

or imprisoned not more than one year, or both.

Daniel S. Goldin,

Administrator.

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FEDERAL TRADE COMMISSION

16 CFR PART 256

Rescission of Guides for the Law Book Industry

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: On March 18, 1999, the Commission published a **Federal Register** document initiating the regulatory review of the Federal Trade Commission's ("Commission") Guides for the Law Book Industry ("Law Book Guides" or "Guides") and seeking public comment. The Commission has now completed its review, and this document announces its decision to rescind the Guides and removes the Guides from the Code of Federal Regulations.

EFFECTIVE DATE: January 19, 2000.

ADDRESSES: Requests for copies of this notice should be sent to the Consumer Response Center, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The notice is available on the Internet at the Commission's website, <http://www.ftc.gov>.

FOR FURTHER INFORMATION CONTACT: Edwin Rodriguez, Attorney, Federal Trade Commission, Division of Enforcement, 600 Pennsylvania Avenue NW, S-4302, Washington, DC 20580, (202) 326-3147, e-mail Erdriguez@ftc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of the Commission's ongoing review of all current Commission rules and guides, the Commission published a **Federal Register** notice on March 18, 1999, 64 FR 13369, seeking comments about the Law Book Guides' overall costs and benefits, and the continuing need for the Guides. The Law Book Guides contain 17 sections that provide guidance regarding the sale of legal reference materials to the legal profession, law schools, and other consumers. The 17 sections cover practices ranging from the marketing of legal reference materials to consumers, to the supplementation of these materials, and billing practices employed by sellers, and specify detailed disclosures that should be

made in direct mail promotional materials and oral representations soliciting the sale of legal reference materials.

The Commission issued the Guides in 1975, 40 FR 33436, to assist the legal publication industry with compliance with section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45. The Commission issued the Guides following consideration of public comments submitted in response to a request from purchasers and their representatives, such as the American Association of Law Libraries. Earlier, Raymond M. Taylor, then Librarian for the North Carolina Supreme Court, had published an article detailing alleged abuses in the legal publishing industry.¹ These abuses include practices such as putting new titles and new binders on old material, misrepresenting that certain publications are "new" or "revised or enlarged," misrepresenting the jurisdictional application of publications, adding remotely related books to established sets to assure their automatic sale, failing to disclose prices, failing to issue supplements for publications that otherwise soon would become obsolete. The article suggested, among other things, that the Commission should prescribe appropriate practices that industry should follow in the publication, advertising, and sale of legal publications.

II. Comments Received

The Commission received five comments in response to the **Federal Register** notice.² All of the comments state that the Guides serve a useful purpose and that there is a continuing need for them. Four comments assert that there continue to be abuses or other problems in the legal publications industry,³ such as failing to disclose in

advertisements the manner in which electronic versions of legal reference materials vary from their print counterparts,⁴ failing to disclose prices in advertisements,⁵ or sending and billing customers for materials only remotely related to what they have purchased.⁶ DeVaun states that mergers in the legal publishing industry have caused the accuracy of information provided by legal publishers' customer service personnel to suffer. Several comments suggest that the Commission adopt revisions to the Guides to recognize certain current market practices, including the distribution and licensing of electronic legal resources (e.g., those provided on CD-ROM or by other electronic means).

III. Commission's Determinations

After extensive review of the Guides and their effect on the legal reference industry and purchasers of legal reference materials, the Commission has decided that the Guides no longer are necessary to promote compliance with section 5 of the FTC Act. For the reasons set forth below, the Commission has determined to rescind the Guides.

