
Rules of
Elected Officials
Division 60—Attorney General
Chapter 9—Fraudulent and Omissive Acts and
Practices

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Title 15—ELECTED OFFICIALS
Division 60—Attorney General
Chapter 9—Fraudulent and
Omissive Acts and Practices

15 CSR 60-9.010 Definitions

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Unless inconsistent with the definitions provided in Chapter 407, RSMo, the following terms and phrases shall mean:

(A) Assertion may be words, conduct or pictorial depiction, and may convey past or present fact, law, value, opinion, intention or other state of mind;

(B) Consumer shall include any person (as defined in section 407.010.5., RSMo) who purchases, may purchase or is solicited for purchase of merchandise; and

(C) Material fact is any fact which a reasonable consumer would likely consider to be important in making a purchasing decision, or which would be likely to induce a person to manifest his/her assent, or which the seller knows would be likely to induce a particular consumer to manifest his/her assent, or which would be likely to induce a reasonable consumer to act, respond or change his/her behavior in any substantial manner.

*AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1994, effective Sept. 30, 1994.*

**Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.*

15 CSR 60-9.020 Deception in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify the meaning of terms whether or not used in the Act. This rule specifies the settled

meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Deception is any method, act, use, practice, advertisement or solicitation that has the tendency or capacity to mislead, deceive or cheat, or that tends to create a false impression.

(2) Reliance, actual deception, knowledge of deception, intent to mislead or deceive, or any other culpable mental state such as recklessness or negligence, are not elements of deception as used in section 407.020.1., RSMo (see *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 SW2d 362 (Mo. App., W.D. 1973); *State ex rel. Ashcroft v. Marketing Unlimited*, 613 SW2d 440 (Mo. App., E.D. 1981); *State ex rel. Webster v. Areaco Investment Co.*, 756 SW2d 633 (Mo. App., E.D. 1988)). Deception may occur in securing the first contact with a consumer and is not cured even though the true facts or nature of the advertisement or offer for sale are subsequently disclosed. *Exposition Press, Inc. v. F.T.C.*, 295 F.2d 869 (2d Cir. 1961).

*AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1994, effective Sept. 30, 1994.*

**Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.*

15 CSR 60-9.030 Deceptive Format

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Practices specified are not intended to be an all inclusive list of practices which are deceptive, but this rule enumerates specific practices which are deceptive and are violative of section 407.020, RSMo.

(1) It is deception for any person in an advertisement or sales presentation to use any format which because of its overall appearance has the tendency or capacity to mislead consumers.

*AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1994, effective Sept. 30, 1994.*

**Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.*

15 CSR 60-9.040 Fraud in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Fraud includes any acts, omissions or artifices which involve falsehood, deception, trickery, breach of legal or equitable duty, trust, or confidence, and are injurious to another or by which an undue or unconscionable advantage over another is obtained.

(2) Fraud, as used in section 407.020.1., RSMo is not limited to common law fraud or deceit and is not limited to finite rules, but extends to the infinite variations of human invention (see *Howard v. Scott*, 225 Mo 685, 125 SW 1158 (1910); *Skidmore v. Back*, 512 SW2d 223 (Mo.App. S.D. 1974); *United States v. Bishop*, 825 F.2d 1278 (8th Cir. 1987); *State v. Shaw*, 847 S.W.2d 768 (Mo. banc 1993)).

*AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1994, effective Sept. 30, 1994.*

**Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.*

15 CSR 60-9.050 False Pretense in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may

specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) False pretense is any use of trick or deception, forgery, or false and fraudulent representation, statement, pretense, instrument or device with the intent to defraud (see *State v. Fields*, 366 SW2d 462 (Mo. 1963)).

(2) Reliance and injury are not elements of false pretense as used in section 407.020.1., RSMo.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1994, effective Sept. 30, 1994.

*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.060 False Promise in General

PURPOSE: The attorney general administers and enforces the provisions of the *Merchandising Practices Act, Chapter 407, RSMo*. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) False promise is any statement or representation which is false or misleading as to the maker's intention or ability to perform a promise, or likelihood the promise will be performed.

(2) Reliance and injury are not elements of false promise as used in section 407.020.1., RSMo.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1994, effective Sept. 30, 1994.

