

DISPLAY AND ADVERTISING OF DISCOUNT PRICES

By Marcelo E. Gallo

As from the issuance of Resolution 7/2002 by the former Secretariat of Competition, Deregulation and Consumer Defense (*Secretaría de la Competencia, la Desregulación y la Defensa del Consumidor*), and up to the effective date of Resolution 915/2017 issued by the Secretariat of Trade (*Secretaría de Comercio*) (on January 3, 2018), even though it basically regulated the “display” of prices, it contained some provisions on “advertising” of prices, and several of them were derogated by the above said Resolution 915/2017.¹

“Display” of prices, as it arises from Resolution 7/2002, is the manner in which the prices of products – or services – must be displayed in the shops.

In general terms the manner in which prices should be displayed in the points of sale is set forth in sections 5th and 6th of Resolution 7.²

Prices should be displayed per unit, in a clear, visible, horizontal and legible way. When prices are contained in lists, said lists must be displayed in the places of access, in plain view of the public and in the points of sale or customer service offices, available for the public (Resolution 7, section 5th).

In the case of personal property, the price should be displayed on each object, article, and product or group or set of the same goods exposed to the public view. When as a result of the

¹ With regard to advertising of prices only the following remain in force in Resolution 7/2002,

(i) the regulations referred to the advertising of financed prices in section 4th (“...When the financed prices are informed through any mass media, the cash price, the advance payment, if any, the number and amount of each installment, and the total financial cost of each advertised financing alternative. Those who market products and/or services under the modality of financed sales in installments cannot include in their advertisements, publicities or messages, under any broadcast medium (either oral or written, through radio, TV or via internet, among others) the phrase “without interest” (or any other similar one), when the financing cost of the product or service is fully or partially passed on to the consumer price, understanding as such, when the cash price is lower than the addition of the value of the installments corresponding to the financed price...”),

(ii) the regulation of section 9th, related also to financed prices (“When the offered financing is not granted by the offeror of the good or service, the name of the entity responsible of it should be clearly informed, both in the display and in the advertising.”) and

(iii) the regulation of section 12 (“Advertisements made by individuals through classified ads per line are excluded from the compliance with section 8th of this Resolution”), the latter refers to a derogated regulation.

² Certain particular cases of prices display are regulated, for certain types of shops and for specific products and services, by sections 13 to 23 of Resolution 7/2002.

nature or location of the goods this is not possible, a list of prices should be displayed (Resolution 7, section 6th).

Section 2nd of Resolution 7 refers to the **display of discounted prices**, that - as regards what concerns us here - sets forth the following:

“PRICES TO BE DISPLAYED

Section 2nd —... Those who offer personal property or services with the price at a discount shall clearly inform the previous price of the product or service together with the price at a discount. The previous price shall be **displayed** by using relevant characters, of good contrast and visibility.” (Emphasis added; it does not appear in the original).

Until the derogation of section 8th of Resolution 7/2002 by section 3rd of the similar one N° 915/2017, the third paragraph of the derogated section 8th also set forth, for the **advertising of prices at a discount**, the obligation to inform the previous price of the product or service jointly with the price at a discount, in similar terms as those used in section 2nd of Resolution 7 for the display of prices.³

Finally, **until the issuance of Resolution 915/2017 both, in the “display” and in the “advertising” of prices at a discount it was mandatory to display the previous price of the product - or service - together with the price at a discount.** This had to be made clearly, by using outstanding, embossed and easily visible characters.

The regulations on advertising contained in Resolution 7/2002 that were derogated by Resolution 915/2017 were replaced by the regulations of sections 4th⁴ and 5th⁵ of the latter resolution.

Section 4th, in its current wording – as regards what concerns us here – provides that the advertising of goods or services must comply with the following requirements:

³ As regards the issue under analysis, at the time of its derogation section 8th of Resolution 7/2002, read as follows: “ADVERTISING. Section 8th —... Those who **advertise** personal property or services with prices at a discount shall clearly display the previous price of the product or service together with the price at a discount. The previous price shall be displayed in embossed and easily visible typographical characters of similar size as those informing the price at a discount ...” (Emphasis added; it does not appear in the original).

⁴ Section that was substituted by section 22 of [Resolution N° 248/2019](#) issued by the Secretariat of Domestic Trade (*Secretaría de Comercio Interior*); published in the Official Gazette on 5/24/2019. It is valid as from the day following its publication in the Official Gazette.

⁵ Section that was substituted by section 23 of [Resolution N° 248/2019](#) issued by the Secretariat of Domestic Trade (*Secretaría de Comercio Interior*); published in the Official Gazette on 5/24/2019. It is valid as from the day following its publication in the Official Gazette.

(a) It must not contain inaccuracies or concealments under the terms of section 11 of decree 274/19, which punishes the so-called “misleading advertising”.⁶

(b) The legends or warnings set forth as mandatory by the national or provincial laws, as well as by their regulations, must be included in the advertising.