First, the Guides are overly regulatory in that they include significantly more detail regarding suggested disclosures and other practices than the Commission would promulgate today. Further, repealing the Guides would not impair the Commission's ability to prosecute abuses in the legal reference materials industry, if necessary. Under the FTC Act the Commission may seek administrative or federal district court orders against companies or individuals who engage in unfair or deceptive practices,⁷ prohibiting future violations, and providing other relief such as consumer redress, disgorgement of ill-gotten gains, consumer notification, and civil penalties, in some cases. The Commission, for example, could prosecute sellers who failed to clearly and conspicuously disclose material information or sent or billed customers for unordered materials. Such practices would violate section 5 of the FTC Act, or section 3009(a) of the Postal Reorganization Act of 1970, 39 U.S.C. 3009, which declares that mailing, or

¹ Raymond M. Taylor, *Law Book Consumers Need Protection*, 55 A.B.A.J. 553 (1969).

² The Commission's request for public comment elicited comments from: (1) Linda DeVaun, Technical Services Librarian for Sonnenschein, Nath & Rosenthal, Chicago, IL ("DeVaun"), #00001; (2) Robert L. Oakley, Washington Affairs Representative, American Association of Law Libraries (Mr. Oakley is also director of the law library and professor of law at the Georgetown University Law Center) ("AALL"), #00002; (3) Carl C. Monk, Executive Director, Association of American Law Schools ("AALS"), #00003; (4) Lorna Tang, University of Chicago Law Library ("Tang"), #00004; and (5) Kenneth H. Ryesky, attorney and adjunct professor of law ("Ryesky"), #00005. These comments are on the public record in file number P994243 as document numbers B25345900001 through B25346100005. They are cited in this notice as #00001, #00002, etc. The comments are available for viewing in Room 130 at the Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, from 8:30 am to 5 pm, Monday-Friday.

³ DeVaun, #00001; ALL, #00002; Tang, #00004; Ryesky, #00005.

⁴ DeVaun, #00001.

⁵ AALL, #00002, at 7.

⁶ Tang, #00004.

⁷ See Federal Trade Commission Policy Statement on Deception, *appended to Cliffdale Associates, Inc.*, 103 F.T.C. 110, 174-184 (1984); and Federal Trade Commission Policy Statement on Unfairness, *appended to International Harvester Co.*, 104 F.T.C. 949, 1070-76 (1984).

billing for, unordered merchandise constitutes a violation of section 5 of the FTC Act.⁸ Prior cases brought by the Commission to enforce the Postal Reorganization Act and Section 5 of the FTC Act provide guidance to industry regarding the illegality of sending and attempting to collect for unordered merchandise.⁹

Second, guides are particularly useful when they resolve uncertainty over what claims are likely to be considered "unfair or deceptive" under Section 5. Several of the provisions in Guides, however, do little more than advise against making untrue or deceptive claims, or failing to disclose material information where silence would be deceptive.

Moreover, the Commission understands from the comments that the industry is quickly evolving into electronic media and increasingly using licensing techniques to distribute legal publications, which present new technological and intellectual property issues for consideration. Thus, although the Guides provide overly detailed suggestions regarding presale disclosures, they are so narrowly focused that they do not include these or other new and perhaps more important areas of concern to sellers and purchasers.

Third, there appears to be no justification for singling out this

particular industry for unusually detailed and specific advice, or why legal reference material purchasers are in greater need of protection than purchasers in other industries. Industry associations, or purchaser associations such as AALL or AALS, can adopt guides of their own to educate sellers and purchasers about the information purchasers of legal reference materials need to make purchasing decisions. Indeed, eliminating the Guides may provide the incentive for these associations to develop their own guides that address their members' most important concerns.

Based on comments, the Commission has concluded that there no longer is a need for the Guides. The Commission, therefore, has rescinded the Guides.

List of Subjects in 16 CFR Part 256

Advertising, Law, Trade practices.

PART 256—[REMOVED]

The Commission, under the authority of Sections 5(a) and 6(g) of the Federal Trade Commission Act, 15 U.S.C. 45(a) and 46(g), amends chapter I of title 16 in the Code of Federal Regulations by removing part 256.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00-994 Filed 1-18-00; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 00-4]

RIN 1515-AC29

Boarding of Vessels in the United States

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document, as a primary focus, amends the Customs Regulations regarding the boarding of vessels arriving in ports of the United States. These amendments are made to implement amendments to the underlying statutory authority enacted as part of the Customs Modernization Act, as well as to reflect policy determinations necessitated as a result of those amendments. To this same end, certain general amendments are made to the regulations concerning vessel entry and clearance as well as the issuance of

permits to lade and unlade merchandise.

