unlawful by Section 2(a) but are intended to be of general application.

SECTION A

DEFINITIONS

As used in these Rules and Regulations, the following words shall have the following meanings:

“Advertisement,” “Advertising,” “Advertise”

Any commercial message in any newspaper, magazine, leaflet, flyer, or catalog, on radio, television, public address system, or made in person, in direct mail literature or other printed material, or any interior or exterior sign or display, in any window display, in any point of transaction literature or price tag which is delivered or made available to a customer or prospective customer in any manner whatsoever.

“Bait Advertising”

“Bait Advertising” is an alluring but insincere offer to sell a product which the advertiser does not intend or want to sell. Its purpose is to switch consumers from buying the advertised product in order to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. The primary aim of a bait advertisement is to obtain leads as to persons interested in buying a product of the type so advertised.

“Blind Advertising”

An advertisement which has the tendency to induce consumers to contact the advertiser and which fails to reveal that the primary purpose of the advertisement is the sale of goods or services, and fails to reveal the identity of the advertiser.

“Books”

For the purposes of these rules, the term “book” or “books” as herein used shall be construed as embracing all or any books, supplements, yearbooks, pamphlets, magazines, looseleaf material, and other printed material, sold, offered for sale or distributed, unless the context of the particular rule indicates or implies a contrary construction.

“Buyer”

“Buyer” includes a lessee or renter.

“Clear and Conspicuous Disclosure”

Without limiting any other provisions of law, disclosures required by these regulations shall be of such size or color contrast and so placed as to be readily noticeable to purchasers or prospective purchasers reading advertising, sales promotional literature, or invoices containing same, or reading any representation as to content on the container in which the product is packed, or inspecting a product before installation or with a minimum of disassembly after installation. A term is conspicuous when it is so written that a person against whom it is to operate ought to have notice of it. Language in the body of a form is “conspicuous” if it is in larger or contrasting type or color.

“Deceptive Warranty”

For the purpose of this chapter a “deceptive warranty” is:

(1) a guarantee or warranty that contains an affirmation, promise, description, or representation that is either false, fraudulent, or that, in the light of all the circumstances, would mislead the consuming public; or fails to contain the necessary information to avoid misleading the consuming public; or,

(2) a guarantee or warranty created by the use of such terms as “guarantee” or “warranty” if the terms and conditions of such guarantee or warranty so limit scope and application as to render the representation illusory, as where any costs or charges to the consumer attendant upon such work are prohibitive or approach the cost for the repairs absent any warranty or guarantee.

“Door to Door” Transaction

The sale, rental or lease of consumer goods or services with a purchase price of \$25 or more whether under single or multiple contracts in which the buyer’s agreement or offer to purchase is induced at a place other than the place of business of the seller.

“Person or Persons”

The term “person” or “persons” as used in these regulations includes an association, a corporation, an individual, an institution, a natural person, an organization, a partnership, and any other legal entity.

“Place of Business”

The main or permanent branch office or fixed location for doing business of a seller. A booth at a fair or other temporary, stationary or mobile selling point does not constitute a place of business for the purposes of Chapter 93A.

“Private Home Study, Business, Technological, Social Skills and Career Schools”

The term “private _____ school” shall mean a school, or institution, or business maintained or classes conducted for the purpose of teaching or purportedly teaching either by correspondence, in person or in a classroom, business administration, accounting, data processing, computer operation, secretarial skills, sales skills, social skills, habits or customs, general skills, vocational or career skills, or other related courses, instructions or fields, for profit or tuition charge. The term shall not include a school or college regularly chartered and authorized by the laws of the Commonwealth to grant degrees or a school conducted by any person for the education and training of his employees already on the payroll of such person.

“Product”

“Product” includes goods, whether tangible or intangible, real, personal, or mixed, services, or franchise or distribution systems of any nature whatsoever.

“Sell”

“Sell” includes lease, rent, or barter.

“Warranty/Guarantee”

The terms “warranty” or “guarantee” or any term connoting a warranty or guarantee as used in these regulations are synonymous. The terms apply also to purported warranties and guarantees and to any promise or representation in the nature of a warranty or guarantee.

A warranty that the goods shall be merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind. The serving for value of food or drink to be consumed either on the premises or elsewhere is a sale. Goods to be merchantable must be at least such as pass without objection in the trade under the contract description; and in the case of fungible goods, are of fair average quality within the description; and are fit for the ordinary purposes for which such goods are used; and run within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved; and among all units involved; and are adequately contained, packaged, and labeled as the agreement may require; and conform to the promises or affirmations of fact made on the container or label if any.

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods shall be fit for such purpose.

An express warranty or any statement in the nature of an express warranty or guarantee includes any affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain. Any verbal or written representation, as well as any description of the goods, or sample or model of the goods which is made part of the basis of the bargain creates an express warranty. It is not necessary to the creation of an express warranty that the seller use formal words such as “warranty” or “guarantee” or that he have a specific intention to make a guarantee.

