and other pricing offers.

Legal issues in coupons, rebates and special offers
What We’ll Cover

• A Pricing What? *Defining pricing offers.*
• Law Stuff: *How and where regulation occurs*
• The Top 7(ish)! *What’s Hot.*
• Am I Hot or Not? *What’s Right for You?*
• Uh Oh! *When things go wrong*
“PRICING” OFFERS

Buy 1 + Donate 1
Thank you for joining the fight against skin cancer.

Thanks to your help, we are able to provide over $10 million worth of sunscreen to families in need around the country. Find out more about the difference you made, and continue to spread the life-saving sunblock.

Buy any smoothie
Get one FREE
(of equal to lesser value)
Present at a Jamba store. Sip away.

Lancôme FREE GIFT
ONLINE & IN-STORE
yours with $29.50 Lancôme purchase
(An $84-$102 Product Value)

FREE SHIPPING & BONUS PRODUCTS!
when you spend $55 or more from Lancôme online.
free shipping code: TRAVEL
details
shop now

TIVO® gets you $200* back
Act now to rebates and service activation

Limited time remaining!
WHO’S WATCHING?

• The FTC
  – Section 5 of the Act
  – False Advertising
  – Failure to Disclose
  – COPPA
• State Attorneys General
  – Similar to FTC
• Competitors
• Consumers
THE COUPON:
OFFERING CONSUMERS A LIMITED TIME DISCOUNT ON A PRODUCT OR SERVICES, DEPENDENT UPON PRODUCING THE COUPON. TRADITIONALLY COUPONS MADE OF PAPER.
THE Checklist

• Dates of Validity
• Track per-person volume?
• Vendor and contract issues?
• National vs. Local
  – Milk in Wisconsin?
• Cash value – it’s for tax purposes
• Other Limitations
  – Days of week, first-time buyers, while supplies last, etc.
• Digital Platform Delivery?
Redeem for One Free Coffee Drink.

- Must show employee ID to redeem coupon (or)
- Provide one-time use code
- or...
- send paper coupons and don’t allow reproduction.

What we learned from Starbucks’ Good Deed

Keep in mind:
Add product limitations, if any
Printable coupons are not the same as digital.
Expiration is important
No cash value for coupon
May be geographic limitations
$5 Off your next supply purchase of $25.

Valid 7/8/12 thru 7/14/12. Valid in store only. Coupon valid on regular-, sale-, promotional- and/or clearance-priced supply items. Limit one per customer. Excludes Max Value items. Minimum purchase of $25, before taxes, required. Void if copied, sold, purchased, transferred, taxed or where prohibited. Cannot be combined with any other coupon, associate discount, OfficeMax® Customer Perks and/or Retail Connect™ pricing. Not valid on purchases of gift cards, general-use prepaid cards, phone cards, Virgin Mobile devices, U.S. postage stamps, shredding services, MaxAssurance®, Criccenter®, OfficeMax® Essentials Kits, assembly or FedEx® shipping services. Excludes all mobile phones, mobile-phone accessories and service plans as sold by RadioShack Mobile™ at select OfficeMax locations. Not valid on prior purchases or for credit card payments. Coupon must be surrendered at time of purchase. No cash or credit back. Cash value $.001¢. © 2012 OMX, Inc.

- No digital platforms
- 1 per customer
- Coupon valid
- For “sale” items, too,
- BUT not good with special pricing programs
- Not valid with items for which OM (Clearly) has a “no discount agreement
- No appreciable cash value
- To the coupon itself (tax issue)
THE BOGO:
OFFER TO CONSUMERS TO BUY A PRODUCT AT A SPECIFIC RETAIL PRICE (USUALLY FULL PRICE) AND GET A SECOND PRODUCT FOR FREE OR DISCOUNTED. USUALLY IMPLEMENTED FOR OVERSTOCK.
The Checklist

• Enough on hand or raincheck policy?
• Is it a charity promotion or a sale?
• Which item gets the discount?
  – Price
  – Type
• Limitations on Geography
• Limitations on Quantity
• Proper Calculation
• Sale price or original price?
• Return Policy
• Other Conditions
Must be VIP, but how?

