

109:4-3-17 Distress sale.

(A) Definition.

Distress Sale. A "distress sale" is any sale which is described or represented either directly or indirectly by any term which would reasonably lead a consumer to believe that the offer of such goods, either by choice or necessity, has been occasioned by any of the following factors:

- (1) Termination or discontinuance by the supplier of all or any portion of the supplier's business;
- (2) Loss or termination of lease;
- (3) Liquidation of assets;
- (4) Fire, smoke, water or other disaster, regardless of cause;
- (5) Bankruptcy or receivership;
- (6) The financial condition of the supplier.

Distress sale does not include the sale of special purchase items, clearance items, or seasonal items as those terms are defined in rule 109:4-3-03 of the Administrative Code.

(B) It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to:

- (1) Make any representation concerning the cause, basis, reason or necessity of any distress sale unless such representation is true;
- (2) Advertise, conduct or continue any distress sale for a period greater than forty-five days except that a supplier may extend the duration of a distress sale for an additional forty-five-day period by clearly and conspicuously disclosing in any advertisement or other representation regarding such distress sale the fact of such extension;
- (3) Substitute or supplement the stock or inventory by purchase, consignment or transfer of goods from another outlet unless (a) such item of goods was ordered for that outlet prior to the placement of any advertisement or other representation declaring a distress sale; (b) or such item of goods was ordered in compliance with rule 109:4-3-03 of the Administrative Code; or (c) such item of goods owned prior to the filing of bankruptcy or creation of a receivership is transferred from another outlet of the supplier in conformity with a court order and the supplier provides a clear and conspicuous notice of that fact in all advertisements that merchandise has been added;
- (4) Misrepresent the former price, savings, quality or ownership of any goods to be sold at such sale;
- (5) Fail to include in any advertisement concerning a distress sale the opening and terminating dates of the sale;

- (6) Advertise or represent a distress sale for the purpose of closing and relocating an outlet at another location without clearly and conspicuously disclosing that fact;
- (7) Fail to separate or otherwise clearly identify distress sale merchandise from regular stock in any distress sale advertisement;
- (8) Fail to clearly and conspicuously mark, identify or otherwise physically separate at the business location each item of goods that is subject to the terms of any distress sale advertisement so their identity may be readily ascertained;
- (9) Misrepresent the identity of the person or entity conducting a distress sale;
- (10) Make reference to a liquidation sale or use a term of similar import unless the supplier is in fact liquidating all assets for final distribution;
- (11) Advertise, announce or conduct a going-out-of-business sale and subsequently reopen, or resume within twelve months of any such distress sale the same business under the same or any new name if the ownership and/or control of such business substantially remains the same. Nothing in this provision shall be deemed to preclude a true sale of a business if that fact is clearly disclosed;
- (12) Fail to comply with any license, registration, inventory itemization or other requirement of the particular political subdivision of this state wherein such distress sale is being conducted.

(C) Exceptions.

- (1) Except as set forth herein, this rule shall have no application to licensed auctioneers, sheriffs, public officials, court officers, or any other person acting under the direction or authority of any court selling goods in the course of their official duties, provided that suppliers in receivership, bankruptcy, or any liquidator acting on their behalf shall be subject to the provisions of this rule unless enforcement would conflict and be preempted by federal law;
- (2) Except as specifically set forth above, the requirements of this rule are in addition to all other requirements contained in Chapter 109:4-3 of the Administrative Code, pertaining to consumer transactions.

Effective:

R.C. 119.032 Review Dates: 11/12/99
Promulgated under: R.C. Chapter 119
Statutory authority: R.C. § 1345.05
Rule amplifies: R.C. § 1345.02
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