I. False Advertising

- A. No advertisement containing an offer to sell a product shall be made when the offer is not a bona fide effort to sell the advertised product.
- B. No statement or illustration shall be used in any advertisement which creates a false impression of the grade, quality, make, value, currency of model, size, color, usability, or origin of the product offered, or which may otherwise misrepresent the product in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised product to another.
 - 1. Even though the true facts are subsequently made known to the buyer, the law is violated if the first contact or interview is secured by deception.
- C. No act or practice shall be engaged in by an advertiser or seller to discourage the purchase of the advertised product as part of a bait scheme to sell another product.

For example, among acts or practices which will be considered in determining if an advertisement is a bona fide offer are:

- 1. The refusal to show, demonstrate, or sell the product offered in accordance with the terms of the offer.
- 2. The disparagement by acts or words of the advertised product or disparagement with respect to the guarantee, credit terms, availability of service, repairs or parts, or in any other respect, in connection with it.
- 3. The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised product to meet reasonably anticipated demands, unless the advertisement clearly and adequately discloses that supply is limited and/or the product is available only at designated outlets.
- 4. The refusal to take orders for the advertised product to be delivered within a reasonable period of time.
- 5. The showing or demonstrating of a product which is defective, unusable or impractical for the purpose represented or implied in the advertisement.
- 6. Use of a sales plan or method of compensation for salesmen or penalizing salesmen, designed to prevent or discourage them from selling the advertised product.

- D. No practice shall be pursued by an advertiser or seller in the event of

sale of the advertised product of obtaining or attempting to obtain a rescission of the sale for the purpose of selling another product in its stead. Among acts or practices which are relevant in determining if the initial sale was in good faith, and not a stratagem to sell another product are:

1. Accepting a deposit for the advertised product, then switching the buyer to a higher-priced product.
2. Failure to make delivery of the advertised product within a reasonable time or to make a refund.
3. Disparagement by acts or words of the advertised product, or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or in any other respect, in connection with it.
4. The delivery of the advertised product which is defective, unusable or impractical for the purpose represented or implied in the advertisement. Sales of the advertised product do not preclude the existence of a bait and switch scheme if the sales are a mere incidental by-product of the fundamental plan and are intended to provide an aura of legitimacy to the over-all operation.

II. Deceptive Advertising of Guarantees

In determining whether terminology and direct or implied representations concerning guarantees, however made, i.e., in advertising or otherwise, in connection with the sale or offering for sale of a product, may be in violation of General Laws, Chapter 93A, Section 2(a), the following general principles will be used:

- A. In general, any guarantee in advertising shall clearly and conspicuously disclose:
 1. The nature and extent of the guarantee. This includes disclosure of:
 - a. What product or part of the product is guaranteed.
 - b. What characteristics or properties of the designated product or part thereof are covered by, or excluded from, the guarantee.
 - c. What is the duration of the guarantee.
 - d. What, if anything, any one claiming under the guarantee

must do before the guarantor will fulfill his obligation under the guarantee, such as return of the product and payment of service or labor charges; and

2. The manner in which the guarantor will perform. This consists primarily of a statement of exactly what the guarantor undertakes to do under the guarantee. Examples of this would be repair, replacement, refund. If the guarantor or the person receiving the guarantee has an option as to what may satisfy the guarantee this should be set out; and
 3. The identity of the guarantor. The identity of the guarantor should be clearly revealed in all advertising, as well as in any documents evidencing the guarantee. For example, it should be made clear whether the manufacturer or the retailer is the guarantor.
- B. As to those guarantees which are adjusted by the guarantor on a pro rata basis, the advertising relating thereto should clearly disclose this fact, the basis on which they will be pro rated, e.g., the time for which the guaranteed product has been used, and the manner in which the guarantor will perform.
1. If these guarantees are to be adjusted on the basis of a price other than that paid by the buyer, this price should be clearly and conspicuously disclosed.

Example: During the course of a sale, "A" sells to "B" for \$20 and with a 12 month guarantee a battery that he regularly sells for \$25. After 6 months the battery proves defective. If "A" adjusts on the basis of the price "B" paid, \$20, "B" will only have to pay ½ of \$20, or \$10, for a new battery. If "A" instead adjusts on the basis of the regular selling price, "B" will owe ½ of \$25, or \$12.50 for a new battery. The guarantor would be required to disclose here the following: that this was a 12 month guarantee, that the regular selling price, rather than the actual sale price, would be used in the adjustment, that there would be an adjustment on the basis of the time that the battery was used and, if factual, that he would not pay the adjustment amount in cash, but would make an adjustment on a new battery.

