CHAPTER 45A

ADMINISTRATIVE RULES OF THE DIVISION OF CONSUMER AFFAIRS

Authority

N.J.S.A. 56:8–4.

Source and Effective Date

R.1995 d.618, effective November 6, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Executive Order No. 66(1978) Expiration Date

Chapter 45A, Administrative Rules of the Division of Consumer Affairs, expires on November 6, 2000.

Chapter Historical Note

Chapter 45A, Administrative Rules of the Division of Consumer Affairs was originally filed July 2, 1973, as R.1973 d.176, effective August 1, 1973. See: 5 N.J.R. 151(b), 5 N.J.R. 290(a). Petition for Rulemaking of prescription drug pricing. See: 22 N.J.R. 3166(b).

Subchapter 2, Motor Vehicle Advertising Practices, became effective July 15, 1973 as R.1973 d.183. See: 5 N.J.R. 191(a), 5 N.J.R. 290(d). Revisions to Subchapter 2 became effective November 17, 1986 as R.1986 d.362. See: 8 N.J.R. 235, 8 N.J.R. 563(b). Subchapter 2 was repealed and new rules adopted effective August 17, 1987 as R.1987 d.341. See: 19 N.J.R. 1056(a), 19 N.J.R. 1562(c). Subchapter 2 was repealed and new rules adopted effective May 15, 1989 as R.1989 d.253. See: 21 N.J.R. 115(a), 21 N.J.R. 1368(a).

Subchapter 3 was adopted as new rules, filed June 22, 1973, by R.1973 d.169, effective January 1, 1974. See: 5 N.J.R. 154(a), 5 N.J.R. 239(b).

Subchapter 4 was adopted as new rules, filed August 10, 1973, by R.1973 d.222, effective August 15, 1973. See: 5 N.J.R. 229(d), 5 N.J.R. 317(c).

Subchapter 5 was adopted as new rules, filed September 14, 1973, by R.1973 d.262, effective January 1, 1974.

Subchapter 6 was adopted as new rules by R.1979 d.392, effective October 1, 1979. See: 11 N.J.R. 386(a), 11 N.J.R. 580(e). Subchapter 6 was readopted as R.1984 d.526, filed October 24, 1984. See: 16 N.J.R. 2349(a), 16 N.J.R. 3214(a).

Subchapter 7 was adopted as new rules by R.1973 d.307, effective January 1, 1974. See: 5 N.J.R. 351(b), 5 N.J.R. 390(b). Subchapter 7 was readopted as R.1984 d.527, filed October 24, 1984. See: 16 N.J.R. 2350(a), 16 N.J.R. 3214(b).

Subchapter 8 was adopted as new rules, filed October 26, 1973, by R.1973 d.309, effective December 1, 1973. See: 5 N.J.R. 354(a), 5 N.J.R. 390(e).

Subchapter 9 was adopted as new rules, filed January 21, 1974, by R.1974 d.15, effective March 1, 1974. See: 5 N.J.R. 422(a), 6 N.J.R. 82(b). Amendments were adopted by R.1980 d.200, effective May 6, 1980. See: 12 N.J.R. 45(a), 12 N.J.R. 348(b). Subchapter 9 was readopted as R.1985 d.256, effective April 29, 1985. See: 17 N.J.R. 678(a), 17 N.J.R. 1323(b).

Subchapter 10 was adopted as new rules, filed January 21, 1974, by R.1974 d.16, effective March 1, 1974. See: 5 N.J.R. 421(a), 6 N.J.R. 82(c).

Subchapter 12 was adopted as new rules by R.1975 d.351, effective November 20, 1975. See: 7 N.J.R. 231(b), 7 N.J.R. 571(c). Subchapter 12 was repealed and new rules adopted by R.1988 d.271, effective June 20, 1988. See: 19 N.J.R. 853(a), 20 N.J.R. 501(b), 20 N.J.R. 1463(a).

Subchapter 13 was adopted as new rules by R.1976 d.245, effective August 3, 1976. See: 8 N.J.R. 233(b), 8 N.J.R. 439(b).

Subchapter 14 became effective August 23, 1976 as R.1976 d.265. See: 8 N.J.R. 304(a), 8 N.J.R. 439(e). Amendments became effective October 10, 1980 as R.1980 d.444. See: 12 N.J.R. 130(a), 12 N.J.R. 672(d). Subchapter 14 expired on October 9, 1985 pursuant to Executive Order No. 66(1978). New Rules became effective December 16, 1985 as R.1985 d.643. See: 17 N.J.R. 2232(b), 17 N.J.R. 2991(c).

Subchapter 15 was adopted as new rules by R.1982 d.29, effective February 1, 1982. See: 13 N.J.R. 665(a), 14 N.J.R. 160(a).

Subchapter 16 became effective April 1, 1980 as R.1980 d.111. See: 11 N.J.R. 577(a), 12 N.J.R. 209(b). Subchapter 16 expired April 1, 1985, and a new Subchapter 16 became effective May 20, 1985 pursuant to Executive Order No. 66(1978) as R.1985 d.255. See: 17 N.J.R. 679(a), 17 N.J.R. 1325(a).