When does it expire?

Is it worldwide?

FREE!
THAT'S 2 PAIRS FOR $39.95
GET STARTED NOW
* FREE SHIPPING & EXCHANGES

* Free shipping is available for orders shipped to destinations within the contiguous United States. * Select VIP Member option at checkout to receive discount. Discount cannot be applied to Pay As You Go orders. Cannot be combined with any other offer or applied to any previous order. Good for one item only.
Don’t forget unintended consequence: PR issues
The Cause Promotion:

promoting your for-profit goods and services by championing a non-profit cause.

“for every dollar you spend, we’ll donate 10 cents to UNICEF”
The Gap RED promotion

- Appeals to upwardly mobile consumer
- Sells without discounting merchandise
- Implies community and “giving back”

UNCENSO(RED)

- Requires state registration and bonding
- Special disclosures required on ads
- Charity must be on board
- May be on the hook for minimum value
THE Checklist

- Dates of Validity
- Per purchase or lump sum?
- Vendor and contract issues? (STATE LAW BIG)
- National vs. Local
- Proper charity for your consumers
- Reporting requirements
- Other Limitations
  - Maximum donation?
  - Product Limitation
- Trademark / Co-Branding License
“Trinchero Family Estates has been in the Napa Valley community since 1948 and takes environmental responsibility very seriously,” noted Bob Torres. “Through programs like One Bottle One Tree®, we can extend that commitment globally.”

Trinity Oaks is the only winery that plants a tree for every bottle sold. Now you can enjoy great wine and help the environment at the same time.
• It’s Built Into Your Business Model
• Your donation amount is not consumer dependent
So…Why Wouldn’t You Do it?

You don’t want the headache of filing
Your motivation is only to profit from the non-profit association
The cause will tarnish your own reputation
States change their laws all the time.

Average Initial Registration Cost: $20,000
NO FILING REQUIRED IF Donation isn’t purchase-dependent

A BETTER WORLD, FASTER.

Tech entrepreneurs are using innovation to tackle some of the world’s biggest challenges. We invest in teams with bold ideas that create lasting global impact.

CCV LAWS NOT TRIGGERED MERELY FOR ADVERTISING DONATIONS

EACH YEAR, WE DONATE $100,000,000 IN GRANTS, 60,000 HOURS, $1 BILLION IN PRODUCTS

Global Impact Awardee, SolarAid, is bringing solar lighting to rural communities.
You’ll Look Opportunistic

2011

Bing @bing

How you can #SupportJapan - http://binged.it/fEh7iT. For every retweet, @bing will give $1 to Japan quake victims, up to $100K.
7:45 AM - 12 Mar 2011

34,991 RETWEETS 235 FAVORITES

2013

Kellogg’s UK & IRE @KelloggsUK

We want to apologise for the recent tweet, wrong use of words. It’s deleted. We give funding to school breakfast clubs in vulnerable areas.
3:49 AM - 10 Nov 2013

130 RETWEETS 27 FAVORITES
Reputation could go down?
When you can commit to the cause
When it makes financial sense (otherwise just donate)
When it addresses all aspects of your brand
When the timing is appropriate
When you find the right charity
When your consumers want it

PRUDENT PRACTICES FOR CCV
Consumer advocacy groups don’t need to look far…. There is rarely a witch hunt.

If you’re being pursued, it’s probably something you said or did.

THOU SHALT HONOR YOUR PROMISE!
“if 100 people like this on Facebook, we’ll give you a coupon for 50% off”

Group Coupons:
"Crowdsourcing" a bargain to determine whether consumers want a discount, and offering the bargain when it is triggered.

