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The Clock Is Ticking on "40% Off": NAD Takes on Comp-Value Pricing, Strikethroughs, and Back-to-Back Countdown Timers

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Aggressive promotional pricing and countdown timers are a popular way to generate sales. But advertisers must ensure that these tactics don't mislead reasonable consumers. In NAD Case No. 7592, Syscend, Inc. d/b/a Guardian Bikes agreed to modify a host of promotional claims in response to an inquiry NAD opened through its routine monitoring program.

To avoid misleading consumers when making savings and related claims, this decision teaches that advertisers should:

- "[I]nclude all material terms, and enable consumers to assess the value of a bargain or sale."
- "[E]nsure that the savings promised are real and not based on a dramatic markdown of a fictitious price."
- Ensure that the subject of a comparative savings claim is clear, whether the comparison is being made to competitors' products (which should generally be comparable merchandise of similar quality), the advertiser's own former price for the identical product, or something else.
- Not claim that an offer is available for a "limited time" unless it actually is and allow a reasonable amount of time to pass before making a similar "limited time" claim again.

NAD opened this monitoring inquiry to examine whether Guardian's advertising conveyed unsupported messages about its savings and limited-time sales. During the inquiry, Guardian agreed to revise its advertising and reported that it had already revised its strikethrough comparative pricing. NAD determined that Guardian's modifications, if presented in a sufficiently clear and conspicuous manner, would address its concerns. For example:

- **"40% off" savings claims.** Guardian advertised "40% OFF All BIKES" and "You've Got 40% OFF," but the savings were measured against a "Comp Value" benchmark built from competitors' prices and explained only in a website pop-up. Guardian agreed to make clear that future "40% off" references reflect an everyday comparison to competitors' bikes.
- **Everyday prices presented as sale prices.** During its Memorial Day sale, Guardian paired "40% off" claims with a limited-time free accessory bundle, even though the bikes appeared to be offered at their everyday prices and only the bundle was time-limited. Guardian agreed to clarify that limited-time promotions are offered in addition to, and separately from, its everyday comp-value savings.

- **Countdown timers.** Guardian promoted a single week-long offer with three consecutive countdown clocks, each starting the moment the last one expired. Guardian committed to ensure that limited-time indicators clearly identify both when a promotion ends and what it includes, and NAD therefore did not separately decide whether the timers were accurate or illusory.
- **Strikethrough pricing.** Gmail promotions and checkout baskets displayed strikethrough prices such as “Now \$249 List Price \$444” and “~~\$546~~ \$329” without disclosing that the higher price was a comp-value figure. Guardian reported that it added conspicuous comparative-value disclosures and worked with advertising platforms to remove or revise ads lacking them.

NAD treats these modifications, for compliance purposes, as though it had recommended them and Guardian had agreed to comply. NAD also recommended that clarifying language appear in the main claim or in a clear and conspicuous disclosure that does not contradict the claim and is repeated wherever necessary. Guardian agreed to comply.

If you have questions about pricing claims (or anything else ad-law related), the [Kilpatrick Advertising Team](#) is here to help.