



PR Dept of Consumers Affairs moves to amend the Puerto Rico Regulation against Misleading Practices & Advertisement by this year's Black Friday

The Puerto Rico Department of Consumers Affairs (Department) held public hearings on September 22, 2010 with the intention of amending the PR Regulation Against Misleading Practices & Advertising. The new regulation is scheduled to be rolled out before this year's Black Friday. The proposed regulation contains various changes, the most significant of which will impact the manner in which retailers will need to design, implement and advertise sales of limited-quantity inventory (i.e., "While supplies last sales"). Some of the changes proposed by the Department--if approved--would require retailers to "guarantee" inventory in limited-quantity sales for at least 50% of the term of the offer by providing a raincheck or a substitute product (as defined by the regulation) when the limited quantity good becomes depleted before said deadline. A specific term in "while supplies last sales" may seem a contradiction but bear in mind that the proposed regulation also requires a start and end date on all advertised sales, as well as establish a minimum of hours for sales in general.

Limited inventory sales offers have come a long way in Puerto Rico. There was a time when inventory and closing sales were basically prohibited for certain dates and holidays unless the items on sale were relevant to the particular holiday. Then came a time when limited quantity sales were only allowed on any and all types of products if and when retailers were able to advertise a minimum of 50 items per store. As foreseen, such 50-per store limitation was received by the industry as a restraining jacket. In 2009, the Department lifted the 50-per store limitation, soon to find that certain retailers would advertised a single item available per store on goods that the Department understood were of a generally available nature or while simultaneously putting out large scale advertising campaign which would lead to consumer demand often over exceeding availability of the good. Consumer complaints understandably, soon came forward. The Department found the practice to be misleading in an attempt to eschew the purpose behind rain check regulations.

Cabrera & Rico has filed its review and comments on the proposed regulation with the Department on September 22, 2010 geared toward the drafting of a more practical regulation pertaining limited inventory offers. We have recommended alternate language to the proposed regulation requiring retailer disclosures that will protect retailers' freedom in designing their own offers in response to their known inventory, while preserving consumers' right to have retailers honor duration disclosures on the terms of the particular limited quantity offer.

The Department has received industry comments and recommendation on the proposed regulation and will continue to do so until October 6, 2010.

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