OK, but we gotta talk about this....
(new Facebook rule in November)
The Checklist

- Honor the Trigger
  - Have enough on hand
  - Make sure it’s expiry-possible
- Check state law for local about expiry date
- Check offer site for competitive restrictions
- Generally, only premium can expire
- Restrictions on timing, date, or eligibility
  - Only after 5pm
  - Must have house 1200 SF
  - Must be accompanied by a full priced adult
- Shipping or extra charges?
$15 for Two-Hour Beer 101 and Tasting at Village Pourhouse

Restrictions:
- Must be 21 years of age or older with valid ID.
- Coupon good until December 31, 2014, after which time coupon will be valid at face value.
- One per customer. May give two additional as gifts. Not valid for parties of 6 or more.

The Fine Print:
- Expires 07/31/2010
- Must email to reserve a spot in class at least 48 hours in advance. Dates subject to availability.
- Great for groups.
For the reason of approving Class Action Settlement, $2,125,000 is awarded to Class Counsel as reasonable attorney services rendered in the Action and reasonable expenses paid by Class Counsel shall be paid from the Settlement.

Incentive Awards: The Court has set aside $2,125,000 to pay Incentive Awards to Class Counsel as reasonable attorney services rendered in the Action and reasonable expenses paid by Class Counsel shall be paid from the Settlement.

The Court granted final approval of the Groupon Settlement on December 17, 2012. However, certain objectors have filed appeals to the Court’s final approval order, which will take additional time to resolve. The two objector appeals are fully briefed and awaiting an oral argument date, but the Ninth Circuit Court of Appeals has a large backlog of cases. As a result, the parties currently have no reliable timetable for when the Settlement approval will be addressed on appeal and, if upheld, become final so that claims can be processed and settlement payments issued. The parties therefore cannot predict at this time whether and when the Settlement approval will become final, claim forms will be processed and settlement payments can be issued. If you have already submitted a claim, your claim will be held and processed if and when the Settlement approval becomes final.
Does Anyone Really Care What Words You Use?
Would there be a slide if the answer was “no?”

TIME-DELIMINATED OFFERS:
LIMITED TIME OFFERS BASED UPON VARIOUS CRITERIA, INCLUDING WHILE SUPPLIES LAST.
The Checklist

• If Free, is there a retail value?
  – If it’s unavailable outside of the offer, maybe not?
  – Is a free “fun fact” something of value?
• If a limited time price, does the price go back up?
• If “while supplies last,” is there enough on hand
• If identifying a savings, is it sold at the higher price?
• If a subscription feature, are all terms disclosed?
• Handling charges of any kind?
• Limitations or exclusions of merchandise / service
  – Minimum purchase
  – Limited locations
    • “bait and switch?”
  – Is time very short?
    • Too short creates a contest
EXTRA 60% OFF ALL SALE STYLES

VALID IN U.S. ONLY | *EXCLUSIONS APPLY |

SHOP SALE

CLOSE

This Weekend Only!

START AT THE TOP 50% OFF**

FULL-PRICE TOPS & SWEATERS (INCLUDING CASHMERE!)

SWEATERS

KNITS & TEES

BLOUSES & TOPS
**EXTRA 60% OFF SALE STYLES***
*Offer valid at Ann Taylor stores in the U.S., other than a few select stores, and anntaylor.com for orders shipped within the US. The extra 60% off discount will be taken on all sale styles starting on Wednesday 10/1/2014 at 12 AM EST until Monday 10/6/2014 at 3 AM EST. Discount will be applied automatically at checkout; no promotional code is needed. Select styles and pricing for this offer may vary between in-store and online. Final sale items are excluded from the promotion in-store. Taxes, shipping fees, purchases of gift cards, charges for gift boxes and payment of an Ann Taylor Card or LOVE LOFT Card account are excluded from the discount. Not valid in conjunction with any other offer or total store promotion. Offer is not valid at Ann Taylor Factory stores, LOFT stores, LOFT.com, or LOFT Outlet Stores. OFFER NOT VALID OUTSIDE OF THE UNITED STATES. No a

