



MARKETING GUIDELINES FOR ELECTRONIC RETAILERS

The Electronic Retailing Association (“ERA”) believes that consumer confidence is the key to the continued growth and success of the electronic retailing industry. In order to encourage fair, ethical, and responsible marketing practices that will promote consumer confidence in electronic retailing, ERA has adopted the following “Marketing Guidelines for Electronic Retailers,” which apply to all advertisements produced or disseminated in any media – television, radio, print or the Internet – by ERA members.

GENERAL PRINCIPLES

ERA members should be aware of the laws and regulations that govern advertising and marketing practices, and conduct their business in compliance with those laws and regulations. ERA members should encourage the companies or individuals with whom they do business to follow the principles set forth in these Marketing Guidelines, and should not do business with firms that they know to be engaging in dishonest or unethical business practices. Because these Guidelines cannot anticipate and answer all the questions that may arise due to technological advancements and other future changes in the marketplace, ERA members should look to the spirit as well as the letter of these Guidelines, always striving to be fair and reasonable in their dealings with consumers. Most importantly, ERA members should tell the truth, the whole truth, and nothing but the truth to consumers.

GENERAL GUIDELINES FOR ADVERTISING

No ERA member shall produce or disseminate or assist any person in the production or dissemination of any advertisement that has a deceptive format (i.e., that appears to be a bona fide information or entertainment program created by a disinterested party solely for the purpose of providing information or entertainment) or that otherwise purports to be something other than an advertisement.

Each television or radio advertisement that is more than 15 minutes long must be preceded and concluded with clear and prominent audio or video disclosures that the program is a paid advertisement for [name of product or service]. Similar disclosures also should be made prior to each ordering opportunity. In addition, each such advertisement should include a clear and prominent audio or video disclosure identifying the name of the party who sponsored, paid for or furnished the program.

All statements made in an advertisement shall be truthful and not misleading, whether or not they are specifically made with respect to the product or service being marketed. Advertisements must not contain deceptive implied claims, nor omit material information, the disclosure of which is necessary to prevent the



advertisement from being deceptive. Any necessary qualifying disclosures should be legible (or audible) and understandable.

Comparative advertising should inform buyers of the benefits of the advertiser's product, and not run down a competitor's product. Comparisons should be presented fairly and accurately rather than in a contemptuous manner intended to degrade the competitive product.

All statements regarding prices and costs must be truthful and substantiated. For example, if an advertiser claims that the current price for an advertised product is less than a former price, the former price must be a bona fide price at which the product actually was offered for sale. Comparative price advertising should compare only actual prices for comparable products and must not be otherwise misleading. When "free" or similar representations are made, any conditions or obligations upon which receipt of the "free" item are contingent should be disclosed, and the cost of the "free" merchandise should not be recovered by marking up the regular price of the product that must be purchased in order to receive the "free" product, or by lowering the quality or quantity of the product that must be purchased.

Advertising should not disparage any person or group on the grounds of race, religion, national origin, gender, age, or sexual orientation, or include indecent or offensive content.

Particular care shall be taken in advertisements for products designed for use by children. Any such advertising should comply with the "Self-Regulatory Guidelines for Children's Advertising" issued by the Council of Better Business Bureaus' Children's Advertising Review Unit. No program-length commercial shall be produced primarily for an audience twelve years old and under.

CLAIMS SUBSTANTIATION

There must be a reasonable basis, consisting of competent and reliable evidence, for all express or implied objective claims made for a product or service.

If the programming contains an express or implied representation that the truth of a claim has been scientifically established or proven, the advertiser must possess a sufficient level of evidence to convince the relevant scientific community of the claim's truthfulness. At a minimum, an advertiser should always have the amount and kind of substantiation that it claims it has.

Particular care should be taken to substantiate health or safety claims for all products such as dietary supplements, drugs, diet and exercise products, and medical devices. All representations regarding the safety or efficacy of such products or services must be substantiated by competent and reliable scientific



evidence.

Demonstrations of the product being marketed or a competing product must not misrepresent any material feature of that product or the product's actual performance in real-life conditions. All demonstrations must actually take place as represented or the details of the demonstration (such as the actual elapsed time) must be disclosed.