- C. "Satisfaction or your money back," "10 day free trial," or similar representations will be construed as a guarantee that the full purchase price will be refunded promptly at the option of the buyer.
 1. If such guarantee is subject to any conditions or limitations whatsoever, they shall be set forth as provided for in B.

Example: A rose bush is advertised under the representation

“Satisfaction or your money back.” The guarantor requires return of the product within 1 year of purchase date before he will make refund. These limitations, i.e., “return” and “time” shall be clearly and conspicuously disclosed in the ad.

- D. When a product is represented as “guaranteed for life” or as having a “lifetime guarantee,” the meaning of the term “life” or “lifetime” should be explained.

Example: “A” advertised that his transmission was guaranteed for “life”, whereas his guarantee ran for the “life of the car” in which the transmission was originally installed. The advertisement is ambiguous and deceptive and should be modified to disclose the “life” referred to.

- E. Advertisements which contain representations of guarantees that assure prospective buyers that savings may be realized in the purchase of the advertiser’s products, such as “Guaranteed to save you 50%”, shall include a clear and conspicuous disclosure of what the guarantor will do if the savings are not realized, together with any time or other limitations that he may impose. Guarantees of this type may constitute affirmative representations of fact and, in this respect, are governed by H.

- F. A seller or manufacturer shall not advertise or represent that a product is guaranteed when he cannot or does not promptly and scrupulously fulfill his obligations under the guarantee.

1. A specific example of refusal to perform obligations under the guarantee is use of “Satisfaction or your money back” when the guarantor cannot or does not intend promptly to make full refund upon request.

- G. Where guarantees are employed in such a manner as to constitute representations of material facts, the guarantor not only undertakes to perform under the terms of the guarantee, but also assumes responsibility under the law for the truth of the representations made.

Example 1: “Guaranteed for 36 months” applied to a battery is a representation that the battery can normally be expected to last for 36 months and should not be used in connection with a battery which can normally be expected to last for only 18 months.

Example 2: “Guaranteed to grow hair or money back” is a representation that the product will grow hair and should not be used when in fact such product is incapable of growing hair.

Example 3: “We guarantee you will earn \$500 a month” is a representation that prospective employees will earn a minimum of \$500 each month and should not be used unless such is the fact.

- H. The term “unconditionally guaranteed” should not be used when a guarantee is restricted in any manner other than as to time and when there is a time limit, it should be clearly disclosed (e.g., “unconditionally guaranteed for 3 years”). An “unconditional guarantee” is considered as an undertaking on the part of the guarantor either to refund the full purchase price of the product so guaranteed or to repair or replace such product should it prove defective in any respect, all at the option of the buyer.

(Note: The unqualified use of the word “guaranteed” shall be considered as a representation that an article so described is “unconditionally guaranteed”.)

III. Deceptive Pricing

No claim or representation shall be made by any means which has the capacity or tendency or effect of deceiving buyers or prospective buyers as to the value or the past, present, common or usual price of a product, or as to any reduction in price of a product, or any saving relating to a product. Savings or value claims utilized in connection with terms such as “originally,” “formerly,” “regularly,” “usually,” “comparable value,” “list price” or other like terms, expressions or representations must be based on facts provable by the claimant or advertiser.

- A. By his own records; or
- B. By reasonably substantial competitive sales in the trading area where such claims or representations are made, under circumstances and conditions as represented or implied by the claims or representations.

IV. General Misrepresentations

- A. No claim or representation shall be made by any means concerning a product which directly, or by implication, or by failure to adequately disclose additional relevant information, has the capacity or tendency or effect of deceiving buyers or prospective buyers in any material respect. This prohibition includes, but is not limited to, representations or claims relating to the construction, durability, reliability, manner or time of performance, safety, strength, condition, or life expectancy of such product, or financing relating to such product, or the utility of such product or any part thereof, or the ease with which such product may be operated, repaired, or maintained or the benefit to be derived from the use thereof.
- B. No advertisement shall be used which would mislead or tend to mislead buyers or prospective buyers, through pictorial representations or in any other manner, as to the product being offered for sale. Where price is featured in advertising, any picture or depiction utilized in connection therewith, shall clearly indicate the exact product being offered for sale at the advertised price.

V. Referral Schemes

No plan or scheme of inducing purchases, or entering into obligations by representations and promises such as the following, or conditioned thereon, shall be used:

- A. That the seller would pay to each buyer certain money, credit or anything of value for each of any number or of a certain number of prospective buyers referred or recommended by each buyer, or for each such prospective customer so referred who becomes a buyer, and to whom the same representations and promises would be made, and
- B. That the buyers' purchases may thus be free or paid off in whole or in part by such money, credit, thing of value, and/or
- C. Concealing or disguising the obligation or contract involved or falsely representing that the plan does not involve any obligation or contract.

