



Live TV Marketing Guidelines

The Electronic Retailing Association believes that consumer confidence is the key to the continued growth and success of the electronic retailing industry. In order to encourage fair, ethical, and responsible marketing practices that will promote consumer confidence in electronic retailing, ERA has adopted the following "Live TV Marketing Guidelines," which apply to all live, direct response television shopping programming ("Live DRTV") produced or disseminated by ERA members. These Live TV Marketing Guidelines in some respects exceed legal requirements, and in some respects constitute industry best practices, which may exceed reasonable and acceptable practices, and accordingly these Live TV Marketing Guidelines should be viewed as aspirational.

General Principles

ERA members engaged in marketing by means of Live DRTV ("Live DRTV Marketers" or "Marketers") should be aware of the laws and regulations that govern advertising and marketing practices, and should conduct their business in compliance with those laws and regulations.

Live DRTV Marketers should deal fairly and equitably with consumers. Live DRTV Marketers should operate with a sense of responsibility to their viewers, customers and consumers in general.

Live DRTV Marketers should live up to the reasonable expectations of their customers, and should ensure that they are not responsible for delivering unsuitable or inappropriate materials to their customers.

All Live DRTV should include complete, fair and accurate descriptions of all products or services offered for sale. Such descriptions should enable viewers to make informed decisions as to whether or not to purchase the products or services.

Live DRTV Marketers should not deliberately or inadvertently mislead viewers or misrepresent products or services in any way.

Live DRTV Marketers should encourage the companies and individuals with whom they do business to follow the principles set forth in these Live TV Marketing Guidelines, and should not do business with companies or individuals who engage in dishonest or unethical business practices.

General Guidelines for Advertising

Live DRTV Marketers shall not produce or disseminate any Live DRTV that has a deceptive format (i.e., that appears to be a bona fide information or entertainment program created by a disinterested party solely for the purpose of providing information or entertainment) or that otherwise purports to be something other than an advertisement. All Live DRTV should include a clear and prominent audio or video disclosure identifying the Marketer and any third party who sponsored, paid for or furnished the program.

All statements made in Live DRTV shall be truthful and not misleading, whether or not they are specifically made with respect to the product or service being marketed.

Live DRTV must not contain deceptive implied claims, or omit material information, the disclosure of which is necessary to prevent the marketing from being deceptive. Any necessary qualifying disclosures should be legible (or audible) and understandable.

Comparative claims in Live DRTV should inform buyers of the benefits of the Marketer's product or service, and not run down a competitor's product or service. Comparisons should be presented fairly and accurately rather than in a contemptuous manner intended to degrade the competitive product or service.

All statements in Live DRTV regarding prices and costs must be truthful and substantiated. For example, if a Marketer claims that the current price for a product or service is less than a former price, the former price must be a bona fide price at which the product or service actually was offered for sale. Comparative price or value claims should compare only actual prices or values for the same or comparable products or services and must not be otherwise misleading. When "free" or similar representations are made, any conditions or obligations upon which receipt of the "free" item are contingent should be disclosed, and the cost of the "free" merchandise should not be recovered by marking up the regular price of the product or service that must be purchased in order to receive the "free" product or service, or by lowering the quality or quantity of the product or service that must be purchased.

Live DRTV should not disparage any person or group on the grounds of race, religion, national origin, gender, age, or sexual orientation, or include indecent or offensive content.

Particular care shall be taken in live DRTV for products or services designed for use by children. Any such marketing should comply with ERA's "Guidelines for Marketing Children's Products" and with the "Self-Regulatory Guidelines for Children's Advertising" issued by the Council of Better Business Bureaus' Children's Advertising Review Unit. No Live DRTV shall be produced primarily for an audience of children 12 years old and under.

Claims Substantiation

A Live DRTV Marketer must have a reasonable basis, consisting of competent and reliable evidence, for all express or implied objective claims made for a product or service. Documentation or other support for all such claims should be in the possession of the Marketer at the time the claims are first made.