Pursuant to N.J.S.A. 45:17A–15, Subchapter 17, Sale of Advertising in Journals Relating or Purporting to Relate to Police, Firefighting or Charitable Organizations, was adopted as R.1981 d.294, effective August 6, 1981. See: 13 N.J.R. 235(b), 13 N.J.R. 520(b). Subchapter 17 was repealed by R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Subchapter 19 was adopted as new rules by R.1990 d.371, effective August 6, 1990. See: 22 N.J.R. 786(a), 22 N.J.R. 2331(c).

Subchapter 20 was adopted as new rules by R.1984 d.196, effective May 21, 1984. See: 16 N.J.R. 417(a), 16 N.J.R. 1281(b).

Subchapter 21, originally Representations Concerning and Requirements for the Sale of Kosher Food, was adopted as R.1984 d.113, effective April 2, 1984. See: 16 N.J.R. 220(a), 16 N.J.R. 741(a). Amendments were adopted as R.1984 d.402, effective September 4, 1984. See: 16 N.J.R. 1696(a), 16 N.J.R. 2371(a). Subchapter 21 was repealed and new rules regarding "the Sale of Kosher Products" were adopted as R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d). Amendments were adopted as R.1990 d.433, effective September 4, 1990, and R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 1439(a), 22 N.J.R. 2747(c), 22 N.J.R. 2396(a), 22 N.J.R. 3758(a). Subchapter 21 was repealed and new rules were adopted as R.1994 d.204, effective April 18, 1994. See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

Subchapter 22, formerly Inspections of Kosher Meat Dealers, Kosher Poultry Dealers, and Dealers of Kosher Food and Food Products; Records Required to be Maintained by Kosher Meat Dealers and Kosher Poultry Dealers, was adopted pursuant to N.J.S.A. 56:8–4 as R.1985 d.407, effective August 5, 1985. See: 17 N.J.R. 1241(a), 17 N.J.R. 1901(b). Subchapter 21 was repealed and new rules on the subject were adopted as R.1987 d.450, effective November 2, 1987. See: 19 N.J.R. 1060(a), 19 N.J.R. 2060(d). Amendments were adopted as R.1990 d.606, effective December 17, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a). Chapter 21 was repealed by R.1994 d.204, effective April 18, 1994. See: 25 N.J.R. 3086(a), 26 N.J.R. 1667(a).

Subchapter 23 was adopted as new rules by R.1985 d.306, effective June 17, 1985. See: 17 N.J.R. 680(a), 17 N.J.R. 1581(a).

Subchapter 24 was adopted as new rules by R.1993 d.372, effective July 19, 1993. See: 24 N.J.R. 3019(b), 24 N.J.R. 3666(a), 25 N.J.R. 3235(a).

Subchapter 25 was adopted as new rules by R.1988 d.23, effective January 4, 1988. See: 19 N.J.R. 1967(a), 20 N.J.R. 103(a). Subchapter 25 was repealed and new rules adopted by R.1988 d.520, effective November 7, 1988. See: 20 N.J.R. 2036(a), 20 N.J.R. 2790(b).

Subchapter 26 was adopted as new rules by R.1989 d.65, effective February 6, 1989. See: 20 N.J.R. 2681(b), 21 N.J.R. 339(b).

Pursuant to Executive Order No. 66(1978), Chapter 45A was readopted as R.1990 d.606, effective November 9, 1990. See: 22 N.J.R. 2396(a), 22 N.J.R. 3758(a).

Pursuant to Executive Order No. 66(1978), Chapter 45A was readopted as R.1995 d.618, effective November 6, 1995. As part of R.1995 d.618, Subchapter 2, Motor Vehicle Advertising Practices, Subchapter 6, Deceptive Practices Concerning Automotive Sales Practices, Subchapter 7, Deceptive Practices Concerning Automotive Repairs and Advertising, and Subchapter 8, Tire Distributors and Dealers, were recodified as Subchapters 26A, 26B, 26C and 26D respectively. See: Source and Effective Date. See, also, section annotations.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. DECEPTIVE MAIL ORDER PRACTICES

13:45A–1.1 General provisions

(a) Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq., this rule makes unlawful thereunder some specific practices in the mail order or catalog business.

(b) It is an unlawful practice in connection with the advertisement or sale of merchandise for a person conducting a mail order or catalog business to accept money through the mail or any electronic transfer medium, for merchandise ordered by mail, telephone, facsimile transmission or electronic mail and then permit six weeks to elapse without either:

1. Delivering or mailing the merchandise order; or

2. Making a full refund; or

3. Sending the consumer a letter or notice advising the consumer of the duration of an expected delay or the substitution of merchandise of equivalent or superior quality, and offering to send a refund within one week if so requested. If a proposal to substitute merchandise is made, it shall describe, in specific detail, how the substituted merchandise differs from the merchandise ordered; or

4. Sending the consumer substituted merchandise of equivalent or superior quality, together with:

i. A written notice offering, without reservation, to accept the return of the merchandise at the seller's expense within 14 days of receipt of the merchandise and, upon request, the consumer's choice of either, a refund of cash paid, including the amount of postage to return the item, or a credit; and

ii. A postage-paid letter or card on which the consumer may indicate whether he wishes the purchase price to be refunded or credited to his account within 14 days of receipt of the letter or card by the seller. The consumer's request entered on such a letter or card must be honored by the seller; and

iii. The written notice and postage-paid letter or card, as stated in (b)4i and ii above, need not be sent with the merchandise, if in lieu thereof, a statement that the seller will accept the return of the merchandise for a period of at least 14 days without reservation is printed in the catalog itself.