VI. Advertising or Offering to Sell on an "Easy Credit" Basis

- A. It is an unfair or deceptive act or practice for any seller to induce a buyer or prospective buyer to enter into a transaction by advertising or offering to sell to such buyer on easy or lenient credit terms, or words to similar effect or meaning, when the facts demonstrate that the credit or repayment terms of the credit arrangement are neither lenient nor easy. Factors indicating that the credit terms are neither lenient nor easy are:
 1. The seller does not in fact extend credit to persons whose ability to pay, or credit rating, is below generally prevailing standards of credit worthiness;
 2. The downpayment and repayment periods are not as low as or are shorter than those extended to persons ordinarily determined to be credit worthy;
 3. The true cost of the credit being charged by the seller is in excess of the average cost being charged by other sellers in the same general merchandise retail market;
 4. The mark-up over the seller's acquisition cost for the goods or services which are the subject of the transaction exceeds the average mark-up being charged for similar or comparable goods or services by sellers in the same general merchandise retail market;
 5. The seller pursues a policy of using rigorous collection practices against buyers who fall behind in their payments;

6. The seller negotiates, sells, or discounts the instrument which is the evidence of the buyer's indebtedness to a third party without printing or stamping on the face "Consumer Note."
- B. A creditor in consumer loan transactions shall be subject to all of the defenses of the borrower arising from the consumer sale or lease for which the proceeds of the loan are used, if the creditor knowingly participated in or was directly connected with the consumer sale or lease transaction.

Without limiting the scope of the preceding paragraph, a creditor shall be deemed to have knowingly participated in or to have been directly connected with a consumer sale or lease transaction if:

1. He was a person related to the seller or lessor;
2. The seller or lessor prepared documents used in connection with the loan;
3. The creditor supplied forms to the seller or lessor which were used by the consumer in obtaining the loan;
4. The creditor was specifically recommended by the seller or lessor to the borrower, and made two or more loans in any calendar year, the proceeds of which are used in transactions with the same seller or lessor; or
5. The creditor was the issuer of a credit card which may be used by the consumer in the sale or lease transaction as a result of a prior agreement between the issuer and the seller or lessor.

Any creditor who participates in a transaction which violates this rule, or knows or should have reason to know that a seller's practices may violate this rule, shall be deemed to be engaging in an unfair and deceptive trade practice. Any creditor who attempts to enforce a note, instrument, or other evidence of the buyer's indebtedness arising out of a transaction which violates this rule shall be deemed to be engaging in an unfair or deceptive trade practice.

VII. Repairs and Services Including Warranties and Service Contracts

- A. Repairs and Services. It shall be an unfair and deceptive act or practice to:
 1. Fail to provide in advance to a customer upon request a written estimate of the cost to the customer of the anticipated repairs, or the basis upon which the charge to the customer will be made and the reasonably expected time to accomplish such repairs,

including any charge for reassembly of any parts disassembled for inspection or any service charge to be imposed;

2. Make or charge for repairs which have not been authorized by the customer;
 3. Fail to disclose, in the case of an in-home service call where the consumer has initially contacted the repairman, that a service charge will be imposed even though no repairs are effected, before the repairman goes to the consumer's home;
 4. Represent that repairs are indicated to be necessary when such is not a fact;
 5. Represent that repairs have been made when such is not a fact;
 6. Represent that the goods being inspected or diagnosed are in a dangerous condition or that the customer's continued use of them may be harmful to him when such is not a fact;
 7. Materially understate or mistate the estimated cost of repair services.
 8. Fail to provide the customer with an itemized list of repairs performed and the reason for such repairs including:
 - a. A list of parts and statement of whether they are new, used, or rebuilt and the cost thereof to the customer; and
 - b. The number of hours of labor charged and the name of the mechanic performing the service; provided, however, that the requirements of (b) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis.
- B. Warranties. It shall be an unfair and deceptive act or practice to fail to perform or fulfill any promises or obligations arising under a warranty. The utilization of a deceptive warranty is unlawful.

Language intended to limit or modify the warrantor's obligations under a warranty shall not operate to limit the warrantor's liability, notwithstanding the limiting language, if the warrantor fails to perform under the warranty, provided, however, that no language of limitation otherwise unenforceable by statute or regulation shall be enforceable. This regulation in no way limits, modifies, or supersedes any other statutory or regulatory provisions dealing with warranties.

- C. Service Contracts. It shall be an unfair and deceptive trade practice to fail to disclose in writing, fully and conspicuously, in simple and readily understandable language that a service contract charge will be imposed if the consumer wishes to insure that repairs will be made to a purchased product so that it will operate properly. It shall also be an unfair and deceptive trade practice to fail to disclose in writing, fully, clearly, and conspicuously, in simple and readily understandable language that a consumer is paying a lower price for goods or services in exchange for a waiver of his warranty rights.