*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.070 Misrepresentation in General

PURPOSE: The attorney general administers and enforces the provisions of the *Merchandising Practices Act, Chapter 407, RSMo*. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) A misrepresentation is an assertion that is not in accord with the facts (see Restatement, Second, Contracts, section 159; *Packard v. K C One, Inc.*, 727 SW2d 435 (Mo.App., W.D. 1987)).

(2) Reliance, knowledge that the assertion is false or misleading, intent to defraud, intent that the consumer rely upon the assertion, or any other capable mental state such as recklessness or negligence, are not elements of misrepresentation as used in section 407.020.1, RSMo. (see *State ex rel. Danforth v. Independence Dodge, Inc.*, 494 SW2d 362 (Mo.App., W.D. 1973); *State ex rel. Ashcroft v. Marketing Unlimited*, 613 SW2d 440 (Mo.App., E.D. 1981); *State ex rel. Webster v. Areaco Investment Co.*, 736 SW2d 638 (Mo.App., E.D. 1988)).

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1993, effective Sept. 30, 1994.

*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.080 Material Untruths

PURPOSE: The attorney general administers and enforces the provisions of the *Merchandising Practices Act, Chapter 407, RSMo*. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Methods, acts, uses and practices specified are not intended to be an all inclusive list of misrepresentation but this rule enumerates specific acts and practices which are misrepresentations and are violative of section 407.020, RSMo.

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to make an untrue statement of material fact.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1994, effective Sept. 30, 1994.

*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.090 Half-Truths

PURPOSE: The attorney general administers and enforces the provisions of the *Merchandising Practices Act, Chapter 407, RSMo*. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application. Methods, acts, uses and practices specified are not intended to be an all inclusive list of misrepresentation, but this rule enumerates specific practices which are misrepresentations and are violative of section 407.020, RSMo.

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they are made, not misleading.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. * Original rule filed March 18, 1993, effective Sept. 30, 1994.

*Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.

15 CSR 60-9.100 Fraudulent Misrepresentations

PURPOSE: The attorney general administers and enforces the provisions of the *Merchandising Practices Act, Chapter 407, RSMo*. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of

certain terms used in the enforcement of the Act and provides notice to the public of their application. Methods, acts, uses and practices specified are not intended to be an all inclusive list of misrepresentation, but this rule enumerates the specific acts and practices which are misrepresentations and are violative of section 407.020, RSMo.

(1) It is a misrepresentation for any person in connection with the advertisement or sale of merchandise to make any fraudulent assertion.

(2) An assertion is fraudulent if the person intends his/her assertions to induce a consumer to purchase merchandise, and the person—

(A) Knows or believes that the assertion is not in accord with the facts; or

(B) Knows that he does not have a reasonable basis for his/her assertion (see Restatement, Second, Contracts, section 162).

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. Original rule filed March 18, 1994, effective Sept. 30, 1994.*

**Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.*

15 CSR 60-9.110 Concealment, Suppression or Omission of Any Material Fact in General

PURPOSE: The attorney general administers and enforces the provisions of the Merchandising Practices Act, Chapter 407, RSMo. The attorney general may make rules necessary to the administration and enforcement of the provisions of Chapter 407, RSMo and, in order to provide notice to the public, may specify meanings of terms used in the Act. This rule specifies the settled meanings of certain terms used in the enforcement of the Act and provides notice to the public of their application.

(1) Concealment of a material fact is any method, act, use or practice which operates to hide or keep material facts from consumers.

(2) Suppression of a material fact is any method, act, use or practice which is likely to curtail or reduce the ability of consumers to take notice of material facts which are stated.

(3) Omission of a material fact is any failure by a person to disclose material facts known

to him/her, or upon reasonable inquiry would be known to him/her.

(4) Reliance and intent that others rely upon such concealment, suppression or omission are not elements of concealment, suppression or omission as used in section 407.020.1., RSMo.

AUTHORITY: sections 407.020, RSMo Supp. 1992 and 407.145, RSMo Supp. 1993. Original rule filed March 18, 1994, effective Sept. 30, 1994.*

**Original authority: 407.020, RSMo 1967, amended 1973, 1985, 1986, 1992 and 407.145, RSMo 1986, amended 1993.*