



13 August 2012

By email: policy.submissions@asic.gov.au

Geoffrey Leveritt
Senior Lawyer, Strategic Policy
Australian Securities and Investments Commission
GPO Box 9827
Melbourne VIC 3001

Dear Mr Leveritt

ASIC Consultation Paper 178: Advertising Credit Products and Credit Services

The Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on *ASIC Consultation Paper 178: Advertising Credit Products and Credit Services: Additional Good Practice Guidance*. We appreciate the opportunity to make this submission later than the original closing date.

We strongly support draft Regulatory Guide 234. In particular we support ASIC's position that advertisements should give clear, accurate and balanced messages and allow consumers to make appropriate decisions, rather than simply avoid being misleading or deceptive.¹

We have made some recommendations and comments on particular sections below.

About Consumer Action

Consumer Action is an independent, not-for-profit, campaign-focused casework and policy organisation. Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. Consumer Action is also a nationally-recognised and influential policy and research body, pursuing a law reform agenda across a range of important consumer issues at a governmental level, in the media, and in the community directly.

We also operate MoneyHelp, a not-for-profit financial counselling service funded by the Victorian Government to provide free, confidential and independent financial advice to Victorians experiencing financial difficulty.

¹ Draft RG 234.1-234.6

Consumer Action Law Centre

Level 7, 459 Little Collins Street Telephone 03 9670 5088
Melbourne Victoria 3000 Facsimile 03 9629 6898

info@consumeraction.org.au
www.consumeraction.org.au

Comments on particular parts of the draft Regulatory Guide

Warnings, disclaimers and fine print

We strongly support example 16, which warns provider to use terms such as 'up to' or 'from' with caution because the overall impression of the advertisement may be that the benefit advertised is available more widely than is the case.

The terms 'up to' or 'from' indicate that the advertised benefit or price may not apply to all of the products, but they do suggest that all consumers are eligible to receive the benefit if they purchase an eligible product. As example 16 notes, a benefit may not be available on a loan if the amount borrowed is below a certain amount. Similarly, advertised interest rates on term deposit are usually not available without a minimum deposit. If the benefit is not this widely available, these terms should not be used unless qualified.

We are aware that the terms 'up to' or 'from' may be technically correct even where used to describe an offer that is not available to all consumers. However, the same can be said of an advertisement which makes a headline claim which is heavily qualified later in very small print. What is relevant is that in both circumstances a misleading impression is created (and indeed that the intent is to give a misleading impression) and this hinders the ability of consumers to make appropriate decisions.

Fees, costs and novel features

Example 24 (at RG 234.54) regards the omission of details on a novel feature and reads as follows:

Advertisements for a credit card promoted a single annual percentage rate. In fact, while that rate applied for purchases, a different and higher rate applied to cash advances. At the time, differential pricing based on the type of transaction was relatively new for credit cards, and in that context, ASIC was particularly concerned that the advertisements failed to refer to the multiple rates.

This warning should be replicated for all advertisements, not only those with novel features. The advertisement described in example 24 is not complete or balanced even if many consumers are aware that credit cards have different rates for different transactions. If not challenged, misleading or unbalanced advertising can become industry practice and is then much harder to question. Some recent examples are the use of the term 'cap' in mobile phone plans (when 'cap' referred to a price floor rather than a ceiling, as would be generally understood by the term), and the term 'interest free' in credit advertising (where extra fees apply and an 'interest free' product is no cheaper than any other).

Interest rates and 'micro lenders'

Example 29 explains that credit providers should not advertise low or 0% interest suggesting a low overall cost when the product contains significant other fees and charges. In the example, the credit provider is a 'micro lender'.

