# January sales law

The January sales are about to get under way in earnest this week, and some optical practitioners will be offering discounts. **Stuart Ponting** gives a guide to advertising the sale items legally

At this time of year, trading standards officers are keeping a watchful eye out to ensure that special offers, bargain prices, and mega-discounts are actually honest and genuine claims. The law in relation to pricing is complicated. In October 2005 the Department of Trade and Industry attempted to provide some clarity on the law and traders' obligations under it by issuing guidance, in the form of the code of practice for traders on price indications.

In relation to prices that are not part of a sale or promotion – these might be termed the 'ordinary selling price' – there is actually very little regulation to be concerned about. The general position is that traders can charge any price they want to.

However, when a trader decides to run a special price promotion or offer a discount, the law requires that any representations made about the price are not misleading. This includes representations made in a TV, radio or press advertisement, on a website, by email or text message, in a printed form or shelf-edge marking or on the telephone.

## 28-day ruling

Signage displaying 'All stock half price' when it isn't, or stating '50 per cent off all ordinary prices' when in fact all prices were artificially inflated by 50 per cent the day before are both prohibited and illegal. The code states: 'Generally, you should compare like with like and where a reduced price is claimed then the product should have been offered for sale at the higher price for at least 28 consecutive days in the previous six months in the same outlet. If your comparison does not meet those criteria then you should provide an explanation which is unambiguous, easily identifiable and clearly legible to the consumer.'

The price which has existed for 28 days at the same store in the last six months is known as the 'established price'. This is what a trader has to compare his new sale price with.

**Goods in the sale should be clearly separated from those which are not**


The code sets various examples of established prices and, at first glance, identifying an established price is straightforward.

For example, a pair of sunglasses has been on sale for £100 for six months at all of a trader's stores. The £100 becomes an established price because it meets the requirements of the code. This is what the trader must make any comparison against. So if the selling price is later reduced to £50, valid comparisons would be as follows: Was £100 Now £50; 50 per cent off; or half price. These are all accurately asserted claims and are not misleading to the customer.

If after another two months of the selling price being £50 at all the stores, the price is then reduced to £25, the valid claims would again be: Was £50 Now £25; 50 per cent off; or half price. They would not be for example 75 per cent off or: Was £100, Now £25. This is because the £50 becomes the established price after 28 days and so that becomes the proper comparator for any subsequent price comparisons.

But what happens when a price is not established? Perhaps the price has not existed for 28 days or it has existed for more than 28 days but only at 10 per cent of the trader's stores. This is where traders must understand the spirit of the code. Traders must give clear and accurate details as to how the price comparison the trader gives has been arrived at.

A higher price used only to artificially inflate any discount offered is a breach of the code. Prices set by traders must be set at a level where they have a reasonable expectation that the goods could be sold at the higher price. But what happens if you want to make a representation but the products or services are not identical? If the representation is clear, honest and meaningful, it is unlikely to mislead your customer.

Traders must always also give consideration to the way that goods are displayed in-store. Again the code is helpful in giving some indication of what traders should do. Goods which are in the sale or the subject of a special promotion should be clearly separated from goods which are not. Any signage which relates to the sales promotion should be clear, unambiguous and positioned very close to relevant goods.

Traders should also avoid ambiguous statements or claims such as 'Sale price £10' or 'Reduced to £50' as the customer is unable to identify the previous selling prices and in similar terms, traders should not use words like 'sale' or 'discount' where there actually is no sale or discount in relation to these goods.

The code also provides guidance on a number of other areas such as 'free offers', sale prices with limited availability and non-optional extras. Traders should ensure that they are familiar with the provisions of the code in those areas too.

What are the consequences for the trader if they get it wrong? Under Section 20(1) Consumer Protection Act 1987, where the trader has given a misleading price indication, such a breach will usually result in a formal investigation by the local trading standards officer. Quite often traders are prosecuted for their misleading indications. Breaches of the Consumer Protection Act are dealt with in the criminal courts and any successful prosecution will usually result in a fine and a criminal conviction.

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