(c) For purposes of (b)3 and 4 above, merchandise may not be considered of "equivalent or superior quality" if it is not substantially similar to the merchandise ordered or not fit for the purposes intended, or if the seller normally offers the substituted merchandise at a price lower than the price of the merchandise ordered.

(d) Subsection (b) above does not apply:

1. To merchandise ordered pursuant to an open-end credit plan as defined in the Federal Consumer Credit Protection Act or any other credit plan pursuant to which the consumer's account was opened prior to the mail order in question, and under which the creditor may permit the customer to make purchases from time to time from the creditor or by use of a credit card; or

2. When all advertising for the merchandise contains a notice (which, in the case of printed advertising, shall be in a type size at least as large as the price) that delay may be expected of a specified period. In such cases, one of the events described in (b) above must occur no later than one week after expiration of the period specified in the advertisement; or

3. To merchandise, such as quarterly magazines, which by their nature are not produced until a future date and for that reason cannot be stocked at the time of order; or

4. To installments other than the first of merchandise, such as magazine subscriptions, ordered for serial delivery.

(e) It is an unlawful practice in connection with the advertisement or sale of merchandise for a person conducting a mail order or catalog business to fail to disclose the legal name of the company and the complete and permanent street address from which the business is actually conducted in any materials, including advertising and promotional materials, order blanks and order forms, which contain a mailing address other than the actual street address from which the business actually engages in or conducts business.

(f) The provisions of this section shall apply to any person who conducts a mail order or catalog business in or from the State of New Jersey or who advertises or sells merchandise via mail order or catalog into this State.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Franchise arrangement; application of New Jersey Consumer Fraud Act. J & R Ice Cream Corp. v. California Smoothie Licensing Corp., C.A.3 (N.J.)1994, 31 F.3d 1259.

Multi-million dollar transaction between large corporations not covered by Consumer Fraud Act. BOC Group, Inc. v. Lummus Crest, Inc., 251 N.J.Super. 271, 597 A.2d 1109 (L.1990).

Action against gas company for misuse of Purchased Gas Adjustment Clause was not cognizable under the Consumer Fraud Act; Public Utilities Commission has exclusive jurisdiction over misuse of such clauses. Daaleman v. Elizabethtown Gas Co., 77 N.J. 267, 390 A.2d 566 (1978).

Respondent's motion to depose the Executive Director of the Office of Consumer Protection, in furtherance of defense that inspection processes were arbitrary and capricious, denied due to lack of good cause showing that information could not be otherwise obtained. Div. of Consumer Affairs v. Acme Markets, Inc., 3 N.J.A.R. 210 (1981).

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. SALE OF MEAT AT RETAIL

13:45A–3.1 Definitions

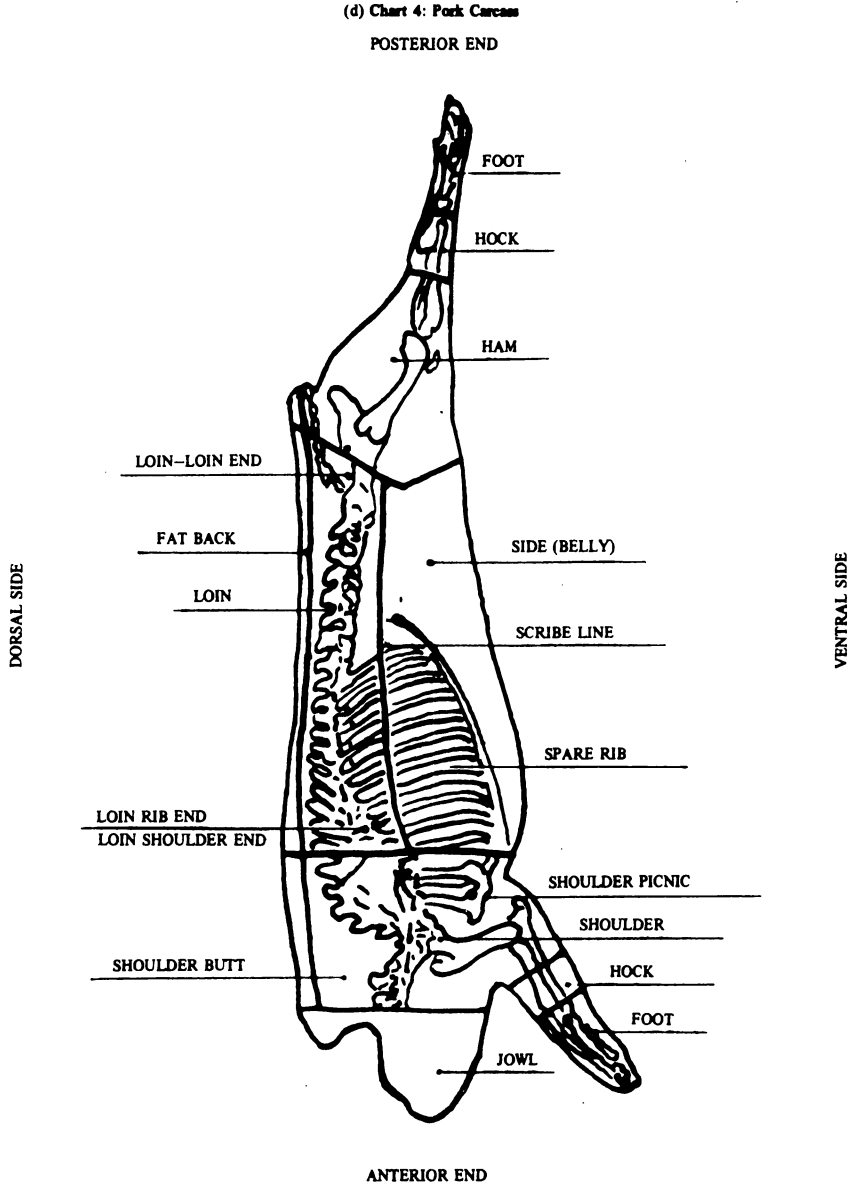
The following words and terms, when used in this Subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Back ribs" means ribs derived from the rib area of pork loin.

