

## § 239.3

### § 239.3 “Satisfaction Guarantees” and similar representations in advertising; disclosure in advertising that mentions “satisfaction guarantees” or similar representations.

(a) A seller or manufacturer should use the terms “Satisfaction Guarantee,” “Money Back Guarantee,” “Free Trial Offer,” or similar representations in advertising only if the seller or manufacturer, as the case may be, refunds the full purchase price of the advertised product at the purchaser’s request.

(b) An advertisement that mentions a “Satisfaction Guarantee” or a similar representation should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, any material limitations or conditions that apply to the “Satisfaction Guarantee” or similar representation.

*Examples:* These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

*Example A:* (In an advertisement mentioning a satisfaction guarantee that is conditioned upon return of the unused portion within 30 days) “We guarantee your satisfaction. If not completely satisfied with Acme Spot Remover, return the unused portion within 30 days for a full refund.”

*Example B:* (In an advertisement mentioning a money back guarantee that is conditioned upon return of the product in its original packaging) “Money Back Guarantee! Just return the ABC watch in its original package and ABC will fully refund your money.”

### § 239.4 “Lifetime” and similar representations.

If an advertisement uses “lifetime,” “life,” or similar representations to describe the duration of a warranty or guarantee, then the advertisement should disclose, with such clarity and prominence as will be noticed and understood by prospective purchasers, the life to which the representation refers.

*Examples:* These examples are for both print and broadcast advertising. These examples are illustrative, not exhaustive.

*Example A:* (In an advertisement mentioning a lifetime guarantee on an automobile muffler where the duration of the guarantee is measured by the life of the car in which it is installed) “Our lifetime guarantee on the Whisper Muffler protects you

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for as long as your car runs—even if you sell it, trade it, or give it away!”

*Example B:* (In an advertisement mentioning a lifetime guarantee on a battery where the duration of the warranty is for as long as the original purchaser owns the car in which it was installed) “Our battery is backed by our lifetime guarantee. Good for as long as you own the car!”

### § 239.5 Performance of warranties or guarantees.

A seller or manufacturer should advertise that a product is warranted or guaranteed only if the seller or manufacturer, as the case may be, promptly and fully performs its obligations under the warranty or guarantee.

## PART 240—GUIDES FOR ADVERTISING ALLOWANCES AND OTHER MERCHANDISING PAYMENTS AND SERVICES

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AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46; 49 Stat. 1526; 15 U.S.C. 13, as amended.

SOURCE: 55 FR 33663, Aug. 17, 1990, unless otherwise noted.

### § 240.1 Purpose of the Guides.

The purpose of these Guides is to provide assistance to businesses seeking to comply with sections 2 (d) and (e) of the Robinson-Patman Act (the “Act”). The guides are based on the language of the statute, the legislative history, administrative and court decisions, and the purposes of the Act. Although the Guides are consistent with the case law, the Commission has sought to provide guidance in some areas where no

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definitive guidance is provided by the case law. The Guides are what their name implies—guidelines for compliance with the law. They do not have the force of law.

### § 240.2 Applicability of the law.

(a) The substantive provisions of section 2 (d) and (e) apply only under certain circumstances. Section 2(d) applies only to:

- (1) A seller of products
- (2) Engaged in interstate commerce
- (3) That either directly or through an intermediary
- (4) Pays a customer for promotional services or facilities provided by the customer

(5) In connection with the resale (not the initial sale between the seller and the customer) of the seller's products

(6) Where the customer is in competition with one or more of the seller's other customers also engaged in the resale of the seller's products of like grade and quality.

(b) Section 2(e) applies only to:

- (1) A seller of products
- (2) Engaged in interstate commerce
- (3) That either directly or through an intermediary
- (4) Furnishes promotional services or facilities to a customer

(5) In connection with the resale (not the initial sale between the seller and the customer) of the seller's products

(6) Where the customer is in competition with one or more of the seller's other customers also engaged in the resale of the seller's products of like grade and quality.

(c) Additionally, section 5 of the FTC Act may apply to buyers of products for resale or to third parties. See § 240.13 of these Guides.

### § 240.3 Definition of seller.

*Seller* includes any person (manufacturer, wholesaler, distributor, etc.) who sells products for resale, with or without further processing. For example, selling candy to a retailer is a sale for resale without processing. Selling corn syrup to a candy manufacturer is a sale for resale with processing.

### § 240.4 Definition of customer.

A *customer* is any person who buys for resale directly from the seller, or the

seller's agent or broker. In addition, a "customer" is any buyer of the seller's product for resale who purchases from or through a wholesaler or other intermediate reseller. The word "customer" which is used in section 2(d) of the Act includes "purchaser" which is used in section 2(e).

NOTE: There may be some exceptions to this general definition of "customer." For example, the purchaser of distress merchandise would not be considered a "customer" simply on the basis of such purchase. Similarly, a retailer or purchasing solely from other retailers, or making sporadic purchases from the seller or one that does not regularly sell the seller's product, or that is a type of retail outlet not usually selling such products (e.g., a hardware store stocking a few isolated food items) will not be considered a "customer" of the seller unless the seller has been put on notice that such retailer is selling its product.

*Example 1:* A manufacturer sells to some retailers directly and to others through wholesalers. Retailer A purchases the manufacturer's product from a wholesaler and resells some of it to Retailer B. Retailer A is a customer of the manufacturer. Retailer B is not a customer unless the fact that it purchases the manufacturer's product is known to the manufacturer.

*Example 2:* A manufacturer sells directly to some independent retailers, to the headquarters of chains and of retailer-owned cooperatives, and to wholesalers. The manufacturer offers promotional services or allowances for promotional activity to be performed at the retail level. With respect to such services and allowances, the direct-buying independent retailers, the headquarters of the chains and retailer-owned cooperatives, and the wholesaler's independent retailer customers are customers of the manufacturer. Individual retail outlets of the chains and the members of the retailer-owned cooperatives are not customers of the manufacturer.

*Example 3:* A seller offers to pay wholesalers to advertise the seller's product in the wholesalers' order books or in the wholesalers' price lists directed to retailers purchasing from the wholesalers. The wholesalers and retailer-owned cooperative headquarters and headquarters of other bona-fide buying groups are customers. Retailers are not customers for purposes of this promotion.

### § 240.5 Definition of competing customers.

*Competing customers* are all businesses that compete in the resale of the seller's products of like grade and quality