

803(6) prohibits creditors from using names other than their own that would create the false impression that a third party (presumably a collection agency) is involved. This addresses the problem highlighted by Guide 5. Section 812 of the FDCPA also prohibits furnishing forms creating a false impression of third-party collection agency involvement. In the main, the practices addressed by Guide 5 are addressed by the FDCPA.

G. Services, Guide 6 [Section 237.6]

Guide 6 prohibits an "industry member" from misrepresenting the services it renders in soliciting accounts.¹⁶ Similarly, Section 807(2) of the FDCPA prohibits the false representation of "any services rendered or compensation received by any debt collector for the collection of a debt." Thus, elimination of Guide 6 will have no effect on the Commission's debt collection enforcement policies.

III. Conclusion

The Commission's Guides Against Debt Collection Deception have been superseded by the FDCPA and are no longer needed. Few in the debt collection industry are even aware that the Guides exist. The Commission has never taken any enforcement action alleging violation of Section 5 because the conduct at issue violated the Guides. Since they are superfluous, the Commission has determined that it is in the public interest to eliminate the Guides.

List of Subjects in 16 CFR Part 237

Credit, Trade practices.

PART 237—[REMOVED]

The Commission, under authority of Sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of Title 16 of the Code of Federal Regulations by removing Part 237.

By direction of the Commission.

Donald S. Clark,
Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive

rules.¹ The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. See FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.²

Notwithstanding its long-standing, general practice of seeking public comment and its specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word "title" in designation of non-ceramic products since it was issued in

¹ Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive Use of the Word "Free" In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

² See, e.g., Request for Comments Concerning Guides for the Hosiery Industry, 59 FR 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 Fed. Reg. 18006 (Apr. 15, 1994).

1950.³ The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.⁴

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95-19542 Filed 8-7-95; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 242

Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service

AGENCY: Federal Trade Commission.

ACTION: Elimination of guide.

SUMMARY: The Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service ("Free Film Guide") sets forth industry guidance concerning offers of "free" film in connection with the sale of photographic processing services. The Commission's Guide Concerning Use of the Word "Free" and Similar Representations, which was adopted after the Free Film Guide and which applies to all industries, sets forth essentially the same guidance concerning offers of "free" merchandise or service in connection with the sale of some other merchandise or service. The Free Film Guide has thus been supplanted by the Guide Concerning Use of the Word "Free" and Similar Representations and is no longer needed. Accordingly, the Commission has determined that it is in the public interest to eliminate the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service.

³ 16 C.F.R. 14.2.

⁴ Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.

¹⁶ "In the solicitation of accounts for collection or for ascertainment of credit status, an industry member shall not directly, or by implication, misrepresent the services he renders."

Although the Commission is eliminating the Free Film Guide, proceedings still may be brought against businesses under section 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of these products and services.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this notice should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert J. Schroeder, Seattle Regional Office, Federal Trade Commission, 915 Second Avenue, Suite 2806, Seattle, Washington, 98174, (206) 220-6350.

SUPPLEMENTARY INFORMATION:

I. Introduction

As a part of its ongoing project to review all rules and guides, the Commission has evaluated the continued need for the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service. The same deceptive practices described in the Free Film Guide and the same industry guidance on how to avoid them in this specific industry also appear in the more general Guide Concerning Use of the Word "Free" and Similar Representations, 16 CFR part 251. Accordingly, the Commission has determined to repeal the Free Film Guide.

Because the industry guidance in the Free Film Guide is duplicated in the Guide Concerning Use of the Word "Free" and Similar Representations, the Commission has further determined that public comment is not necessary at this time.¹ Public comment on the issues raised by offers of "free" merchandise or services may be sought at a later date during regulatory review of the Guide Concerning Use of the Word "Free" and Similar Representations.

II. Background

On June 5, 1968, the Commission adopted the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and

Film Processing Service.² The Free Film Guide describes various deceptive practices that may be associated with offers of "free" film in connection with the sale of photographic processing services, and provides industry guidance on how to avoid these types of deception. On November 10, 1971, the Commission adopted the Guide Concerning Use of the Word "Free" and Similar Representations.³ This guide describes various deceptive practices that may be associated with offers of "free" merchandise or services of any kind, and provides industry guidance on how to avoid these types of deception. The **Federal Register** Notice announcing it specifically states that "provisions of all existing guides and trade practice rules that include coverage of use of the term "Free" or similar representations will be construed in the light hereof."⁴ The two guides describe essentially the same deceptive practices and give essentially the same guidance.

III. Review of the Guide

The content of the Guide Against Deceptive Use of the Word "Free" in Connection With the Sale of Photographic Film and Film Processing Service is repeated, in slightly different language but to the same effect, in the Guide Concerning Use of the Word "Free" and Similar Representations. Thus the Free Film Guide has been supplanted and is no longer needed.