VIII. Door to Door Sales and Home Improvement Transactions

In connection with any door to door sale or home improvement transaction, it constitutes an unfair or deceptive act or practice for any seller to:

- A. At the time of initial contact, and before making any statement or asking any questions, use any misrepresentation, or fail to state any material fact which has the capacity or tendency to disguise, hide, or fail to inform the purchaser of the purpose of the contract;
- B. Make any representation, in the sale, offering for sale, advertising, or distributing for sale, or in any other manner, including the failure to adequately disclose additional relevant information, which has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers with respect to any material aspect of the product or transaction or any service to be performed in conjunction with the purchase of the product or service which the seller is advertising, selling, offering for sale or distributing for sale;
- C. Represent that the purchaser's or prospective purchaser's home or other property, real or personal, is to be used as a so called "model home" or "model property" for demonstration or advertising purposes or offer to give a rebate or discount or otherwise pay or to make any other similar representations, if in connection therewith the seller misleads the purchaser or prospective purchaser into the belief that he will be paid a commission or other compensation, either before or after the purchaser or prospective purchaser has paid in full for the seller's work, for any sale which the seller may make in the vicinity or within any specified distance from the purchaser's home, or that the cost of the purchase of any product to the purchaser will thereby be reduced or fully paid, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the purchaser enters into the agreement.
- D. Fail to disclose the exact nature, description and price of the goods or services which are to be the subject of the transaction to the purchaser or prospective purchaser in advance of any attempt to induce the purchaser or prospective purchaser to enter into

1. an agreement in writing, or
 2. to pay any consideration to the seller;
- E. Fail to disclose that goods being offered need additional attachments or fixtures to perform the functions claimed for them by the seller;
- F. Induce or persuade a purchaser or a prospective purchaser to sign any writing when the seller knows or has reason to know that the purchaser or prospective purchaser is unable to read or write, or does not understand the terms of the instrument;
- G. Represent that the purchaser or prospective purchaser has been specially selected to receive a bargain, discount or other advantage when such in fact is not true;
- H. Represent that the purchaser or prospective purchaser is a winner of a contest; or that gift merchandise will be given to persons complying with certain conditions unless such merchandise is given to the persons complying with such conditions;
- I. Include in any door to door sales contract or home improvement contract any confession of judgment or waivers of any of the rights to which a purchaser is entitled by any statute or regulation;
- J. Fail to disclose to a purchaser or prospective purchaser orally prior to the time of sale, and in writing on any conditional sales contract, promissory note, or other instrument of indebtedness executed by a purchaser or prospective purchaser, and with such conspicuousness and clarity as is likely to be observed and ready by such a purchaser or prospective purchaser, that such instrument, which must have printed on the face thereof "Consumer Note", may be discounted, negotiated, or assigned to a finance company or other third party;
- K. Fail to conform to the requirements of G.L. ch. 93, section 48 or G.L. ch. 255D, section 14 or to misrepresent in any manner, the purchaser's or prospective purchaser's right to cancel created under such laws;
- L. Represent that the goods which are being offered are repossessed or the like or are being sold to satisfy the unpaid indebtedness of another person when such in fact is not true;
- M. Represent that the goods that are being offered are current models, when in fact they are not current models, or are discontinued models.

IX. Private Home Study, Business, Technological Social Skills and Career Schools – Correspondence and Other

- A. False Advertising. The making or causing, or permitting to be made or published, any false or deceptive statement or representation or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students or the public, by way of advertising or otherwise concerning private home study, business, technological, career, or social skills schools, their activities in attempting to enroll students, or concerning the character, nature, quality, value, or scope of any course of instruction or educational service offered, its influence in obtaining employment for its students, or in any other material respect, is an unfair and deceptive trade practice.
- B. False Representation as to Earnings. The making of false or deceptive statements or representations or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or the public regarding actual or probable earnings or opportunities in any vocation or field of activity is an unfair and deceptive trade practice.

It is unfair and deceptive practice in the sale or offering for sale of consumer services for a school or person subject to this regulation to represent or imply in advertising or otherwise that persons employed in a particular position earn a stated salary or income or that persons completing the training course will earn the stated salary or income or "up to" the stated salary or income unless:

1. The salary or income is equal to or less than the average salary of persons employed less than five years in the indicated position in the Commonwealth, and the advertisement or representation states the basis for calculation of the average salary or income; or the advertisement or representation states the basis for calculation of the salary stated and also discloses the average salary or income of persons employed less than five years in the indicated position in the Commonwealth; and
2. The advertisement or representation states clearly and conspicuously any limitations, conditions, or other requirements such as union membership or service of an apprenticeship, which must be met before the stated salary or income can be earned; and
3. The advertisement or representation states clearly and conspicuously that no guarantee is made that a person who purchases the advertised services will earn the stated salary or income, unless the guarantee is actually offered by the seller.