If Live DRTV contains an express or implied representation that a claim's truth has been scientifically established or proven, the Marketer must possess a sufficient level of evidence to convince the relevant scientific community of the claim's truthfulness. At a minimum, a Live DRTV Marketer should always have the amount and kind of prior substantiation that it claims it has.

Particular care should be taken in Live DRTV to substantiate health or safety claims for products such as dietary supplements, drugs, diet and exercise products, and medical devices. All representations regarding the safety or efficacy of such products or services must be substantiated by competent and reliable scientific evidence.

Demonstrations in Live DRTV of a product being marketed or a competing product should not misrepresent any material feature of that product or the product's actual performance in real-life conditions. All demonstrations must actually take place as represented or the details of the demonstration (such as the actual elapsed time) must be disclosed.

Comparative advertising claims, whether about a competing product or service or the Marketer's own product or service, must be truthful and substantiated in the same manner as any other objective claim. Comparative tests and demonstrations of competing products or services must take into account the purpose for which the products or services are intended,

the manner in which they are normally used by the consumer, and the instructions for use that accompany the products or services.

Testimonials and Endorsements

Taped or planned testimonials and endorsements in Live DRTV may not make representations that would be deceptive or that could not be substantiated if the Marketer made them directly.

Testimonials may not be portrayed as evidence to substantiate claims in themselves, and any opinions expressed in testimonials must be supported by suitable substantiation. Any claims made in testimonials must comply with the other provisions of these Live TV Marketing Guidelines.

All taped or planned testimonials from consumers in Live DRTV shall reflect the honest opinions, findings, beliefs or experiences of the consumers and be generally representative of the results to be expected by the average consumer. Alternatively, the Marketer may clearly and prominently disclaim that the experiences of the consumer offering the testimonial are not representative of the results to be expected by the average consumer, or disclose what results the average consumer can expect.

If a claim is made in a live or unrehearsed testimonial or endorsement that does not meet the standards for claims made by the Marketer, then the Marketer should promptly disclaim and correct the claim.

If Live DRTV represents that an endorser uses the endorsed product or service, then the endorser must have been a bona fide user of the product or service at the time the endorsement was made. The Marketer should not continue to use an endorsement without reason to believe that the endorser remains a bona fide user of the product or service.

When Live DRTV represents that an endorser is an expert, the endorser's qualifications must in fact give him or her the expertise that he or she is represented as possessing. An expert's endorsement must be supported by an actual evaluation, examination or testing of the product or service he or she is endorsing that is at least as extensive as an expert in that field would normally conduct in order to support the conclusions presented in the endorsement. A Live DRTV Marketer should not continue to use an expert endorsement without reason to believe that the views expressed in the expert's endorsement continue to represent his or her views.

Any "material connection" between a Live DRTV Marketer and an endorser that is not reasonably expected by the audience and that would have a significant effect on the weight or credibility given to the endorsement by that audience - e.g., a family or business relationship - must be disclosed. (Audiences expect expert or celebrity endorsers to be compensated, so payments to expert or celebrity endorsers need not be disclosed.)

Disclosure of Costs and Other Material Terms of an Offer

The terms of an offer should be sufficiently clear and complete so that the average consumer will understand what is being offered, what it costs, and what his or her ongoing commitments or obligations are, if any, prior to purchase of the product or service being marketed. The Marketer should make it clear if accessories or other items depicted or mentioned in Live DRTV are optional and not included in the price. All costs related to an offer (including postage and handling, taxes, etc.) must be disclosed.

When the price is payable in installments, the total price to be paid by the customer should be disclosed, as well as the amount of each installment and the frequency with which those installments are to be paid.

Offers involving continuity programs should comply with ERA's "Guidelines for Continuity Programs." The material terms and conditions of a continuity program must be conveyed to consumers before their orders are accepted.