The Free Film Guide generally proscribes representing that film is provided free with the purchase of processing service when that is not the case. The guide states:

Film processors should avoid representing film as "free" [in connection with the purchase of processing service] when their quoted price for processing is not their regular price for such service. * * * A regular price is the price at which an article or service is openly and actively sold by the advertiser to the public on a regular basis for a reasonably substantial period of time in the recent and regular course of business.⁵

The Guide Concerning Use of the Word "Free" and Similar Representations contains the same general proscription in slightly different language:

[W]hen the purchaser is told that an article is "Free" to him if another article is purchased, the word "Free" indicates that he is paying nothing for that article and no more than the regular price for the other. * * * The term "regular" when used with the term "price", means the price, in the same

quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service * * * in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period.⁶

Both guides expound that consumers understand "free" offers to mean that the price of the processing, or other article that must be purchased, has not been increased to cover the cost of the "free" film or other article.⁷ Both guides counsel that introductory offers should not include a representation of "free" film or other article unless the offeror expects, in good faith, to discontinue the offer after a limited time and commence selling the processing service, or other article that must be purchased, separately at the same price at which it was promoted with the "free" offer.⁸ Both guides further provide that "free" offers should not be continuous or frequent.⁹

Two provisions of the Free Film Guide, while not having specific counterparts in the Guide Concerning Use of the Word "Free" and Similar Representations, are implicitly contained in the more general language of that guide. The first is the statement that a processor has no basis for a "free" film representation where it has not established a regular price for processing service by itself (except in the case of introductory offers).¹⁰ This is implicit in the discussion of the regular price requirement in both guides. The second is the caveat that the Free Film Guide is not intended to preclude the use of nondeceptive "combination" offers of film and processing where there is no representation that one of the items is "free".¹¹ There is nothing in either guide to suggest that such offers would be precluded because the guides, by their terms, apply only to use of the word "free" and similar terms.

The Free Film Guide has been supplanted by the Guide Concerning Use of the Word "Free" and Similar Representations. Accordingly, the Commission has determined that it is in the public interest to eliminate the Free Film Guide.

List of Subjects in 16 CFR Part 242

Advertising, Photographic industry, Trade practices.

¹ The Administrative Procedure Act requires that interpretive rules, such as guides, be published in their final form in the Federal Register. 5 U.S.C. 552(a)(1)(D). It does not require the opportunity for public participation in the issuance or repeal of interpretive rules. 5 U.S.C. 553(b). As a matter of discretion, however, the Commission generally seeks public comment on proposed actions involving industry guides. In this case, the Commission has determined such comment is unnecessary.

² 33 FR 8336.

³ 36 FR 21517.

⁴ Id.

⁵ 16 CFR 242.1(b).

⁶ 16 CFR 251.1(b)(1)-(b)(2).

⁷ 16 CFR 242.1(c); 16 CFR 251.1(b)(1).

⁸ 16 CFR 242.1(f); 16 CFR 251.1(f).

⁹ 16 CFR 242.1(e); 16 CFR 251.1(h).

¹⁰ 16 CFR 242.1(d).

¹¹ 16 CFR 242.1(g).

PART 242—[REMOVED]

The Commission, under authority of sections 5(a)(1) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a)(1) and 46(g), amends chapter I of title 16 of the Code of Federal Regulations by removing Part 242.

By direction of the Commission.

Donald S. Clark,
Secretary.

Statement of Commissioner Mary L. Azcuenaga Concurring in 16 CFR Part 14, Matter No. P954215; Repeal of Mail Order Insurance Guides, Matter No. P954903; Repeal of Guides Re: Debt Collection, Matter No. P954809; and Free Film Guide Review, Matter No. P959101

In a flurry of deregulation, the Commission today repeals or substantially revises several Commission guides and other interpretive rules.¹ The Commission does so without seeking public comment. I have long supported the general goal of repealing or revising unnecessary, outdated, or unduly burdensome legislative and interpretive rules, and I agree that the repeal or revision of these particular guides and interpretive rules appears reasonable. Nevertheless, I cannot agree with the Commission's decision not to seek public comment before making these changes.

Although it is not required to do so under the Administrative Procedure Act, 5 U.S.C. § 553(b)(A), the Commission traditionally has sought public comment before issuing, revising, or repealing its guides and other interpretive rules. More specifically, the Commission adopted a policy in 1992 of reviewing each of its guides at least once every ten years and issuing a request for public comment as part of this review. See FTC Operating Manual ch. 8.3.8. The Commission decided to seek public comment on issues such as:

(1) The economic impact of and continuing need for the guide; (2) changes that should be made in the guide to minimize any adverse economic effect; (3) any possible conflict between the guide and any federal, state, or local laws; and (4) the effect on the guide of technological, economic, or other industry changes, if any, since the guide was promulgated.

