



Retail Council of Canada
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Mr. Éric Ferron
Sr. Competition Law Officer
Fair Business Practices Branch
Competition Bureau
50 Victoria St.
Hull, QC
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Dear Mr. Ferron,

On behalf of Retail Council of Canada and its members, thank you for the opportunity to review the draft information bulletin titled *False or Misleading Representations Related to Consumer Rebate Programs and Similar Promotional Tools*.

RCC recognizes that this draft of the bulletin has been significantly rewritten in an effort to respond to comments provided by RCC and others.

We are pleased to see that the bulletin explicitly recognizes in section 2 the role of manufacturers and fulfillment houses in the development and operation of rebate programs. In section 4, however, the bulletin does say, "The retailer could also be held responsible, along with the manufacturer and importer for misleading representations on a pre-packaged product." As we have noted before, retailers do not scrutinize every shipment of merchandise they receive from a supplier. The result may be that the supplier will implement a rebate program of which the retailer has little or no knowledge. Information relating to the program may be either on the packaging, inside it, or partly in both locations. It would be helpful guidance for all stakeholders if the bulletin could show an awareness of the potential for varied levels of retailer involvement and awareness. We continue to believe that the bulletin should also include some explicit recognition that a retailer's responsibility for the representations is related to the retailer's level of engagement in and knowledge of the program.

The re-drafting of section 5 does provide more guidance for the market place parties, and we appreciate the inclusion of additional examples. We do have some comments in respect of this section.

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Section 5.1 of the bulletin which requires clear and conspicuous disclosure of the eight bulleted items is not practical in all forms of advertising due to time and space limitations – good examples are flyers, TV and radio advertisements, newspaper advertisements, etc. The concept of using a phrase such as, “See in store for more details” should be identified in the bulletin as an acceptable practice.

Section 5.2 of the bulletin – retailers should not be prohibited from using the word “Save” or otherwise displaying a save story as long as the rebate element of the offer is made clear (in terms of amount and type of rebate) and is in close proximity to the save story being advertised. If merchants are not permitted to tell a clear save story, we are concerned the bulletin will substantially eliminate rebates as a pro-competitive pricing and advertising tool because the promotional impact of the rebate is largely lost

Section 5.2 of the bulletin discusses the consumer implications of how sales taxes are levied on a product subject to a rebate, but does not address the difference in the *Excise Tax Act* between a manufacturer’s rebate and a retailer’s rebate. RCC recommends that the Bureau consult with the Canada Revenue Agency and perhaps the Department of Finance to ensure the bulletin accurately addresses both situations.

Section 5.4 of the bulletin – it may be worthwhile clarifying that the offer of a gift card by mail associated with the purchase of a product is acceptable as long as that offer is not being referred to as a “rebate” (since “rebate” implies a savings against the price of the product which was purchased to earn the gift card – which is obviously not the case since the gift card can only be redeemed on a future purchase).

Section 6 of the bulletin –retailers need to be able to show the “net price” after deduction of the rebate as long as the type and amount of the rebate are made clear within the advertisement. Without this, it is difficult to communicate the savings to the consumer, and effectively reduces the promotional and competitive attractiveness of rebate programs.

Section 7 of the bulletin – this part of the bulletin dealing with the ordinary selling price provisions of the Competition Act still provides absolutely no guidance to retailers from a practical perspective. This will undercut the efforts of responsible parties to comply with the Act. Given the emphasis the Bureau has placed on these provisions, the lack of guidance is surprising and disappointing.

Sincerely,

Peter Woolford
Vice President Policy Development & Research

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