

HOUSE No. 1879

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 adoption of the accompanying bill:

An Act regulating material representations in advertising.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Anne M. Gobi</i>	<i>5th Worcester</i>	<i>1/20/2011</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/2/2011</i>

HOUSE No. 1879

By Ms. Gobi of Spencer, a petition (accompanied by bill, House, No. 1879) of Anne M. Gobi and Todd M. Smola relative to unfair and deceptive trade practices involving material representations in advertising. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 254 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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
4 deceptive and disclosures should be effectively communicated to consumers.

5 Section 2 Definitions

6 (A) The term “advertisement” means any oral, written, graphic, or pictorial
7 representation made by a seller in the course of the solicitation of retail business or which
8 encourages a person to purchase a retail product. Advertisement includes any representation
9 made in a newspaper, magazine, or other publication or on radio or television or contained in a

10 notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, catalog or letter or
11 printed on or contained in any tag or label which is attached to or accompanies any product
12 offered for sale. Advertisement includes any representation disseminated within Massachusetts
13 if the advertisement is directed to consumers in Massachusetts.

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

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

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

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

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

28 Section 3 Television Advertisements

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

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

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

36 Section 4 Radio and Audio Advertisements

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

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

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

42 Section 5 Printed, Written, Typed or Graphic Advertisements

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

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

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

48 Section 6 Enforcement

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