

RADIO MARKETING GUIDELINES

It is the policy of Electronic Retailing Association (ERA) that all programs produced by its members contain truthful information and comply with all existing laws and regulations. ERA supports the freedom of its members to exercise their first amendment rights by providing information to consumers. Because ERA's policy is to foster public confidence in the accuracy and reliability of advertising, it has adopted the following guidelines, which may be amended from time to time for implementing this policy.

IDENTIFICATION AND SPONSORSHIP

The radio audience is constantly changing. The only way to assure adequately that the public is sufficiently informed regarding the nature of the program is by an introductory statement repeated at frequent intervals throughout the program. *Capital Cities Communications, Inc.*, 54 FCC 2d 1035 (1975).

Identification: Each radio production should be preceded and concluded with a clear and prominent oral announcement that the program is a paid advertisement for [name of product]. A clear and prominent oral announcement should also be made prior to each ordering opportunity stating that the program the viewer is hearing is a paid advertisement for [name of product].

Sponsorship: Each radio production should include a clear and prominent oral announcement identifying the name of the party who sponsored, paid for or furnished the program.

When a broadcast station transmits any matter for which money, service, or other valuable consideration is either directly or indirectly paid or promised to, or charged or accepted by such station, the station, at the time of the broadcast, shall announce: (1) That such matter is "sponsored," "paid for," or "furnished," either "in whole" or "in part," and (2) "by" whom or on whose behalf such consideration was supplied. 47 C.F.R. § 73.1212(a).

The Federal Communications Commission has determined that the use of "presented by," does not clearly inform viewers that the program they are watching has been sponsored, which could lead to public confusion and misunderstanding. Application of Sponsorship Identification Rules, 66 FCC 2d 302, 303 (1975). Although the broadcaster must clearly identify the person or organization paying for the broadcast, *WDAX, Inc.*, 6 FCC Rcd 1987 (1991), it is in the advertiser's best interest to identify the party paying for the broadcast because the advertiser can determine the announcement's placement more appropriately.



PROGRAM PRODUCTION

The following guidelines shall be observed in the development and production of radio advertisements.

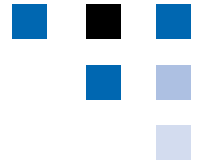
- No programs will be produced by ERA members which are likely to mislead reasonable consumers with respect to the nature of the program, e.g., to lead viewers to believe that the program is a bona fide newscast, documentary or entertainment programming presented by a disinterested party solely for the purpose of providing entertainment or information.
- All statements made in the context of a radio advertisement program shall be truthful, whether or not they are specifically made with respect to the product or service being marketed.
- Infomercial producers shall not deceive the viewer through omitted or misleading information which is likely to affect the purchasing decision or use of the product or service being marketed.
- No programs shall be aired for which product is not available in sufficient quantities to meet reasonably anticipated demand. The marketer must have a reasonable basis to expect that he will be able to ship any ordered merchandise to the buyer within the time specified in the advertisement or within 30 days after receipt of the order (if no shipping time is specified).
- No programming shall contain statements, suggestions, or pictures that are considered indecent or offensive based on community standards.
- Particular care shall be taken in producing a radio advertisement program directed to children under 13 years of age. ERA recommends the Council of Better Business Bureaus' Self-Regulatory Guidelines for Children's Advertising in this regard.

PRODUCT/CLAIMS SUBSTANTIATION

- There must be a reasonable basis, consisting of competent and reliable evidence, for express or implied objective claims made in marketing the product or service.
- If the programming contains an express or implied representation, through the use of such language as "medically proven" or "here's proof," that a claim's truth has been scientifically established, the advertiser must possess a sufficient level of evidence to convince the relevant scientific community of the claim's truthfulness. At least the amount of substantiation claimed in the programming must be present, such as research or tests performed.
- Particular care should be taken to substantiate claims made in marketing products or services for which health, nutrition, or safety claims are made, such as food, drugs, cosmetics, diet foods and plans, vitamins, medical or cosmetic devices, etc. All representations regarding the safety or efficacy of such products or services must be substantiated by competent and reliable scientific evidence.

TESTIMONIALS AND ENDORSEMENTS

- All testimonials from consumers shall be from voluntary, bona fide users of the product or service, where the program represents that the consumer is a user of the product or service,



and 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. Alternatively, the advertiser may clearly and conspicuously disclaim that the experiences of the consumer offering the testimonial are representative of the results to be expected by the average consumer. Any claims made regarding the product or service by consumer testimonials must be substantiated in the same manner as if the advertiser had made the claims.

- All endorsements by “experts” shall be substantiated by the endorser’s qualifications in the relevant area of expertise and shall be the actual result of the application of his expertise in the area in which he is qualified.
- Any “material connection” between the advertiser and the endorser must be disclosed, unless the endorser is a generally recognized celebrity or identified as an expert (and the sole connection is that the celebrity or expert is being paid a fee).
- There must be good reason to believe that the views expressed continue to represent the views of the endorser or expert and that the endorser continues to be a bona fide user of the product for so long as the advertisement is run.

ORDERING: PRICES, WARRANTIES, GUARANTEES, AND REFUNDS

- Any additional costs must be disclosed, such as postage and handling, excise taxes, etc., and all statements made regarding prices must be truthful and substantiated. For example, if the product is marketed as costing more through another outlet or at another time, there must actually be substantial sales of the product at the higher price; if a product is being offered as “two for the price of one,” the second item must usually be sold at additional cost.
- Any warranty or guarantee offered with a consumer product priced in excess of \$15 must be made available to the consumer prior to purchase upon request.
- Guarantee claims made in the marketing process must identify the guarantor and clearly state the nature and manner of performance of the guarantee and any conditions, limitations, or charges in connection therewith. Such claims must also be consistent with the guarantee provided in writing with the product or service.
- If a money back guarantee is offered with the product or service, refunds claimed must be made promptly. In order to ensure the availability of funds for refund purposes, ERA recommends that an escrow account be maintained based on reasonable estimates of refund requests expected.

Monitoring/Enforcement. Subscription to this Policy and these Guidelines is a condition of ERA membership. Members shall have the right to certify their compliance with these Guidelines to members of the general public and the media. Willful violation of these Guidelines is a basis for expulsion from ERA.