**50% OFF FULL-PRICE TOPS & SWEATERS**
**Offer valid at Ann Taylor stores in the U.S., other than a few select stores, and anntaylor.com for orders shipped within the US. The 50% off discount will be taken on full-price tops and sweaters on Friday 10/3/2014 at 3:00 AM EST until Monday 10/6/2014 at 3 AM EST. Discount will be applied automatically at checkout; no promotional code is needed. Select styles and pricing for this offer may vary between in-store and online and certain product exclusions apply: including the Perfect Shirt. Taxes, shipping fees, purchases of gift cards, charges for gift boxes and payment of an Ann Taylor Card or LOVE LOFT Card account are excluded from the discount. Not valid in conjunction with any other offer or total store promotion. Offer is not valid at Ann Taylor Factory stores, LOFT stores, LOFT.com, or LOFT Outlet Stores. OFFER NOT VALID OUTSIDE OF THE UNITED STATES. No adjustments to prior purchases. Not valid for cash. Offer is subject to change without notice.

Tested program on 10/4 in NYC and Emeryville

Specifically omits select stores, but does not say which, and no link.
But is it really?

**FREE/GIFT WITH PURCHASE:** A GIFT OF VALUE PURSUANT TO PAYMENT OF A MORE EXPENSIVE PRODUCT.
(b) Meaning of “Free”.

(1) The public understands that, except in the case of introductory offers in connection with the sale of a product or service (See paragraph (f) of this section), an offer of “Free” merchandise or service which must be purchased is represented to be “Free”. In other words, no right to believe that the merchant will not directly and immediately recover, in whole or in part, the cost of the free merchandise or service by marking up the price of the article which must be purchased, by the substitution of inferior merchandise or service, or otherwise.

(2) The term regular when used with the term price, means the price, in the same quantity, quality and with the same service, at which the seller or advertiser of the product or service has openly and actively sold the product or service in the geographic market or trade area in which he is making a “Free” or similar offer in the most recent and regular course of business, for a reasonably substantial period of time, i.e., a 30-day period. For consumer products or services which fluctuate in price, the “regular” price is the low or price at which any substantial sales were made during the aforesaid 30-day period. Except in the case of introductory offers, if no substantial sales were made, in fact, at the “regular” price, a “Free” or similar offer would not be proper.

(c) Disclosure of conditions. When making “Free” or similar offers all the terms, conditions and obligations upon which receipt and retention of the “Free” item are contingent should be set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability
Scammers Settle FTC Charges They Sent Millions of Spam Text Messages

Deceptive Messages Promised “Free” $1,000 Gift Cards to Major Retailers

FOR RELEASE

June 12, 2014

Failure to Disclose Fees And Conditions
Our Valentine's Day GIFT TO YOU!

FREE FINE FRAGRANCE MIST WITH ANY $10 PURCHASE

$14 value

Offer valid in stores only February 12–29, 2012.

USE CODE 5702 IN STORES ONLY

Single item at regular price. Free item must be of equal or lesser value. While supplies last. Limit one per customer.

$14 value. Prior to shipping and handling and sales tax. Limit one coupon per customer. No substitutions. While supplies last. This coupon must be presented and surrendered at time of in-store redemption. It may not be combined with any others offers, coupons or discounts. This coupon is not redeemable for cash, gift certificates, gift cards, or sale merchandise, nor is it valid toward previous purchases. Change will not be given for product with less than $14 value. No copies or mechanical reproductions of the coupon will be accepted. Offer only valid at U.S. Bath & Body Works stores and Bath & Body Works stores in Canada through February 29, 2012. Offer not valid online or at Bath & Body Works Outlet stores. TERMS AND CONDITIONS ARE APPLIED TO GIFT CERTIFICATES/GIFT CARDS. For more information, call 1-800-395-1001 or visit our contact us page.

Uh Oh...no change?
Disclaimer trouble

Is it really $14?