Id. The Commission has sought public comment and has posed these questions concerning a number of guides since adopting its procedures for regulatory review in 1992.²

Notwithstanding its long-standing, general practice of seeking public comment and its

specific policy of seeking public comment as part of its regulatory review process, the Commission has chosen not to seek public comment before repealing or revising these guides and interpretive rules. Why not? Has the Commission changed its view about the potential value of public comment? Perhaps the Commission knows all the answers, but then again, perhaps not. Although reasonable arguments can be made for repeal or revision of these guides and interpretive rules, public comment still might prove to be beneficial.

In addition, the relatively short period of time that would be required for public comment should not be problematic. The Commission has not addressed any of these guides or interpretive rules in the last ten years. Indeed, it has not addressed some of them for thirty years or more. For example, the Commission apparently has not addressed the interpretive rule concerning the use of the word "tile" in designation of non-ceramic products since it was issued in 1950.³ The continued existence of these guides and interpretive rules during a brief public comment period surely would cause no harm because they are not binding and because, arguably, they are obsolete. I seriously question the need to act so precipitously as to preclude the opportunity for public comment.⁴

In 1992, the Commission announced a careful, measured approach for reviewing its guides and interpretive rules, and public comment has been an important part of that process. Incorporating public comment into the review is appropriate and sensible. Although I have voted in favor of repealing or revising these guides and interpretive rules, I strongly would have preferred that the Commission seek public comment before doing so.

[FR Doc. 95-19543 Filed 8-7-95; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 248**Guides for the Beauty and Barber Equipment and Supplies Industry**

AGENCY: Federal Trade Commission.
ACTION: Elimination of guides.

SUMMARY: The Guides for the Beauty and Barber Equipment and Supplies Industry (the "Beauty/Barber Guides" or the "Guides") designate as unacceptable certain advertising and trade practices relating to the sale of products used by, and/or marketed through, "industry members" (as defined in Section 248.0 of the Guides) such as barber shops, barber schools, beauty parlors, beauty

salons, beauty clinics, and organizations or corporations engaging in the manufacture or distribution of industry products. Such products embrace a wide range of beauty and barber preparations, as well as articles or items of equipment, furnishings, and supplies for such establishments.

The Commission believes that the Beauty/Barber Guides do not provide guidance substantially specific to the beauty and barber equipment and supply industry. In addition, the Commission believes that, in some instances, the Guides no longer accurately represent current Commission policy, and would require extensive revision to be made up-to-date. Although such a revision and reissuance might be warranted if there were evidence of widespread marketing abuses of the type addressed by the Guides, the Commission has no such evidence. In addition, the Commission believes that likely abuses, if any, are adequately addressed under applicable antitrust, consumer protection, and commercial tort laws, which are matters of public record. Consequently, the Commission believes that there is no continuing need for the Guides, and that they should be repealed in their entirety.

Although the Commission is eliminating the Guides, proceedings still may be brought against businesses under Section 5(a)(1) of the Federal Trade Commission Act (the "FTC Act"), 15 U.S.C. 45(a)(1), for engaging in unfair or deceptive acts or practices in or affecting commerce in the advertising and sale of beauty and barber equipment and supplies. Proceedings also may be brought under Section 5(a)(1) of the FTC Act against businesses engaging in unfair methods of competition.

EFFECTIVE DATE: August 8, 1995.

ADDRESSES: Requests for copies of this document should be sent to the Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Douglas J. Goglia, Attorney, Federal Trade Commission, New York Regional Office, 150 William Street, 13th Floor, New York, NY 10038, (212) 264-1229.

SUPPLEMENTARY INFORMATION:**I. Introduction**

As a part of its ongoing project to review all rules and guides, the Commission invited comment on its Guides for the Beauty and Barber Equipment and Supplies Industry, 16

¹ Administrative Interpretations, General Policy Statements, and Enforcement Policy Statements, 16 C.F.R. Part 14; Guides for the Mail Order Insurance Industry, 16 C.F.R. Part 234; Guides Against Debt Collection Deception, 16 C.F.R. Part 237; and Guide Against Deceptive use of the Word "Free" In Connection With the Sale of Photographic Film and Film Processing Services, 16 C.F.R. Part 242.

² See, e.g., Request for Comments Concerning Guides for the Hosiery Industry, 59 Fed. Reg. 18004 (Apr. 15, 1994); Request for Comment Concerning Guides for the Feather and Down Products Industry, 59 Fed. Reg. 18006 (Apr. 15, 1994).

³ 16 C.F.R. 14.2.

⁴ Unfortunately, seeking public comment would not permit the Commission to count the repeal and revision of these guides and interpretive rules in its tally of completed actions in the Regulatory Reinvention Initiative Report that will be sent to the President on August 1, 1995, but perhaps that harm could be mitigated by reporting to the President that the Commission is seeking public comment concerning repeal or revision.