EFFECTIVE DATE: February 18, 2000.

FOR FURTHER INFORMATION CONTACT:

Legal aspects: Larry L. Burton, Office of Regulations and Rulings, 202-927-1287.

Operational aspects: Robert Watt, Office of Field Operations, 202-927-3654.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, amendments to certain Customs and navigation laws became effective as the result of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182), Title VI of which is popularly known as the Customs Modernization Act (the Act). Sections 653 and 656 of the Act significantly amended the statutes governing the entry and the lading and unlading of vessels in the United States. These operations are governed, respectively, by sections 434 and 448 of the Tariff Act of 1930, as amended (19 U.S.C. 1434 and 1448).

Prior to the subject amendments, the entry of vessels of the United States and vessels of foreign countries had been governed by separate statutes (19 U.S.C. 1434 and 1435), neither of which included elements concerning preliminary vessel entry or the boarding of vessels. The Act repealed 19 U.S.C. 1435 and amended 19 U.S.C. 1434 to provide for the entry of American and foreign-documented vessels under the same statute. Additionally, the amended 19 U.S.C. 1434 now provides authority for the promulgation of regulations regarding preliminary vessel entry, and while neither mandating boarding for all vessels nor specifying that optional boarding must be accomplished at any particular stage of the vessel entry process, the amended law does require that a sufficient number of vessels be boarded to ensure compliance with the laws enforced by the Customs Service.

The general authority provided for Customs to board vessels is found in section 581, Tariff Act of 1930, as amended (19 U.S.C. 1581). Prior to amendment, 19 U.S.C. 1448 as previously cited had linked the granting of preliminary vessel entry to a mandatory boarding requirement and physical presentation of manifest documents to a Customs boarding officer. The amended 19 U.S.C. 1448 no longer contains provisions regarding preliminary vessel entry, vessel boarding, or manifest presentation, all of which are now provided for in other statutes. The statute now provides that Customs may electronically issue permits to lade or unlade merchandise

⁸ See 35 FR 14328 (1970). Under this law, sellers, other than charitable organizations soliciting contributions, may not ship unordered merchandise to consumers unless the recipient has expressly agreed to receive it or unless it is clearly identified as a gift, free sample, or the like. In addition, sellers cannot try to obtain payment for or the return of the unordered merchandise. Consumers who receive unordered merchandise are legally entitled to treat the merchandise as a gift. The Postal Reorganization Act refers to "mailing" of unordered merchandise. The Commission, however, has explained that the application of Section 5 of the FTC Act to such practices is not limited to unordered merchandise distributed through the U.S. mail, 43 FR 4113 (1978).

⁹ E.g., *Hachette Book Group USA, Inc.*, No. 39CV00116 (D. Conn. 1994) (settlement in which FTC charged that defendants failed to notify consumers that they would receive yearbooks or supplements unless they returned a mail cancellation card, failed to obtain consumers' agreement to return cancellation cards if they did not want the merchandise, and mailed merchandise and bills to consumers who had not placed orders; settlement included a \$200,000 civil penalty); *Field Publications Ltd. Partnership*, No. H-90-932 PCD (D. Conn. 1990) (settlement in which FTC charged that Field shipped unordered books to subscribers who had agreed to receive another series of books as part of a continuity plan; settlement included a \$175,000 civil penalty); *Standard Reference Library, Inc.*, 77 F.T.C. 969, 976 (1970) (consent order prohibited respondents from representing that consumers' failure to return rejection cards or take any affirmative action to prevent the shipment of merchandise constituted a request to receive merchandise where consumers had not agreed to take on that obligation).