

Frequently Asked Questions

2. **Our advertising agency has prepared an ad campaign highlighting a “sale price”. Our legal department wants to seek outside legal advice on the requirements for using this term. Why would we need to do this?**

The *Competition Act* prohibits false or misleading advertising representations and has particular provisions relating to sale price claims. Whenever a claim is made that a sale price is a discount or savings compared to the regular or ordinary price, the regular price must be justifiable. The *Competition Act* provides two methods of justifying a regular price:

- **Volume Test:** a substantial volume of the product or service is sold at that regular price or higher, either by the supplier or the market generally. While “a substantial volume” can vary in different circumstances, this will generally be the case where more than 50% of sales were made at the regular price.
- **Time Test:** the product or service has been offered in good faith, at the regular price or higher (and that price was reasonable in the circumstances) for a required time frame, e.g. for more than 50% of the time during the six months before or after the sale price representation.

Compliance is important, since the Act provides significant penalties for breaches of these provisions. As a non-criminal “reviewable matter”, administrative monetary penalties of up to \$750,000 (against an individual) and \$10 million (against a corporation) could apply. As a criminal matter, imprisonment may also apply.

For specific legal advice to ensure that your business is in compliance with the ordinary price claim provisions of the *Competition Act*, contact Carol Anne O’Brien at caob@caobrienlaw.com or (416) 640-7270.