(c) The information required for the advertisements set forth in sections 4th and 36th of Act Nº 24,240 (on Consumer Defense) and by Resolution 7/2002 and amendments thereof, related to the essential features of the goods and services that are being advertised, as well as their commercialization conditions, may be furnished to consumers through a web page or toll-free telephone number.

Section 5th of Resolution 915/2017, in its current wording, sets forth – also as regards what concerns us here - that when prices are advertised in the advertisements referred to in section 4th of the resolution, the following information shall, in addition, be contained in the advertisement:

“a. Advertising of non-financed prices: When non-financed prices of goods or services are advertised through any media whatsoever, the following shall be included: (i) **the price expressed in accordance with the provisions set forth in Section 2nd of Resolution Nº 7/02** of the former SECRETARIAT OF COMPETITION, DEREGULATION AND CONSUMER DEFENSE (*SECRETARÍA DE LA COMPETENCIA, LA DESREGULACIÓN Y DEFENSA DEL CONSUMIDOR*), **as regards the payment currency and type of good or service**; (ii) the trademark, model, type or measure; (iii) the country of origin of the good or service; and (iv) the location and extent of the goods and services.” (Emphasis added; it does not appear in the original).

As can be seen, the national regulations that currently regulate advertising of prices say nothing on how to advertise prices at a discount. The referral made by section 5th of Resolution 915/2017 to the provisions of section 2nd of Resolution 7/2002 is expressly limited to “the payment currency” (Argentine pesos) and to the type of good – or service – subject matter of the advertising and to no other aspect.

The obligation to display the previous price of the product or service together with the price at a discount, provided for by the derogated section 8th of Resolution 7/2002, in the wording

⁶ Said section 11 reads as follows: “Misleading advertising. The implementation of any kind of presentation, advertising or publicity which by means of inaccuracies or concealments may induce to mistake, deceit or confusion with respect to the features or properties, nature, origin, quality, purity, mix, quantity, use, price, commercialization or technical conditions for the production of personal property real estates or services is forbidden.”

immediately previous to its derogation by Resolution 915/2017, has not been reestablished by the latter regulation – nor by any other national regulation.

Finally, then, **neither in national jurisdiction nor in the local jurisdictions in which a different provision is not in force, it is mandatory to display in the advertising the previous price of the product – or service - subject matter of the discount** when the price of the product – or service - is advertised as a price at a discount.

On one side, due to the derogation of section 8th of Resolution 7/2002 – which, as I mentioned before, set forth the obligation to inform the previous price of the product or service together with the price at a discount - by section 3rd of Resolution 915/2017 and on the other, by the fact that neither the regulations on advertising of prices made by said Resolution 915 nor in any other national regulation said obligation has been reestablished.

By contrast, said obligation continues in force, when prices at a discount are displayed in the shops, as required by the regulation of section 2nd of Resolution 7/2002.

It might be possible that some Enforcement Authorities of the regulations on Fair Commercial Practices or Consumer Defense may have a different interpretation than the preceding one. And eventually they may try to attribute an infringement for lack of information in the advertisement of prices at a discount with respect to the previous prices together with the price at a discount, setting the grounds for such attribution, for example, in an alleged non-compliance with section 2nd of Resolution 7/2002 or of the duty to provide information.

But, said eventual attribution should not be sustained. Because, again, the national regulation that expressly provided for the obligation has been derogated and not replaced by a similar one. And section 2nd of Resolution 7/2002 is not referred to the advertising of prices, but to their display at the points of sale.

Notwithstanding the foregoing as regards the national regulations, I highlight that– in my opinion- **within the scope of the Autonomous City of Buenos Aires the previous price of the product or service together with the price at a discount must be informed in the advertisement of prices at a discount**, when said advertisement is exclusively released in the Autonomous City; but not when it is made in media distributed or broadcasted in at least another local jurisdiction other than the Autonomous City. The foregoing, on the basis of the provisions set forth in

section 22 of C.A.B.A. Act N° 4827, that provides on the subject under similar terms as those set forth by the derogated section 8th of Resolution 7/2002.⁷

The existence of different obligations in prices advertising regimes in different jurisdictions makes their performance more difficult and expensive for medium and large companies and turns – almost - impossible the performance of said regimes for shopkeepers and businessmen, who may hardly have the necessary human resources and materials to be aware of them.

That is the reason why it would be desirable for the Enforcement Authorities of the regulations – in the case - on advertising of prices, to set uniform criteria and similar, clear and especially, reasonable legislations, which would make easier for the relevant parties, the performance of the regulations and for consumers, the knowledge of the information.

In such sense, I find useless to force the inclusion in advertising of very long paragraphs of “legal phrases”, with information that almost nobody reads. I believe, finally, that as regards the legal information in advertising it is absolutely true that “less is more”.

Buenos Aires, January 28, 2020.

⁷ C.A.B.A. Act N° 4827, section 22, relevant part: “...Those who advertise personal property or services with prices at a discount shall clearly display the previous price of the product or service together with the price at a discount.”