The cost of calling a 900 number or an audiotext service must be clearly and prominently disclosed in Live DRTV. Callers to a pay-per-call service must hear an introductory disclosure message, or "preamble," at the beginning of their calls that discloses the cost of the call and contains the other disclosures prescribed by law, and should be given the opportunity to terminate the call during the preamble without incurring any charge. Live DRTV Marketers should not place any charges on telephone bills when they know or should have known that the charge was not authorized by the consumer responsible for paying the telephone bill.

Warranties

Claims in Live DRTV relating to a product warranty must be truthful and consistent with the terms of that warranty, and the Marketer should disclose any material conditions, limitations, or charges relating to the warranty. Any warranty offered with a consumer product should be properly designated as "full" or "limited," and should contain the basic information required by law (e.g., what the warranty covers and does not cover, what the period of coverage is, what the warrantor will do to correct problems, how the customer can obtain warranty service, and how state law affects the customer's rights under the warranty). Any requests for repairs, replacement products, or refunds under the terms of a warranty should be honored promptly.

A copy of the warranty must be made available free of charge to any consumer who requests one in writing, and Live DRTV that mentions a warranty should tell consumers how to obtain a copy of that warranty.

Orders, Fulfillment, Money-Back Refunds, and Collection and Use of Personal Information

Live DRTV Marketers should ensure that they have adequate resources to enable them to receive and process the number of orders they anticipate, and should process orders in a timely manner. Facilities for viewers to order products or services should be available, at a minimum, at all times when the products or services are offered by Live DRTV. Marketers should ensure that they provide customers with all information required by law at the time the order is made.

A Marketer should not offer merchandise for sale by Live DRTV unless it has a reasonable basis to believe that it will be able to ship that merchandise within the time specified in the offer (or, if no time is specified in the offer, within 30 days after receipt of an order). A Marketer should not charge a customer's credit card account, debit a customer's checking account, or cash a customer's check or money order unless it has shipped or otherwise provided the goods ordered, or is prepared to ship or otherwise provide those goods immediately. If after receiving an order the marketer learns that the product cannot be shipped on a timely basis, it should notify its customers of that fact, allow them to cancel their orders if they wish, and make any necessary refunds promptly.

A Marketer should process and fulfill all orders promptly. A Marketer should ship products to customers in the exact quantities they have been ordered. A Marketer should not substitute merchandise that materially differs from that ordered by a customer unless the customer agrees to the substitution.

A Marketer who offers a satisfaction or "money-back" guarantee to its customers should honor valid refund requests promptly. Any Live DRTV that mentions a money-back guarantee should disclose any material limitations or exceptions that may apply to that guarantee (e.g., "less shipping and handling"). Any Marketer who offers a money-back guarantee should maintain an adequate reserve or otherwise ensure the availability of funds to satisfy refund requests.

A Marketer who offers consumers a "free trial" of a product or service should not charge the customer's credit card, debit his or her checking account, or cash his or her check or money order until the free trial period has expired.

A Marketer should provide its customers with an address and/or telephone number to use to communicate any complaints, inquiries, or refund requests, and should take all reasonable steps to respond to such complaints, inquiries, or refund requests promptly and courteously.

Marketers who collect personal information from consumers should not misrepresent the purposes to which that information may be put. If a consumer requests that his or her personal information not be rented, sold, or exchanged by a Marketer, that request should be honored. A Marketer should not rent, sell, or otherwise provide a consumer's credit card number, social security number, checking account number, or similar information to a third party (other than a third party who assists the member to process or complete authorized purchases or other transactions) without the consumer's express authorization. Marketers should take appropriate measures to protect consumers' private information, including without limitation credit and debit card details.

Self-Certification/Enforcement

Subscription to these Live TV Marketing Guidelines is a condition of ERA membership. Members shall have the right to certify their compliance with these guidelines to members of the general public and the media. Willful violation of these Live TV Marketing Guidelines is a basis for expulsion from the Association.