Comparative advertising claims, whether about a competing product or the advertiser's own product, must be truthful and substantiated in the same manner as any other objective claim. Comparative tests and demonstrations of competing products must take into account the purpose for which the products are intended, the manner in which they are normally used by the consumer, and the instructions for use that accompany the products.

TESTIMONIALS AND ENDORSEMENTS

Testimonials and endorsements may not make representations that would be deceptive or could not be substantiated if the advertiser made them directly.

All testimonials from consumers shall reflect the honest opinions, findings, beliefs or experiences of the consumer and be generally representative of the results to be expected by the average consumer. If the advertiser doesn't have substantiation to support the claim that the testimonial's results are typical, the advertiser should disclose the generally expected performance of the product in the circumstances depicted.

If an advertisement represents that an endorser uses the endorsed product, then the endorser must have been a bona fide user of the product at the time the endorsement was made. The advertiser should not continue to use an endorsement without reason to believe that the endorser remains a bona fide user of the product.

When an advertisement represents that an endorser is an expert, the endorser's qualifications must in fact give him or her the expertise that he or she is represented as possessing. An expert's endorsement must be supported by an actual evaluation, examination or testing of the product or service he or she is endorsing that is at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the endorsement. An advertiser should not continue to use an expert endorsement without reason to believe that the views expressed in the expert's endorsement continue to represent his or her views.

Any "material connection" between an advertiser and an endorser that is not reasonably expected by the audience and that would have a significant effect on the weight or credibility given to the endorsement by that audience — e.g., a



family or business relationship, the receipt of free product or services — must be disclosed. (Audiences expect expert or celebrity endorsers to be compensated, so payments to expert or celebrity endorsers need not be disclosed.)

DISCLOSURE OF COSTS AND OTHER MATERIAL TERMS OF AN OFFER

The terms of an advertised offer should be sufficiently clear and complete so that the average consumer will understand what is being offered, what it costs, and what his or her ongoing commitments or obligations are, if any, prior to purchase of the advertised product or service.

The advertiser should make it clear if accessories or other items depicted or mentioned in an advertisement are optional and not included in the advertised price. All costs related to an offer (including postage and handling, taxes, etc.) must be disclosed.

Offers involving continuity programs are discussed below. Offers made on the Internet should comply with the FTC Revised.com Disclosures Guide (2013).

The cost of calling an advertised 900 number or an audiotext service must be clearly and prominently disclosed in advertising. Callers to a pay-per-call service should hear an introductory disclosure message, or “preamble,” at the beginning of their calls that discloses the cost of the call and contains the other disclosures prescribed by law, and should be given the opportunity to terminate the call during the preamble without incurring any charge. Members should not place any charges on telephone bills when they know or should have known that the charge was not authorized by the consumer responsible for paying the telephone bill.

WARRANTIES

Advertising claims relating to a product warranty must be truthful and consistent with the terms of that warranty, and the advertiser should disclose any material conditions, limitations, or charges relating to the warranty. Any warranty offered with a consumer product should be properly designated as “full” or “limited,” and should contain the basic information required by law (e.g., what the warranty covers and does not cover, what the period of coverage is, what the warrantor will do to correct problems, how the customer can obtain warranty service, and how state law affects the customer’s rights under the warranty). Any requests for repairs, replacement products, or refunds under the terms of a warranty should be honored promptly.

A copy of the warranty must be made available free of charge to any consumer who requests one in writing, and advertisements that mention a warranty should tell consumers how to obtain a copy of that warranty.



ORDER FULFILLMENT, MONEY-BACK REFUNDS, AND COLLECTION AND USE OF PERSONAL INFORMATION

An ERA member should not advertise and offer merchandise for sale unless it has a reasonable basis to believe that it will be able to ship that merchandise within the time specified in the offer (or, if no time is specified in the offer, within 30 days after receipt of an order). A member should not charge a customer's credit card account, debit a customer's checking account, or cash a customer's check or money order unless it has shipped or otherwise provided the goods ordered, or is prepared to ship or otherwise provide those goods immediately. If after receiving an order the marketer learns that the product cannot be shipped on a timely basis, it should notify its customers of that fact, allow them to cancel their orders if they wish, and make any necessary refunds promptly. A marketer should not substitute merchandise that materially differs from that ordered by a customer unless the customer agrees to the substitution.