"Bottom sirloin butt" means meat derived from the posterior portion of the loin of cattle after removal of the short loin and which is the lower portion (ventral side) of the sirloin after removal of the top sirloin butt (dorsal side) by a cut following the natural muscle seam (blue tissue).

"Club steak" means meat derived from the anterior end (rib end) of the short loin of cattle or the posterior end (loin end) of the rib. Any labeling of or advertising for "club steak" shall indicate short loin or rib, whichever is appropriate.

(d) Chart 4: Pork Carcass



SUBCHAPTER 4. BANNED HAZARDOUS PRODUCTS

Case Notes

U.S. v. One Hazardous Product Consisting of a Refuse Bin, D.C., 487 F.Supp. 581 (1980).

13:45A–4.1 Unconscionable commercial practice

It shall be an unconscionable commercial practice for any person, including any business entity, to manufacture, distribute, sell or offer for sale any consumer product contrary to any order of the Consumer Product Safety Commission, pursuant to 15 U.S.C. §2051 et seq.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A–4.2 Consumer product defined

(a) For purposes of this rule, the term "consumer product" means any article or component part thereof, produced or distributed:

1. For sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation or otherwise; or

2. For the personal use, consumption or enjoyment of a permanent or temporary household or residence, a school, in recreation or otherwise.

13:45A–4.3 Violations

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq. any violation of the provisions of this rule shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTER 5. DELIVERY OF HOUSEHOLD FURNITURE AND FURNISHINGS

13:45A–5.1 Deceptive practices; generally

(a) Any person who is engaged in the sale of household furniture for which contracts of sale or sale orders are used for merchandise ordered for future delivery shall:

1. Deliver all of the ordered merchandise by or on the promised delivery date; or

2. Provide written notice to the consumer of the impossibility of meeting the promised delivery date. The notice shall offer the consumer the option to cancel said order with a prompt, full refund of any payments already made or to accept delivery at a specified later time. Said written notice shall be mailed on or prior to the delivery date.

(b) In the event a seller fails to deliver all of the ordered merchandise on the promised delivery date and makes only a partial delivery, the seller shall comply with the notice requirement of (a) above. Said notice shall offer the consumer the option of cancelling the order with a prompt, full refund of any payments already made or accepting delivery of the balance of the ordered merchandise at a specified later date.

(c) Failure to comply with (a) above shall constitute a deceptive practice under the Consumer Fraud Act.

(d) For purposes of this rule, "household furniture" includes, but is not limited to, furniture, major electrical appliances, and such items as carpets and draperies.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Validity. State v. Hudson Furniture Co., 165 N.J.Super. 516, 398 A.2d 900 (App.Div.1979).

Consumer Fraud Act regulation applies when furniture is delivered untimely. DiNicola v. Watchung Furniture's Country Manor, 232 N.J.Super. 69, 556 A.2d 367 (A.D.1989) certification denied 117 N.J. 126, 564 A.2d 854.

Consumer Fraud Act regulations do not apply to breach of warranty. DiNicola v. Watchung Furniture's Country Manor, 232 N.J.Super. 69, 556 A.2d 367 (A.D.1989) certification denied 117 N.J. 126, 564 A.2d 854.

In Consumer Fraud Act, "promised merchandise" relates to quantity and description, not to quality of merchandise. DiNicola v. Watchung Furniture's Country Manor, 232 N.J.Super. 69, 556 A.2d 367 (A.D. 1989) certification denied 117 N.J. 126, 564 A.2d 854.

