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Kohl's slow to comply with ad laws

Survey shows Kohl's ad compliance lacking

By Bruce Mohl, Globe Staff, 7/23/2003

Nine months after Attorney General Thomas F. Reilly warned Kohl's Department Stores to come into compliance with state advertising laws, the Wisconsin-based retailer continues to advertise discounts off of largely fictitious regular prices.

A pricing survey by a local consumer advocate, who tracked the online and in-store prices of 20 items at Kohl's every day for 103 consecutive days, found that 55 percent of those items never or rarely sold for the claimed "regular" or "original" price. Nonetheless, the store continually made price comparisons touting savings off of those prices in advertising, on signs, online, or via apparently inflated price tags.

One out of every four items in the survey was always "on sale" during the 3 1/2-month test period, meaning it never sold at the claimed full price, not even for one day.

State regulations require that products be on sale no more than 45 percent of the time over a six-month period. Yet in the survey conducted by Edgar Dworsky, few, if any, products in the market basket of items could possibly meet that time requirement. Dworsky, the editor of Consumerworld.org, focused on retail issues as an assistant attorney general and state consumer affairs official from 1985 to 1996.

The average item in the survey was on sale 86 percent of the time during that period or before going on clearance (clearance items are not subject to the state's sale-time limits regulation) and several items were constantly on sale.

For example, Kohl's original price for a men's Arrow plaid shirt was \$30, but the shirt never sold at that price for the entire 3 1/2-month period. It was constantly on sale for anywhere from \$15 to \$19.99.

The outcome of Dworsky's survey was strikingly similar to a survey done jointly by The Boston Globe and Dworsky last summer, which

prompted one of Reilly's top aides to write a letter to Kohl's saying the chain's sale advertising and pricing policies appeared to be in violation of state law.

The letter from Diane L. Lawton, managing attorney for Reilly's consumer protection division, set no timetable for Kohl's compliance and did not threaten legal action, but it noted that violations of the advertising regulations are subject to civil fines of up to \$5,000 per violation.

"In the interest of providing Massachusetts consumers with full and accurate pricing information, we think it is important for Kohl's to address these issues by taking affirmative steps to modify its Massachusetts advertising and pricing policies, both in the media and in in-store tags and signs," Lawton wrote to Richard D. Schepp, Kohl's executive vice president and general counsel.

Kohl's hired a Massachusetts attorney after receiving the letter and both sides say there have been discussions. But nine months later no official action has been taken by the attorney general, and Kohl's has made no apparent changes in its advertising and pricing policies.

Sarah Nathan, a spokeswoman for Reilly, said the Kohl's situation is still being reviewed. She said progress has been made, but declined to comment further, other than to say the consumer protection division has a heavy workload and is doing its best to address a host of issues.

Kohl's Boston lawyer, Robert Sherman, has referred questions to Kohl's officials in Menomonee Falls, Wis. A spokeswoman for Kohl's, advised of the survey Monday night, had no immediate comment yesterday.

"I don't know which is more troubling," Dworsky said. "On one hand, you have an otherwise well-respected retailer which appears to continue to flout the law and mislead the public as to the actual savings they offer. On the other hand, you have an attorney general's office that seems to have let them get away with it. Either way, the consumer loses."

In Dworsky's latest survey, six items in the market basket sold at their stated regular price for only one, two, or three days. A pair of Haggar khakis, for example, was originally priced at \$29.99 but sold at that price only two days during the 103-day survey.

A pair of women's Sonoma cargo shorts sold at its original price of \$26 for one day out of the 103 days, and the rest of the time sold at a dizzying array of prices -- seven lower prices in all and four different prices during one five-day period.

The remaining nine items in the market basket sold more often at their stated regular price, but were still on sale significantly more

than 45 percent of the time. The item that came closest to complying with the regulation was a three-pack of Hanes classic underwear, which was regularly priced at \$5.99 and sold at that price 40 percent of the time while being on sale 60 percent of the time.

Kansas has pursued similar pricing and advertising complaints against Kohl's, collecting a total of \$500,000 in fines in two separate actions. Kohl's operates nearly 500 stores in 34 states, including 15 in Massachusetts. In fiscal 2002, the New York Stock Exchange company earned \$643.4 million on revenues of \$9.1 billion.

Dworsky's survey this year was done differently than last year's, which relied on twice-weekly in-store inspections. This year, after picking the market basket of items at a local Kohl's store, Dworsky took product prices daily off of Kohl's website and twice a month compared them to in-store prices at the Kohl's store in Medford.

Online prices matched in-store prices except in three instances involving two products. In each case, the item was on sale both online and in the store, but the sale prices differed slightly. The sale price discrepancy did not affect the study's count of sale and nonsale days, Dworsky said.

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This story ran on page C1 of the Boston Globe on 7/23/2003.
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