

Is the Price Really Right? Michaels Stores Agrees to Pay \$1.8 Million to Settle Deceptive Sale Pricing Charges in New York

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Yesterday the New York Attorney General announced that Michaels Stores, Inc., has agreed to pay \$1.8 million to settle charges that the company engaged in deceptive advertising by misleading consumers about the existence of sales and discounts. Michaels is a retailer of arts, crafts, and custom framing that regularly advertises sales. The company will pay \$800,000 in a civil penalty, contribute \$1 million in art and craft supplies to public schools, and modify its advertising practices.

The Attorney General's office began tracking the company's sales practices two years ago, collecting newspaper flyers, online flyers, in-store banners, and signs advertising custom framing. The state claims that Michaels advertised in at least one of these media every day for two years, advertising its custom framing as a sale product for at least 104 consecutive weeks. The ads stated that custom framing was either at least 50% off or a certain dollar amount off. The state alleges that the pricing constituted false advertising in violation of General Business Law sections 349 to 350-f, Consumer Protection from Deceptive Acts and Practices.



The Federal Trade Commission has not enforced the concepts underlying its Guides Against Deceptive Pricing in recent years and many practitioners (including two former FTC Chairmen) have questioned whether allegedly deceptive promotional prices actually harm consumers. Nonetheless, this settlement demonstrates that the states continue to enforce their general deceptive trade practices statutes against promotional pricing, even in the absence of a statute targeted at such acts. In light of such enforcement, companies should review existing promotional pricing practices.