13:45A–5.2 Contract forms; date of order

(a) The contract forms or sales documents shall show the date of the order and shall contain the following sentence in ten-point bold face type:

The merchandise you have ordered is promised for delivery to you on or before (insert date or length of time agreed upon).

(b) The blank delivery date shall be filled in by the seller either as a specific day of a specific month or as a length of time agreed upon by the buyer and seller (for example, "six weeks from date of order").

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A–5.3 Contract form; delayed delivery

(a) The contract forms or sales documents shall conspicuously disclose the seller's obligations in the case of delayed delivery in compliance with N.J.A.C. 13:45A–5.1 and shall contain, on the first page of the contract form or sales document, the following notice in ten-point bold face type:

If the merchandise ordered by you is not delivered by the promised delivery date, (insert name of seller) must offer you the choice of (1) canceling your order with a prompt, full refund of any payments you have made, or (2) accepting delivery at a specific later date.

(b) The provisions of this subchapter shall apply to any person who sells household furniture in or from the State of New Jersey or to any person located outside of the State of New Jersey who sells household furniture into this State.

(c) It shall be unlawful for any person to use any contract or sales agreement that contains any terms, such as "all sales final" or "no cancellations", which violate or are contrary to the rights and responsibilities provided for by this rule. Any contract or sales agreement which contains such a provision shall be null and void and unenforceable.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A–5.4 Violations; sanctions

Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq., any violation of the provisions of this subchapter shall be subject to the sanctions contained in said Consumer Fraud Act.

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. MERCHANDISE ADVERTISING

13:45A–9.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Advertisement" means any attempt by an advertiser, other than by use of a price tag, catalogue or any offering for the sale of a motor vehicle subject to the requirements of N.J.A.C. 13:45A–2.1 et seq., to directly or indirectly induce the purchase or rental of merchandise at retail, appearing in any newspaper, magazine, periodical, circular, in-store or out-of-store sign or other written matter placed before the consuming public, or in any radio or television broadcast.

"Advertiser" means any person as defined by N.J.S.A. 56:8–1(d), other than a public utility regulated by the Board of Public Utilities, who in the ordinary course of business is engaged in the sale or rental of merchandise at retail and who places, either directly or through an advertising agency, an advertisement before the public.

"Catalogue" means a multi-page solicitation in which a seller offers goods for sale or rental for a seasonal or specified period of time, from which consumers can order goods directly without going to the seller's place of business. An advertising circular, distributed through inclusion in a newspaper, representing a seller's partial offering of goods for sale or rental for a period of time not to exceed two weeks, shall not be considered a catalogue.

"Closeout sale" means a sale in which an advertiser offers for sale at a reduced price items of merchandise remaining at one or more specified locations which the advertiser will not have available for sale within a reasonable period of time after all such items have been sold.

"Division" means the Division of Consumer Affairs.

"Home appliance" means any electrical, mechanical or thermal article produced or distributed for sale to a consumer for use in or around a permanent or temporary household or residence, including, but not limited to, air conditioners, dehumidifiers, dishwashers, dryers, electric blankets, electronic games, fans, freezers, motorized kitchen aids, ovens, radios, ranges, refrigerators, stereophonic equipment, televisions and washers.

"Merchandise" means any objects, wares, goods, commodities, services or anything offered directly or indirectly to the public for sale or rental at retail.

"Price advertisement" means any advertisement in which a specific dollar price is stated with regard to specific advertised merchandise.

"Price reduction advertisement" means an advertisement which in any way states or suggests directly or indirectly that merchandise is being offered or made available for sale at a price less than that at which it has been routinely sold or offered for sale in the past or at which it will be sold or offered for sale in the future. The following words and terms or their substantial equivalent, when used in any advertisement except when used exclusively as part of the advertiser's corporate, partnership or trade name, shall be deemed to indicate a price reduction advertisement: sale, discount, special savings, price cut, bargain, reduced, prices slashed, clearance, regularly, usually, cut rate, originally, formerly, warehouse or factory clearance, buy one get one free, at cost, below cost, wholesale.

"Rain check" means a written statement issued by an advertiser allowing the purchase of designated merchandise at a previously advertised price.

"Reference price" means a price or price range set forth in a price reduction advertisement for the purpose of establishing an advertised selling price as a reduction from a usual selling price of the advertised merchandise.

"Trade area" means that geographical area in which an advertiser solicits or makes a substantial number of sales.

Case Notes

Held that a franchise or business opportunity venture is "merchandise" within intendment of the Consumer Fraud Act; failure of franchiser to provide franchisee with a rule disclosure statement was a per se unconscionable commercial practice, deception, fraud, false pretense, false promise or misrepresentation in violation of the Consumer Fraud Act. Morgan v. Air Brook Limousine, Inc., 211 N.J.Super 84, 510 A.2d 1197 (Law Div.1986).

