

Members of Congress Target Outlet Mall Pricing

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Last Thursday, four members of Congress [sent a letter](#) to the FTC Chairwoman expressing concerns that consumers are being deceived by pricing at outlet stores and asking the FTC to investigate potential violations of Section 5 of the FTC Act and the [FTC's Guides Against Deceptive Pricing](#). They noted that, unlike the historical practice of using outlets to offer excess and slightly damaged inventory, increasingly outlet stores offer goods manufactured exclusively for the store, which are often of lower quality. Although some retailers use different brand names for the outlet stores, others do not, deceiving consumers into believing they are getting products originally intended for sale at the regular retail store. The letter also states: "Many outlets may also be engaged in deceptive reference pricing. It is a common practice at outlet stores to advertise a retail price alongside the outlet store price—even on made-for-outlet merchandise that does not sell at regular retail locations. Since the item was never sold in the regular retail store or at the retail price, the retail price is impossible to substantiate."

The letter also requested information about any existing or proposed plans to investigate outlet stores and urged the FTC to consider whether it may be necessary to define "factory outlet," "outlet store," and similar terms to better inform consumers. Senators Sheldon Whitehouse (D-RI), Richard Blumenthal (D-CT), and Ed Markey (D-MA), and Rep. Anna G. Eshoo (D-CA) sent the letter.

The FTC has not enforced the Guides Against Deceptive Pricing in many years, but this Congressional inquiry could give new life to the Guides. At a minimum, the FTC will likely look into the issues flagged by this issue and possibly issue warnings or other guidance. If your company has factory or outlet stores, the letter serves as a good reminder to check promotional pricing practices to evaluate the basis for any comparisons and to consider how those stores are positioned in comparison to any non-factory stores.