A marketer who offers a satisfaction or "money-back" guarantee to its customers should honor valid refund requests promptly. Any advertisement that mentions a money-back guarantee should disclose any material limitations or exceptions that may apply to that guarantee (e.g., "less shipping and handling"). Any marketer who offers a money-back guarantee should maintain an adequate reserve or otherwise ensure the availability of funds to satisfy refund requests.

An ERA member who offers consumers a "free trial" of an advertised product should not charge the customer's credit card, debit his or her checking account, or cash his or her check or money order until the free trial period has expired.

A marketer should provide its customers with an address and/or telephone number to use to communicate any complaints, inquiries, or refund requests, and should take all reasonable steps to respond to such complaints, inquiries, or refund requests promptly and courteously.

ERA members who collect personal information from consumers should not misrepresent the purposes to which that information may be put. If a consumer requests that his or her personal information not be rented, sold, or exchanged by a member, that request should be honored. A member should not rent, sell, or otherwise provide a consumer's credit card number, checking account number, or similar information to a third party (other than a third party who assists the member to process or complete authorized purchases or other transactions) without the consumer's express authorization.

ADVANCE CONSENT MARKETING

Marketing plans and sales arrangements that allow consumers to consent in advance to receive and pay for goods or services in the future on a continuing or periodic basis are convenient and beneficial to both consumers and marketers.



While Advance Consent Plans have existed in various forms for years, other forms are still evolving. The continued growth and success of Advance Consent Plans requires that marketers adhere to fair, ethical and responsible marketing practices that will promote consumer confidence in Advance Consent purchases. While Advance Consent Plans are already subject to various federal and state laws and regulations, these Guidelines are intended to establish standards and practices, which may exceed the minimum legal requirements.

OVERVIEW AND GENERAL PRINCIPLES

An Advance Consent Plan is a contractual plan or arrangement whereby the consumer consents in advance to receive and pay for goods or services in the future on a continuing or periodic basis, unless and until the consumer cancels, without the consumer having to give further consent prior to each shipment or billing event. An Advance Consent Plan does not include the sale of a fixed number of goods, or the sale of goods or services for a fixed period, provided the sale does not also include a Free To Pay Conversion or Automatic Renewal feature. While Advance Consent Plans can take a variety of forms, the following are some of the more common features which may exist alone or in combination in an Advance Consent Plan.

- **“Free-to-Pay Conversions”** — A plan or arrangement whereby a consumer initially receives a product or service for free, and, unless the consumer cancels during that period, the consumer will incur an obligation to pay for the products or services or for products or services which will continue to be automatically sent or provided to the consumer.
- **“Automatic Renewal Plans”** — A plan or arrangement whereby a consumer agrees that the seller may automatically renew and/or bill the consumer’s membership, subscription or participation in a plan at the end of each term, unless and until the consumer cancels.
- **“Continuity Programs”** — A plan or arrangement whereby a consumer agrees in advance to receive goods (or services) in the future, on a periodic basis and in which the consumer is billed or charged each time the goods or services are provided.

GENERAL PRINCIPLES

The two fundamental principles underlying all forms of Advance Consent Plans are Notice and Consent. A valid Advance Consent Sale 2 requires that all material terms and conditions of the offer be disclosed to the consumer in a clear, conspicuous and understandable manner (i.e., Notice), and that the consumer clearly and affirmatively consents to offer after all such material terms and conditions have been disclosed (i.e., Consent). In the realm of Advance Consent Marketing, Silence Never Equals Consent.



Marketers should also be aware of the federal and state laws and regulations that govern Advance Consent Plans, including the Federal Trade Commission Act, the Telemarketing Sales Rule, and the Unordered Merchandise Rule. Since the Guidelines cannot anticipate and answer all the questions that might arise due to changes in the marketplace, marketers should look to the spirit as well as the letter of these Guidelines, always striving to be fair and reasonable in their dealings with consumers.