13:45A–9.2 General advertising practices

(a) Without limiting the application of N.J.S.A. 56:8–1, et seq., the following practices shall be unlawful with respect to all advertisements:

1. The failure of an advertiser to maintain and offer for immediate purchase advertised merchandise in a quantity sufficient to meet reasonably anticipated consumer demand therefor. When an advertisement states a specific period of time during which merchandise will be available for sale, a sufficient quantity of such merchandise shall be made available to meet reasonably anticipated consumer demand during the stated period. When no stated period appears in the advertisement, a sufficient quantity of merchandise shall be made available to meet reasonably anticipated consumer demand during three consecutive business days commencing with the effective date of the advertisement. The requirement of this subsection shall not be applicable to merchandise which is advertised:

i. On an in-store sign only with no corresponding out-of-store sign;

ii. As being available in a specific quantity; or

iii. As being available in a "limited supply," pursuant to a "closeout sale" or pursuant to a "clearance sale" if such offering meets the definition of a closeout sale.

2. The failure of an advertiser to specifically designate within an advertisement which merchandise items possess special or limiting factors relating to price, quality, condi-

tion or availability. By way of illustration, and not by limitation, the following shall be deemed violative of this subparagraph:

i. The failure to specifically designate which merchandise items are below cost, if any amount less than all advertised items are below cost, when a statement of below cost sales is set forth in an advertisement;

ii. The failure to specifically designate which merchandise items, if any, are damaged or in any way less than first quality condition;

iii. The failure to specifically designate merchandise as floor models, discontinued models or one of a kind, when applicable;

iv. The failure to clearly designate or describe the retail outlets at which advertised merchandise will or will not be available. Such information need not be disclosed on any in-store advertisement.

3. The failure to conspicuously post notice of advertised merchandise, on the business premises to which the advertisement applies, in proximity to the advertised merchandise or at all entrances to the business premises. Such notice may consist of a copy of the advertisement or may take the form of a tag attached to the merchandise or any sign with such terms as "sale," "as advertised," "20% off."

4. In any price advertisement in which a home appliance is offered for sale, the failure of an advertiser to disclose the following information relating to the advertised merchandise: the manufacturer's name or the merchandise trade name, the model or series number and such other information as may be necessary to clearly delineate the advertised item from other similar merchandise produced by the same manufacturer.

5. The use of any type, size, location, lighting, illustration, graphic depiction or color resulting in the obscuring of any material fact.

6. The use of the terms "Public Notice," "Public Sale" or words or terms of similar meaning in any advertisement offering merchandise for sale, where such sale is not required by court order or by operation of law, other than a sale conducted by an auctioneer on behalf of a non-business entity.

7. Describing the advertiser through the use of the terms "warehouse," "factory outlet," "discount," "bargain," "clearance," "liquidators," "unclaimed freight," or other words or terms of similar meaning, whether in the advertiser's corporate, partnership or trade name or otherwise, where such terms do not reflect a bona fide description of the advertiser being described.

8. Whenever an advertiser provides a raincheck for an advertised item which is not available for immediate purchase, the failure to:

i. Honor or satisfy such raincheck within 60 days of issuance unless an extension of such time period is agreed to by the holder thereof; and

ii. Give written or telephonic notice to the holder thereof when the merchandise is available and hold such merchandise for a reasonable time after giving such notice, for all merchandise with an advertised price greater than $15 per unit; and

iii. Offer a raincheck to all customers who are unable, due to the unavailability thereof, to purchase the advertised merchandise during the period of time during which the merchandise has been advertised as available for sale.

9. The making of false or misleading representations of facts concerning the reasons for, existence or amounts of price reductions, the nature of an offering or the quantity of advertised merchandise available for sale.

10. The failure of an advertiser to substantiate through documents, records or other written proof any claim made regarding the safety, performance, availability, efficiency, quality or price of the advertised merchandise, nature of the offering or quantity of advertised merchandise available for sale. Such records shall be made available upon request for inspection by the Division or its designee at the advertiser's regular place of business or central office in New Jersey, or, at the advertiser's option, the Division's designated offices, for a period of 90 days following the effective date of the advertisement.

11. The use, directly or indirectly, of a comparison to a suggested retail price, inventory price, invoice price or similar terms that directly or indirectly compare or suggest the comparison between the cost of supply and the price at retail for the advertised merchandise.

Amended by R.1993 d.6, effective January 4, 1993.
See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).
Added new (a)11.

Case Notes

Penalty statute applied retroactively to misrepresentation of food on menu. Division of Consumer Affairs v. Lubrano, 94 N.J.A.R.2d (CMA) 93.

Respondent's motion to depose the Executive Director of the Office of Consumer Protection, in furtherance of defense that inspection processes were arbitrary and capricious, denied due to lack of good cause showing that information could not be otherwise obtained. Div. of Consumer Affairs v. Acme Markets, Inc., 3 N.J.A.R. 210 (1981).

13:45A–9.3 Price reduction advertisements

(a) Without limiting the application of N.J.S.A. 56:8–1 et seq., in addition to those practices referred to in N.J.A.C. 13:45A–9.2, the following practices shall be unlawful with respect to price reduction advertisements:

1. The failure to state with specificity the period of time during which the price reduction shall be applicable, except on those advertisements to which N.J.A.C. 13:45A–9.2(a)1 is not applicable.