The words "EARN \$. . ." or "EARN UP TO \$. . ." or words of similar import or meaning constitute a representation that a

person who attends the training course will earn the stated salary or income within the meaning of this Regulation.

- C. **Misrepresentation of Opportunity.** The making of false, untrue, or deceptive statements or representations or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or the public regarding any opportunities in any vocation or field of activity as a result of the completion of any given course of instruction or educational service is an unfair and deceptive trade practice.
- D. **False Representations as to Student Employment or a School's Connection with or Approval by the United States Government or the Commonwealth.** The making of false or deceptive statements or representations or any statement or representation which has the tendency or capacity to mislead or deceive students, prospective students, or the public as to services to be rendered in connection with the securing or attempting to secure employment for students, or as to the influence or connection of any school or schools with any branch, department or establishment of the United States Government or with the Commonwealth of Massachusetts is an unfair and deceptive trade practice.
- It is unfair and deceptive practice for a school or a person subject to this regulation to advertise or represent that the school or instruction course has been approved by any government agency without clearly and conspicuously indicating the scope, nature and terms of that approval, particularly as to how the approval applies to the quality of instruction and the truth of the statements contained in the advertisement or representation. For example, an advertisement or representation shall not state "V.A. Approved," but must state, if such is the case: "V.A. education loans may be used for tuition. V.A. does not review nor guarantee the quality of instruction, nor does it guarantee the truth of the statements in this advertisement."
- E. **Limited Time Offers.** Representing an offer to be limited as to time or otherwise when such is not the fact, with the tendency or capacity to mislead or deceive students, prospective students, or the public is an unfair trade practice.
- F. **Misrepresenting Offers as "Special."** Representing an offer as "special" when it is in fact the school's regular offer, is an unfair and deceptive trade practice.
- G. **Fictitious Prices.** Offering courses of instruction at prices purported to be reduced from what are in fact marked up or fictitious prices is an unfair and deceptive trade practice.
- H. **Money Back Agreements.** It is an unfair and deceptive trade practice for any private school subject to these regulations to use directly or

indirectly, any so-called "money back" guarantee, refund agreement, or other similar guarantee, agreement, or contract between school and student which

1. is conditioned upon the student taking or passing or having the opportunity to take or pass, a future government or civil service examination or test, or any other form of future examination or test given by any organization not affiliated with the school; or
 2. is conditioned upon the student being placed upon a government or other eligible list; or
 3. is conditioned upon the student securing or having the opportunity to secure employment within the field of training pursued; or
 4. is conditioned upon any other contingency; or
 5. is discriminatory as to individuals or classes of students with respect to the amount or percentage of the refund to be given; and which because of the text of such guarantee, agreement, or contract, or because of the representations regarding the same, or because of the circumstances or other conditions of its use; or
 6. otherwise involves deception, misrepresentation, bad faith, or the deceptive concealment of pertinent facts.
- I. **Misleading Scholarship Offers.** Making offers of scholarships or partial scholarships in such a manner as to mislead or deceive students or prospective students into the belief that such offers are real when in fact they are not, is an unfair and deceptive trade practice.
- J. **Misuse of the word "Free."** Representing any commodity or service as "free" when in fact such commodity or service is regularly included as part of the course of instruction or service is an unfair and deceptive trade practice.
- K. **Deception in Issuance of Diplomas, Degrees.** It is an unfair and deceptive trade practice for any private school subject to these regulations to issue any certificate or diploma, or to confer any degree which misrepresents the course of study or instruction covered or completed or the accomplishments or standing of the student receiving such certificate, diploma, or degree.
- L. **Misrepresenting Faculty.** Making a statement or representation through advertising or otherwise that a certain individual or individuals are members of the faculty of the school or are members of its advisory board or authors of its instructional material, when they are not, or when they provide no or only token services or advice, or

the making of statements or representations as to the value of any former connection with the United States Government or the Commonwealth of Massachusetts as an aid to securing employment which are false or misleading, is an unfair and deceptive trade practice.

- M. Misrepresentation as to Personal Instruction. The representation, through advertising or otherwise, that students are given personal instruction by the head of the institution or a department head thereof who provides no or only token instruction is an unfair and deceptive trade practice.
- N. Deceptive "Help Wanted" Advertising. The use of "help wanted" or other employment columns in a newspaper or other publication to get in touch with prospective students in such a manner as to lead such prospective students into the belief that a job is offered is an unfair and deceptive trade practice.
- O. Blind Advertising. The use of "blind" advertisements or sales literature to attract prospective students when such advertisements or literature fail to set forth that courses of instruction or other educational services are being offered is an unfair and deceptive trade practice.
- P. Deceptive Language in General. The use of language in any form which has the tendency or capacity to mislead or deceive students, prospective students, or the public is an unfair and deceptive trade practice.
- Q. Unqualified Students. Inducing the enrollment or retention of a student for any course of instruction or training for a job or position for which the school knows or has reason to know the student is unfit by reason of educational or permanent physical disqualification, or other material disqualification is an unfair and deceptive trade practice.