DISCLOSURES

Pre-Notification Negative Option Plans, which are also a form of Advance Consent Marketing, are not specifically addressed in these guidelines because they are already subject to specific regulation under the FTC's Prenotification Negative Option Rule. 16 C.F.R. Part 425

An Advance Consent Sale refers to the actual transaction between the seller and consumer whereby a consumer accepts participation in an Advance Consent Plan.

ERA Advance Consent Marketing Guidelines

Sellers should clearly and conspicuously disclose all material terms and conditions of the offer, including the following, BEFORE the consumer consents to the offer:

FOR ALL ADVANCE CONSENT PLANS

- A description of the goods or services being offered;
- The identity of the seller, including the separate identity for the seller in any upsell;
- The total cost or range of costs (including whether any additional costs, such as shipping and handling apply), in the manner set forth below for each particular Advance Consent Plan;
- The manner in which the consumer will be charged for the goods or services being offered (e.g., whether the consumer will be billed or whether the seller will automatically charge for the consumer);
- When and/or how frequently the consumer will be billed or charged;
- The fact that the consumer must cancel in order to avoid future billing or charges or that the consumer will be billed or charged in the future unless he or she cancels;
- The method by which the consumer can cancel (e.g., by calling, e-mailing or writing to the seller);
- The fact that the seller has a policy of not offering full a refund of the cost of the goods or services, if such is the case, or if the seller makes any representation about its refund policy,



- All materials terms and conditions of the seller's refund policy, including whether the seller offers a full or partial refund.

For **FREE-TO-PAY CONVERSION**, the following additional disclosures:

- The fact that the goods or service will continue on a paid basis after the free period, unless the consumer cancels, and the length of the subsequent term or period;
- When billing will commence (i.e., at the end of the free period);
- The total cost or range of costs the consumer will be billed or charged upon the expiration of the free period, if the consumer fails to cancel;
- The length of the free period expressed either in terms of a length of time or a quantity of goods to be received;

For **AUTOMATIC RENEWALS**, the following additional disclosures:

- The total cost or range of costs for the initial term or billing period and for subsequent renewal terms or periods, if there is a known fixed rate for such renewal terms or periods, or, if there is not a known fixed rate, a statement describing how the renewal price will be determined (i.e., the rate then in effect);
- The fact that the service or membership will renew or continue, and the length of each subsequent renewal or billing period;
- The fact that the consumer will be billed or charged for renewal periods.

For purposes of these guidelines the "identity of the Seller" can be either the party making the offer or the party providing the products or services, an identifiable brand name or trade name, or such other description as will reasonably enable the consumer to contact the party who will be billing or charging the consumer.

For purposes of these Guidelines a Charge may include (i) any amount charged or debited to a consumer's credit card debit card checking against savings or similar account, or (ii) any amount charged to a utility bill, telephone bill, mortgage loan account or similar account for the goods or services of a third party Representations such as "Satisfaction Guaranteed," "Money-back Guarantee" or similar representations indicating opportunity for a refund are covered by this provision.

For **CONTINUITY PROGRAMS**:

- The total cost or range of costs the consumer will be billed or charged each time the goods or services are provided.
- A description of the goods or services to be included in each shipment;
- The fact that periodic shipments or the periodic provision of services will occur;



- Minimum purchase obligations, if any;
- For shipment of goods, the approximate interval between shipments or the approximate number of shipments during a twelve month period.