While we agree with the substance of the example, we object to the use of the term 'micro lender' when referring to a provider of high cost short term loans or payday loans. The terms 'microfinance' (and similar) usually imply that a product is not for profit or has a public interest or economic development objective. The payday lending industry has appropriated this language as

part of its response to criticism but it does not accurately describe the products payday lenders provide or the mission of the lenders. Indeed, the use of the term 'micro lender' by a commercial lender could be argued to be misleading given the well-developed meaning of microfinance. The *Consumer Credit Legislation Amendment (Enhancements) Bill 2012* uses the term 'Small Amount Credit Contract' to describe loans of \$2000 or less for a term of one year or less. We think this is a more appropriate term.

Target Audience and Suitability

We strongly support of the discussion at 234.102 - 234.103 which warns businesses not to advise or imply that a product will be suitable for them. However, we suggest that more detail or a further example is added to acknowledge that this warning applies to internet advertisements.

By searching on google.com.au for a few different search terms we found many examples of advertisements from credit providers suggesting that no credit checks were required or unrealistically fast approval times. Among other examples, we found advertisements which promised:

- 'instant' approval of a credit card
- 15 minute application and a 60 second decision for loans of between \$3000-15000
- 30 minute approval for loans of between \$2000 and \$30000 and 'Bad Credit OK'²

Misrepresenting the nature of the product

We strongly support example 44 (at RG 234.103) which notes that advertising should not promote the availability of a loan or 'finance' where the price or payment amount promoted is in fact a lease. However, we believe this discussion should be extended to cover in more detail the particular problems with the advertising of consumer leases.

For example, Radio Rentals promotes a 'Rent, Try, \$1 Buy' option on its homepage³ and on TV. The '\$1 Buy' element of the deal is qualified and would seem to most consumers to be highly unusual—the goods available to buy are not necessarily the goods rented but goods that are 'similar to [the] rented goods in age, dimension and features'. The \$1 buyout is only available after renting for 36 months.

The details of the '\$1 Buy' transaction are so strange because the arrangement Radio Rentals is offering is designed to appear to be something it is not. The structure of the bargain and the marketing around it makes the transaction seem to be a sale by instalments when it is in fact a consumer lease—providing that the goods bought are only 'similar' to the rented goods is designed to ensure the consumer does not accrue ownership rights so the transaction does not become a sale by instalments. Radio Rentals chooses to offer a consumer lease because the regulatory burden is lighter, but the result is a deal which is inherently confusing and is arguably designed to be confusing.

We accept that this raises broader policy questions about the regulation of consumer leases which is beyond the scope of the consultation paper and ASIC's powers as a regulator. However, this is also a problem of poor advertising. Radio Rentals' advertisements promoting the 'Rent,

² We advertisements described above were results of searches for 'fast loan' and 'credit card' on google.com.au on 16 July 2012.

³ <http://www.radio-rentals.com.au/>

Try, \$1 Buy' include a disclaimer explaining the details of the transaction, however the print is very small and not prominent. On the current TV commercial, the print is on screen while images of goods for lease appear and change, and words and information such as the price per day and Radio Rentals' phone number appear in much larger type. On the homepage, the text is again very small and is in a colour less prominent than the headline offer.

Overall, we think it would be hard to argue that these advertisements give clear, accurate and balanced messages or that they would help consumers make decisions. We suggest the draft Regulatory Guide be amended to include more detail on advertising consumer leases and further examples of unacceptable misrepresentations of the nature of the product.

More detail would also be useful to acknowledge the broader ways in which consumers are given the impression that they will receive a loan rather than a lease. For example, Motor Finance Wizard promotes its phone number as '1800 CAR LOAN' despite typically offering leases.

Distinguishing advertising and program content

We agree with the comments at RG 234.128 - 234.130 on the importance of ensuring advertising should be clearly distinguished from program or editorial content. However, we believe the discussion needs to make clear that this applies not only to news and current affairs but also to product placement in other programs.

Please contact David Leermakers on 03 9670 5088 or at david@consumeraction.org.au if you have any questions about this submission.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody
Director, Policy and Campaigns



David Leermakers
Senior Policy Officer