C. Private Employment Agencies and Business Schemes

- A. The making of false or deceptive representations through advertisements or otherwise, regarding the actual or probable earnings or the existence of opportunities or openings in any vocation, company, business, firm, or other place of employment is an unfair and deceptive trade practice.
- B. It is an unfair and deceptive trade practice to make any representations as to opportunities available in, or to promote any activity, occupation, or vocation as being profitable for one engaging in it if in fact the representations as to the opportunities available or profits to be made are untrue.

- C. It is an unfair and deceptive practice in the sale or offering for sale of consumer goods or services for any person, to represent or imply in advertising or otherwise that persons employed in a particular position in a trade or industry or who are self-employed earn a stated salary or income or that the goods or services offered or sold will enable the purchaser or prospective purchaser to earn the stated salary or income or "up to" the stated salary or income unless:
 1. the salary or income is equal to or less than the average salary or income of persons employed less than five years in the indicated position in the Commonwealth, and the advertisement or representation states the basis for calculation of the average salary or income; or the advertisement or representation states the basis for calculation of the salary stated and also discloses the average salary or income of persons employed less than five years in the indicated position in the Commonwealth; and
 2. the advertisement or representation states any limitations, conditions, or other requirements such as union membership or service of an apprenticeship, which must be met before the stated salary or income can be earned; and
 3. the advertisement or representation states clearly and conspicuously that no guarantee is made that a person who purchases the advertised goods or services will earn the stated salary or income, unless the guarantee is actually offered by the seller.

The words "EARN \$. . ." or "EARN UP TO \$. . ." or words of similar import or meaning constitute a representation that a person who purchases the goods or services will earn the stated salary or income within the meaning of this Regulation.

XI. Lay Away Plans

It is unfair and deceptive acts or practice:

- A. To fail to disclose or to misrepresent in any way the store's policy with reference to a "lay away" plan;
- B. To represent to a buyer who is purchasing on a "lay away" plan that the specific goods chosen by the buyer or an exact duplicate of such goods are being laid away for that buyer when such is not a fact;
- C. To fail to disclose to the buyer that the specified goods or their exact duplicate will only be set aside for a certain period of time;
- D. To deliver to the buyer after payments (pursuant to the lay away plan) are completed, goods which are not identical or exact substitutes to those specified, unless prior approval in writing has been received from the buyer;

- E. To increase the price of the goods specified either by way of increasing the payments or substituting goods which are of a lower quality of price;
- F. To fail to deliver to the buyer, on any date payment is made, a receipt showing the amount of that payment and the date thereof, and, upon request, the balance of payments made up to that date;
- G. To fail to disclose or misrepresent in any way the store's policy with reference to cancellations and repayment or non-repayment of payments already made, and in case payments are not refunded, to fail to disclose that fact in writing.

XII. Pricing and Refund, Return and Cancellation Privileges

A. Pricing

1. Failure to Disclose Price. It is an unfair and deceptive act or practice for any person subject to this act to fail to affix to any goods offered for sale to the public the price at which the goods are to be sold or fail to disclose to a buyer prior to any agreement the price or cost of any services to be provided.
2. Deceptive Pricing. No claim or representation shall be made which represents or implies, in advertising or otherwise, that a product or service may be purchased for a specified price when such is not the case; or that a product or service is being offered for sale at a reduced price when such is not the case; or that such special or reduced price is to be in effect for a limited time only when such is not the case; or otherwise deceives purchasers or prospective purchasers with respect to the price of products or services offered for sale.

The following are examples of, but is not a complete list of practices declared unlawful by this section:

- a. representing or implying that a stated price is for a complete or functional product or service when in fact the product or service so priced is deficient as to parts or equipment or any other deficiency necessary and usual to the proper functioning and appearance of such product or to the usefulness and efficiency of such service;
- b. representing or implying that the price of the product includes certain services, such as delivery, installation, service or adjustments, or includes parts or accessories when such is not the case;

- c. representing or implying that prices applicable only to certain sizes to types of goods or services apply to other or all sizes or types of such goods or services.
3. Deceptive Use of "Loss Leaders." It is an unfair trade practice to sell, or offer for sale, any product or service, at a price less than the cost thereof to the seller as a "loss leader" used in inducing the buyer to make the purchase and sold only in combination with the purchase of other merchandise or services on which the seller recovers such loss.
- B. Refunds, Return and Cancellation Privileges. It is unfair and deceptive trade practice:
1. To fail to clearly and conspicuously disclose to a buyer, prior to the consummation of a transaction, the exact nature and extent of the seller's refund, return, or cancellation policy;
 2. To misrepresent the nature and terms of the seller's refund, return, or cancellation policy;
 3. To fail to perform any promises made to a buyer in connection with the refund, return, or cancellation privileges.