Enough on hand?
BEWARE THE FAILURE TO DISCLOSE

gift with “kind of” purchase: PROVIDING CONSUMERS WITH A GIFT IN EXCHANGE FOR A CERTAIN ACTION, SUCH AS BLOG POST OR INFLUENCING POST ON SOCIAL MEDIA
Dear Mr. Plevan:

As you know, the staff of the Federal Trade Practices has conducted an investigation into AnnTaylor Stores Corporation, violated Section 5 of the FTC Act by giving gifts to bloggers in connection with coverage of an event. We were concerned that they received gifts for posting blog content about an event on January 26, 2010, but failed to disclose that they received gifts for posting blog content about that event. Section 5 of the FTC Act requires the disclosure of a material connection between an advertiser and an endorser when such a relationship is not reasonable expected by readers of the blog.

Guides Concerning the Use of Endorsements and Testimonials in Advertising

FEDERAL TRADE COMMISSION
16 CFR Part 255

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Kenneth A. Plevan, Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, NY 10036-6522

Re: AnnTaylor Stores Corp., File No. 102-3147

Dear Mr. Plevan:
REBATES: A promise to refund all or part of the purchase price of an item if purchased and refund requested within a time period.

The devil is in the details.
The Checklist

• Will you advertise the rebate amount or the final price? State law applies.
• Is the system overly cumbersome or difficult?
• Is this a “bait and switch” to coerce payment?
• Is there too little time to redeem?
• Did you disclose the rebate FORMAT?
• Are paper forms available?
• Do Employees know how to assist?
Sears, Staples, T-Mobile Agree to Come Clean on Rebate Fees

Massachusetts presses companies to be more upfront about charges associated with rebate cards

04/19/2010 | ConsumerAffairs

Sears, Staples and T-Mobile have agreed to be more upfront about fees and restrictions associated with rebate cards, at least in Massachusetts, after coming under pressure from consumer protection officials in the Bay State.

The companies had previously changed the form of many of their rebates from paper checks to rebate cards. However, consumers are generally accustomed to rebates in the form of checks, and rebate cards often include fees and restrictions not associated...
Rebate form can be completed at store

Track your number

Or... just use your mobile phone number
NEGATIVE OPTION MKTG:
PROVIDING CONSUMERS WITH A TRIAL PERIOD AFTER WHICH TIME THEY WILL BE CHARGED FOR A RECURRING SUBSCRIPTION UNLESS THEY AFFIRMATIVELY DECLINE THE OFFER IN TIME.

“That’s right! You get a free month’s supply. Then, each month, we’ll replenish your supply so your skin will stay younger forever!”
SERIOUSLY? NO RESTRICTIONS?
And wait... HOW do you cancel exactly?

OH.....YOU MUST SUBMIT CREDIT CARD
How to cancel your subscription

Canceling your subscription reverts your account to the Free level:
1. Go to the Subscription page.
2. Under Cancel your subscription, click View your options.
3. Select a reason (select Other reasons if you're canceling for a promotion). Click CONTINUE.
4. Click CANCEL MY SUBSCRIPTION.
5. Enter your password in the password field. Click CANCEL SPOTIFY PREMIUM (or UNLIMITED) SUBSCRIPTION.

Your Subscription page now shows the date you will revert to our Free ad-based service. We hope you decide to upgrade again!
DIFFERENTIAL PRICING:
VARYING THE PRICE OF A PRODUCT OR SERVICE BASED UPON CONSUMER DATA OF WHAT THEY WILL PAY.

“Anyone who likes Justin Bieber is young, so let’s charge them less.”
“Differences” to Avoid

- Protected Classes
  - Race-based
  - Gender-based
  - ADA
- Anti-Trust Triggers
- Sensitive Classes
  - Poor
  - Wealthy
Hey

On Orbitz, Mac Users Steered to Pricier Hotels

What if I used my commodore 64?
Different Done Right

- Make the distinction tech-plausible
  - 10% off on computer
  - 40% off on mobile “deals” device
- Pricing based upon time
  - Midnight deals for those who are awake
  - “blue light” specials for Twitter followers
Some Final Thoughts

• The law is relevant, but service is key!
• If you want to “hide” it, you’re in trouble.
• Platforms have rules, too. Don’t ignore them.
• Do what you say. Say what you do.
• Bad PR could be worse than the law.
• Consumers will forgive if you ask.