2. The failure to set forth the retail selling price or price range for all specifically advertised merchandise.

3. For any specifically advertised merchandise items advertised for sale at a price of $100.00 or more, the failure to conspicuously set forth a reference price or price range based upon either:

i. The advertiser's usual selling price or price range for the identical merchandise or for comparable merchandise of like grade or quality; or

ii. A usual selling price charged by competitors in the advertiser's trade area for the identical merchandise or for comparable merchandise of like grade or quality.

4. The failure of the disclosure of the reference price or price range to adhere to the following conditions:

i. The reference price or price range shall be set forth in close proximity to the retail selling price and the advertised item and shall be established on the basis of a substantial number of sales or offers of sale in the regular course of business, made at any time within the most recent 60 days during which the advertised merchandise was available for sale prior to, or to be made in the first 60 days during which the advertised merchandise will be available for sale following, the effective date of the advertisement.

ii. When, and only when, an advertiser operates more than one retail outlet at which advertised merchandise has been or will be available for purchase in the ordinary course of business at different prices, such advertiser may set forth a price range, based on the sales or offers of sale at its retail outlets, as its reference price for a particular item. For example, an advertisement reading: "Regular price $110 to $125—On sale for $100" would comply with this regulation.

iii. When an advertiser advertises two or more items of comparable merchandise as available at reduced prices, such advertiser may set forth a price range, based on the reference prices for the advertised products. For example, an advertisement reading: "Eastinghome 19" color TV's—Regularly $250 to $300. Now $150 to $200" would comply with this regulation.

iv. With regard to the price comparison required by this subsection, the advertisement shall clearly and conspicuously disclose in close proximity to the reference price or price range the basis for such reference as set forth in (a)3 above. In this regard, terms such as "comparable value," "competitor's price," "our regular price" or words of similar import shall be used to designate the basis for the reference price.

5. The failure of an advertiser to prove the validity of its claim of a price reduction based on one of the bases therefor as set forth in (a)3 above to the Division or its designee, regardless of whether or not a reference price need be set forth in the advertisement. This substantiation shall adhere to the 60 day periods established by this section.

6. In any advertisement consisting of a general announcement of a price reduction characterized as savings of a particular percentage or a range of percentages (such as "save 20% or 20% to 50% off"), the failure to:

i. State the minimum percentage reduction as conspicuously as the maximum percentage reduction, when applicable; and

ii. Base the advertised percentage reduction on one of the categories set out in (a)3 above, disclosing such basis in the advertisement.

7. The use of the terms "cost," "wholesale" or other similar terms to describe an advertised price where such price is not equal to or less than the price per unit paid by the advertiser to the manufacturer or distributor of the merchandise. In the computation of the price per unit of the advertised merchandise, freight may be included if the advertiser pays for same and is not reimbursed therefor, but handling and all overhead or operating expenses shall be excluded.

8. The use or statement of any false, deceptive or misleading reference price comparison. A reference price or price comparison shall be deemed false, misleading, and deceptive where it is not based upon a substantial number of sales or offers of sale which have been or will be made within the advertiser's trade area at that price at any time within the 60 day periods established by this section.

Amended by R.1993 d.6, effective January 4, 1993.
See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).
Deleted (a)3iii; stylistic revisions.

13:45A–9.4 Application of regulation

(a) This subchapter shall apply to the following advertisements:

1. Any advertisement uttered, issued, printed, disseminated or distributed within this State concerning goods and services advertised as available at locations exclusively within this State; and

2. Any advertisement, other than radio and television broadcasts, issued, printed, disseminated or distributed to any substantial extent within this State concerning goods and services advertised as available at locations within this State and outside this State; and

3. Any advertisement, other than radio and television broadcasts, issued, printed, disseminated or distributed primarily within this State concerning goods and services advertised as available at locations exclusively outside this State; and

4. Any radio and television broadcasts uttered, issued, disseminated or distributed primarily within this State and outside this State, or at locations exclusively outside this State.

(b) An advertiser, a manufacturer, an advertising agency and the owner or publisher of a newspaper, magazine, periodical, circular, billboard or radio or television station acting on behalf of an advertising seller shall be deemed an advertiser within the meaning of this subchapter, when such entity prepares or places an advertisement for publication. No such entity shall be liable for a violation of this subchapter when the entity reasonably relies upon data, information or materials supplied by an advertising seller for whom the advertisement is prepared or placed or when the violation is caused by an act, error or omission beyond the entity's control, including but not limited to, the post-publication performance of the advertising seller. Notwithstanding that an advertisement has been prepared or placed for publication by one of the aforementioned entities, the advertiser on whose behalf such advertisement was placed may be liable for any violation of this subchapter.

(c) An advertiser has no liability under this subchapter for a failure to comply with any requirement thereof if the advertiser shows by a preponderance of evidence that failure to comply resulted from actions of persons other than the advertiser which were not, or should not have been reasonably anticipated by the advertiser; or that such failure was the result of a labor strike or a natural disaster such as, but not limited to, fires, floods and earthquakes.

(d) If any provisions of this subchapter or the application thereof to any person or circumstances is held unconstitutional or beyond the statutory powers of the Attorney General, the remainder of this subchapter and the application of such provisions to other persons or circumstances shall not be affected.