XIII. Subscription and Mail Orders

1. Misrepresentation of Books or Services. It is an unfair trade practice to make or publish, or cause to be made or published, directly or indirectly, any false, misleading, or deceptive statement or misrepresentation, whether in the form of advertisement, testimonial, endorsement, illustration, or other form of representation however disseminated or published concerning the grade, quality, material, size, contents, use, value, price, origin, preparation, manufacturer, or date of publication or copyright of any book, or the current or up to date character thereof or concerning the grade, quality, substance, size, manufacture, or the value of the binding thereof or the lettering thereon, or concerning any service offered in connection therewith, or in any other material respect.
- B. Misrepresentation of Books being Free. In the sale or offering for sale of books, it is an unfair trade practice to represent, through advertising or otherwise, that such books are given free and that payments required in connection therewith are for supplements thereto or for extension, revision, continuation, yearbook, or other similar services or for services to be rendered by a research or other bureau, when such is not the fact; or that a certain number of books have been reserved to be given away free of cost to selected persons as a means of advertising, or that a certain number of persons in a

community have been designated to receive a book or books or any form of service free of cost, when such is not the fact.

C. **Misrepresentation as to the Nature of Business.** It is an unfair trade practice for a seller:

1. To use, or cause to be used, any representation or inference

- a. That such seller is an association or organization of educators, teachers, engineers, or scientists, or of persons having other professional or technical qualifications when such is not in fact true; or
- b. That the business of such seller is other than a private business enterprise operated for profit when such is not the fact; or
- c. That such seller is a book publisher or a representative or distributor for a book publisher when such is not the fact; or

2. To misrepresent in any manner the character, extent or type of business of such seller.

D. **Misrepresentation as to Connection with Educational Institution.** It is an unfair trade practice for any seller to represent through advertising or otherwise, that it or its sales representatives are connected in any manner with any school, college, university, or other educational institution, or with any board or committee thereof, or with any other organization, or that any book or service sold or offered by it is required, endorsed or approved by any such institution, board, committee, or organization when such is not the fact.

XIV. New for Used, Substitution of Products, Failure to Deliver

- A. **New for Used.** It is an unfair and deceptive trade practice to represent, directly or indirectly, that a product is new or unused, or that any part of a product is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof. It is further an unfair and deceptive trade practice for a seller to offer for sale or sell any product which is used, contains used parts; is rebuilt, remanufactured, reconditioned, or contains rebuilt, remanufactured, or reconditioned parts; or has the appearance of being new when it is not; unless prior, clear and conspicuous disclosure that such a product has been used, rebuilt, remanufactured or reconditioned, or that it contains used, rebuilt, remanufactured or reconditioned parts, is made to the buyer or prospective buyer.

The disclosure that a product has been used or contains used parts as required by the previous paragraph may be made by use of a word such as, but not limited to, "Used," "Second Hand," "Repaired," "Remanufactured," "Reconditioned," "Rebuilt," or "Relined," whichever is applicable to the product involved.

B. **Substitution of Products.** It is an unfair and deceptive trade practice to make a substitution of products:

1. By shipping, delivering, or installing products which do not conform to samples submitted or to specifications upon which the sale is consummated to induced, or to the representations made prior to securing the order, without advising the purchaser of the substitution and obtaining his consent thereto prior to making shipment, delivery, or installation;
2. By falsely representing the reason for making the substitution in order to induce consent; or
3. When there was no intention to deliver the original merchandise ordered.

C. **Failure to Deliver.** It is an unfair and deceptive act or practice:

1. To advertise or promise prompt delivery where delivery is neither prompt nor expeditious.
2. To fail to deliver merchandise ordered by mail or otherwise on which payment has been made or undertaken, in the form of a deposit, down payment or total payment where a definite delivery date has been set unless the seller can show circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the delivery date.
3. To accept an order for goods, or services, where delivery is not, because of facts known to the seller, contemplated within four weeks, unless a later delivery date is specifically agreed upon by the buyer and the seller.

XV. General

Without limiting the scope of any other rule, regulation or statute, an act or practice is a violation of Chapter 93A, Section 2 if:

- A. It is oppressive or otherwise unconscionable in any respect; or
- B. Any person or other legal entity subject to this act fails to disclose to

a buyer or prospective buyer any fact, the disclosure of which may have influenced the buyer or prospective buyer not to enter into the transaction; or

C. It fails to comply with existing statutes, rules, regulations or laws, meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth or any political subdivision thereof intended to provide the consumers of this Commonwealth protection; or

D. Violates the Federal Trade Commission Act, the Federal Consumer Credit Protection Act or other Federal consumer protection statutes within the purview of Section 2 of Chapter 93A.