

HOUSE No. 254

The Commonwealth of Massachusetts

PRESENTED BY:

Anne M. Gobi

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act regulating material representations in advertising.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Anne M. Gobi	5th Worcester
Todd M. Smola	1st Hampden
Denise Provost	27th Middlesex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 243 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT REGULATING MATERIAL REPRESENTATIONS IN ADVERTISING.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The Commonwealth of Massachusetts finds the following:

2 1) Consumers are entitled to proper advertising disclosures.

3 2) The disclosure of qualifying information is necessary to prevent an ad from being deceptive and
4 disclosures should be effectively communicated to consumers.

5 Section 2 Definitions

6 (A) The term “advertisement” means any oral, written, graphic, or pictorial representation made by a
7 seller in the course of the solicitation of retail business or which encourages a person to purchase a retail
8 product. Advertisement includes any representation made in a newspaper, magazine, or other publication
9 or on radio or television or contained in a notice, handbill, sign, billboard, banner, poster, display,
10 circular, pamphlet, catalog or letter or printed on or contained in any tag or label which is attached to or
11 accompanies any product offered for sale. Advertisement includes any representation disseminated
12 within Massachusetts if the advertisement is directed to consumers in Massachusetts.

13 (B) The term “disseminate” means to publish, broadcast, deliver, circulate, mail, display and post or
14 otherwise distribute to a consumer.

15 (C) The term “clear and conspicuous” means that the material representation being disclosed is of
16 such size, color, contrast or audibility and is so presented as to be readily noticed and understood by a
17 reasonable person to whom it is disclosed.

18 (D) The term “material representation” means any oral, written, graphic or pictorial claim or
19 statement, the disclosure of which has the tendency or capacity to influence the decision of reasonable
20 buyers or reasonable prospective buyers whether to purchase the product.

21 (E) The term “representation” means any oral, written, graphic or pictorial claim or statement.

22 (F) The term “seller” means any person who offers any product for sale, rental or lease. “Seller”
23 excludes any authorized representative of a seller; however “seller” shall exclude an individual not
24 engaged in trade or commerce under M.G.Lc.93A, who places a classified advertisement in a newspaper,
25 magazine or other publication.

26 Section 3 Television Advertisements

27 A) Material representation must be displayed in type not less than 14 scan lines in height

28 B) Material representations must contain letters of a color or shade that contrasts with the
29 background, and the background may not consist of colors and/or images which obscure or detract
30 attention from the material representation.

31 C) Material representations must appear on the screen for duration equal to at least one second per
32 three words of the material representation but not less than five seconds.

33 Section 4 Radio and Audio Advertisements

34 A) Material representations must be at an audible decibel level

35 B) Material representations must be delivered at a speed equal to or less than any other
36 representation contained in the advertisement.

37 C) No ancillary words or sounds shall be used to obscure or distract attention from the material
38 representation or detract from its meaning or importance.

39 Section 5 Printed, Written, Typed or Graphic Advertisements

40 A) Material representation must appear in a minimum of eight point type.

41 B) Material representations must be in close proximity to the information which it modifies and is
42 not obscured by any ancillary information.

43 C) Material representations must be printed in letters which noticeably contrast with the background.

44 Section 6 Enforcement

45 Any violations of this Act shall be deemed to be an unfair and deceptive trade practice and subject to any
46 and all provisions of Chapter 93A