

# NAD Addresses “List” Prices and “Limited Time” Offers

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In recent years, there has been an increase in class action lawsuits alleging that companies are using artificially inflated “list” or “strikethrough” prices to mislead consumers into thinking they are getting a better deal than they are. A recent NAD case demonstrates that competitors can challenge each other over these issues, as well.

Etekcity filed an NAD challenge against Renpho, arguing that its competitor displayed artificially inflated “list” or “strikethrough” prices for its Elis 1 smart scale. As part of the challenge, Etekcity provided data it had collected over the course of 16 months showing that although the scale had a list price of \$34.99, the actual selling price ranged between \$19.99 and \$25.99.

In its defense, Renpho pointed to language on Amazon explaining that possible values for “list” prices on Amazon could be “the first price at which [the advertiser] offered the product” and that “[l]ist prices are validated against Amazon recent sales history and external competitor prices to ensure [Amazon] reflect[s] accurate information to [their] customers.”

Renpho argued that its “list” price wasn’t misleading because it was the first price at which it sold its scale and that the price is comparable to or lower than its competitor’s prices. NAD didn’t buy the argument. Although advertisers can generally choose the object of their price comparisons, NAD precedent provides that “list” prices “must not be outlier prices for a given product.”

NAD held that even if Renpho “list price” met Amazon’s definition, “Renpho would still need to ensure that the price reflects a price at which an appreciable number of sales have been made or that the price is otherwise a bona fide price that has been offered for a significant amount of time in the recent, regular course of business.”

In addition to the dispute over “list” prices, Etekcity argued that Renpho’s advertisements of “limited time deals” offering the scale at \$19.99 were also misleading because the scale was often sold at that price. NAD agreed and recommended that Etekcity ensure that “limited time deals” be actually limited in time and that “a reasonable amount of time passes before” it makes a similar claim.

From a defensive perspective, this case suggests that companies may want to review how they formulate their “list” or strikethrough prices. Just because the prices fall within Amazon’s definition doesn’t mean that they’re safe from challenge. From an offensive perspective, the case suggests that NAD may be a good venue for companies that want to challenge their competitor’s pricing practices.