AFFIRMATIVE CONSENT

- Sellers must obtain the consumer's affirmative consent to an Advance Consent Sale. Silence never equals consent.
- Affirmative Consent may be given orally, electronically or in writing; however, the consumer must be required to perform some affirmative act, (e.g., return a document, check a box, affix a seal or stamp, make an oral response or push a number or button on a telephone keypad or computer keyboard etc.) which clearly evidences acceptance of the Advance Consent Sale.
- All material terms and conditions of the Advance Consent Sale must be disclosed to the consumer before the consumer's affirmative consent is provided.
- In telephone solicitations, this means that the material terms and conditions of them offer must be disclosed before the consumer is asked whether he or she consents to the offer.
- For online solicitations, disclosure of material terms and conditions must be unavoidable by the consumer and must be presented prior to the consumer incurring any financial obligation (i.e., by clicking a "submit order" or "I agree" button). If pop-ups or hyperlinks are used to provide these disclosures, such pop-ups and hyperlinks should comply with the FTC's Dot Com Disclosure guidelines (<http://www.ftc.gov/bcp/online/pubs/buspubs/dotcom/index.shtml>). The fact that the online offer contains an advance consent feature should be disclosed on the initial page of the online order sequence to avoid creating an initial misimpression on the part of the consumer as to the nature of the offer.
- The consumer's affirmative consent must be solicited and provided in a manner which clearly evidences that the consumer is consenting to the terms of the Advance Consent Sale.

BILLING PRACTICES

- Billing practices of sellers should accurately reflect the terms agreed to in advance by the consumer.
- Billing descriptors should, to the extent feasible and permissible, disclose the identity of the seller or product and a customer service telephone number. Where the disclosure of all of the information described is not feasible or permissible, priority should be given to disclosing a customer service telephone number. It is appropriate to disclose a URL in lieu of a telephone number if either the sale to which the charge relates occurred online or if the consumer agreed in advance to communicate online with the seller.



RENEWAL REMINDERS FREQUENCY

For Automatic Renewal Plans, a Renewal Reminder should be provided at least once during each consecutive twelve month period (a “year”), provided, however, that if a consumer has consented in advance to a definite term or billing period in excess of twelve months, the Renewal Reminder may be provided prior to each such renewal period or billing event.

For Automatic Renewal Plans which bill or charge at least once a month or more frequently, Sellers may be excused from providing an annual Renewal Reminder if either (1) the seller can demonstrate that it has otherwise communicated with the consumer at least once during the year, or (2) the seller can demonstrate that the consumer has actually used the seller’s products or services at least once during the year.

The Renewal Reminder should be provided in reasonable proximity to the first billing event which will occur during the renewal term to which the Renewal Reminder relates so that it is received by the consumer sufficiently in advance of that billing event to enable the consumer a reasonable opportunity to cancel without being billed or charged.

CONTENT

Renewal Reminders should disclose the consumer’s right to cancel, sufficient information to enable the consumer to cancel, either the deadline by which the consumer must cancel to avoid being billed or charged, or a disclosure of when the next renewal term or billing period begins, and the amount the consumer will be billed or charged on the next billing event if the consumer does not cancel.

NOTICE OF MATERIAL CHANGES

Sellers should not make any material changes to the goods or services being offered pursuant to an Advance Consent Plan without first providing the consumer written notice of the change and obtaining the consumer’s affirmative consent to the change in accordance with these Guidelines. A change in price shall not be considered a material change requiring the consumer’s affirmative consent if before the consumer consented to the Advance Consent Sale, the seller reserved the right to change the price. However, in the event of a price increase, the seller should still send a notice to the consumer indicating the new price so that it is received by the consumer sufficiently in advance of the first billing event incorporating the price change, to allow the consumer a reasonable opportunity to cancel. The notice incorporating the price change should disclose the consumer’s right to cancel sufficient information to enable the consumer to cancel, and either the deadline by which the consumer must cancel to avoid being billed or charged the new price or a disclosure of when the new price goes into effect.



PRIVACY

Sellers should be sensitive to the privacy concerns of consumers and regulators in connection with the use and disclosure of consumer's account billing information. Sellers should maintain and require their telemarketing or other service providers to maintain account-billing information in compliance with applicable laws and regulations.

Sellers and their agents or service providers should not transfer a consumer's account billing information to any unaffiliated third party other than a billing or processing agent without the consumer's express authorization.

If the seller already possesses the consumer's account billing information and the seller did not obtain that information directly from the consumer, the seller: must disclose that it already possesses the consumer's account billing information; must obtain the consumer's affirmative consent to charge that account; and for automatic renewal plans that operate on a continuous service basis and accordingly, do not have a "renewal term," the Renewal Reminder should be sent in close proximity to the first billing event, which will occur during the billing period to which the Renewal Reminder relates.

For purposes of these guidelines, "Account Billing Information" shall mean a credit card, debit card, checking, savings or similar account number, utility, telephone, mortgage loan or similar account number or identifier which the seller will use to charge the consumer must provide the consumer with sufficient information to enable the consumer to reasonably identify which specific account will be charged.

If the advance consent seller will obtain the consumer's account billing information from another marketer rather than directly from the consumer, then offer must include disclosure of the identity of the advance consent seller that will be charging the consumer, the fact that the advance consent seller will obtain the account billing information from the other marketer, and the identity of the account to be billed sufficient specificity for the consumer to understand what account will be charged (e.g., your Visa/MasterCard account ending in XXXX). Such disclosure must be made before the consumer provides consent to the offer.

CANCELLATION POLICIES / CUSTOMER SERVICE

Consumers should have a method of canceling an Advance Consent Sale that is reasonably accessible and easy to use and requires no payment to the seller. For Free to Pay Conversions, consumers should be given a telephone number for canceling. Sellers may provide a URL in lieu of a telephone number; however, Sellers should not employ e-mail as the sole method for consumers to cancel unless either the sales transaction occurred online the consumer consented in advance to communicate online with the seller.



Consumers should be given sufficient information to enable the consumer to cancel and the deadline for canceling reasonably in advance of the deadline by which the consumer must cancel in order to avoid being billed or charged. Sellers should promptly make any refunds due upon cancellation. Sellers should provide prompt, effective and readily accessible customer service and strive towards maximizing customer satisfaction. At a minimum, Sellers should provide consumers with reasonable access to customer service during normal business hours. If customer service is not available on a 7 day/24 hour basis, there should be a recording on the customer service number during those hours when customer service is not available advising consumers of the time period during which they can contact customer service.

While sellers may make a reasonable attempt to dissuade consumers from canceling, cancellation procedures and any scripts or IVR recordings used by customer service to respond to cancellation requests should not be so burdensome as to make it difficult or cumbersome for the consumer to cancel.

Customer service representatives should be trained so that they are knowledgeable about and have an understanding of the terms and conditions of the offer.

VERIFICATION OF TELEPHONE SALES

Sellers should obtain affirmative consent from consumers before billing or charging the consumer.

For telemarketing calls, if a consumer alleges that he or she did not authorize a charge, and the seller cannot produce a taped recording or otherwise demonstrate the consumer's affirmative consent, the consumer shall be entitled to an automatic (e.g., no questions asked) refund, unless the Seller can demonstrate fraud or abuse on the part of the consumer.

“FREE” AND “FREE TRIAL” OFFERS

The use of the word “free” is subject to various federal and state laws and regulations. Marketers should conduct such offers in compliance with all applicable laws and regulations. “Free Trial Offers” refers to promotions in which consumers have the opportunity to receive and examine products or services for some specified “trial period” without being charged or obligated to pay during the free trial. Unlike “free” goods or services, 8 sellers can bill or charge for services offered on a free trial basis after the free trial period has expired, if the consumer does not cancel. Free trial periods should never begin until the consumer has complete access to the services or has begun to receive the goods, which are the subject of the free trial. Sellers should never charge a consumer's credit card or otherwise deduct funds from a consumer's account prior to the expiration of a free trial period. Sellers may bill consumers during the free trial period as long as the bill is not payable until the free trial has expired.



Electronic Retailing Association

COMPLIANCE RESPONSIBILITIES

Members engaged in Advance Consent Marketing should comply with all applicable laws and regulations implicated by their offers and these Guidelines for Advance Consent Marketing. Members should not provide assistance to or accept it from anyone that they know is violating applicable laws or regulations or these Guidelines.

There are other distinctions between “free offers,” “free trial offers” and “risk free offers” which are outside the scope of these guidelines.

ENFORCEMENT

These Guidelines have as their purpose increasing the confidence of consumers in general in direct response marketing. In the event that ERA becomes aware that one or more members may be violating these Guidelines, the Association may take such steps as appears appropriate potentially including, but not limited to, referral of the offending party to the appropriate law enforcement agencies and may, to the extent that such appears consistent with the public interest, the expulsion of the offending party from the Association.