Amended by R.1993 d.6, effective January 4, 1993.
See: 24 N.J.R. 684(a), 25 N.J.R. 192(a).
Revised (b).

Case Notes

Culpability of advertising agencies and newspapers. Fenwick v. Kay American Jeep, Inc., 136 N.J.Super. 114, 344 A.2d 785 (App.Div.1975) reversed 72 N.J. 372, 371 A.2d 13.

13:45A–9.5 through 13:45A–9.8 (Reserved)

SUBCHAPTER 10. SERVICING AND REPAIRING OF HOME APPLIANCES

13:45A–10.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Home appliance dealer" means any person, including any business entity who, in the ordinary course of business, is engaged in the advertising, sale or lease of home appliances.

"Home appliance repairer" means any person, including any business entity who, in the ordinary course of business, is engaged in the service or repair of home appliances.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A–10.2 Required information

(a) Whenever a consumer purchases a home appliance, the home appliance dealer shall supply the consumer with a written copy of any information concerning:

1. Manufacturer's warranties, if any are still applicable;

2. Dealer's warranties, if any;

3. Dealer's service contract, if such is agreed upon, which must include a clear statement of any:

i. Basic "diagnostic" charges or any other set fee; and

ii. The methods used to determine any additional charge including the charge for labor and parts.

(b) Whenever a consumer requests service on a home appliance from a home appliance repairer, the home appliance repairer shall disclose before the consumer becomes committed to any expense:

1. Any diagnostic charges or other set fees; and

2. The methods used to determine the total charge including the charges for labor and parts.

(c) If the home appliance repairer is also the dealer from whom the appliance was purchased and there was a service contract covering the requested services, the provisions of (b) above shall not apply.

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A–10.3 Deceptive practices

(a) Without limiting the prosecution of any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq., the following acts or omissions shall be deceptive practices in the conduct of the business of repairing and servicing home appliances:

1. Commencing work other than diagnostic work or work included in a diagnostic fee without having obtained the consumer's signature or the signature of the consumer's agent on a written itemized estimate of the labor and parts necessary, including specific notation of exchange price on parts where applicable. If such written consent cannot be obtained, repair work may be commenced only if the consumer has been advised of the estimate and has consented thereto and the person advising the consumer has noted the conversation on the estimate as well as the date, time and phone number at which he reached the consumer.

2. All purchasers and lessees of passenger cars and motorcycles registered, sold or leased in the State of New Jersey; and

3. Dealers servicing such vehicles whether their service facilities are located within or outside of the State.

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).
Revised (b).

13:45A–26.2 Definitions

As used in this subchapter, the following words shall have the following meanings:

"Days" means calendar days.

"Director" means the Director of the Division of Consumer Affairs.

"Dispute Resolution System" means a procedure established by the Division of Consumer Affairs and the Office of Administrative Law for the resolution of disputes regarding motor vehicle nonconformity(s) through summary administrative hearings.

"Lemon Law" means P.L. 1988, c.123, an Act concerning new motor warranties and repealing P.L. 1983, c.215, as amended by P.L. 1993, c.21.

"Lemon Law Unit" ("LLU") means the administrative unit within the Division of Consumer Affairs that processes Lemon Law matters.

"Motor vehicle" means a passenger automobile or motorcycle as defined in N.J.S.A. 39:1–1, that is registered, sold or leased in the State of New Jersey, whether purchased, leased, or repaired in the State or outside the State.

"Nonconformity" means a defect or condition which substantially impairs the use, value or safety of a motor vehicle.

"OAL" means the Office of Administrative Law.

"Out of service" means the number of days the defective motor vehicle is on the premises of a repair facility for the purpose of repairing one or more nonconformities; delays caused by the consumer, such as a delay in picking up the motor vehicle from the facility after notification that it is ready, shall not be counted as days out of service.

"Term of protection" means within the first 18,000 miles of operation or the two years following the original date of delivery of the motor vehicle to the consumer, whichever is the earlier date.

"Title" means the certificate of ownership of a motor vehicle.

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).
Revised definition "motor vehicle".
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Case Notes

Vehicle nonconformity; proof. Kuhn v. Mercedes–Benz of North America, Inc., 94 N.J.A.R.2d (CMA) 101.

Lemon law claim had to be brought before 18,000 miles. Ortenau v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 98.

Failure to prove that vehicle had substantial impairment. Mayurnik v. Chrysler Corporation, 94 N.J.A.R.2d (CMA) 96.

Failure to prove defect. Krieg v. American Isuzu Motors, 94 N.J.A.R.2d (CMA) 91.

Squealing breaks not a defect. Kaufman v. Hyundai Motor America, 94 N.J.A.R.2d (CMA) 89.

Failure to prove nonconformity. Wilkinson v. Chrysler Motor Corp., 94 N.J.A.R.2d (CMA) 87.

Pulsing upon braking was not a defect; antilock brakes. Candeias v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 85.

Relief under Lemon Law; problems continued after vehicle was repaired over period of several visits. Gehringer v. Volkswagen United States, Inc., 94 N.J.A.R.2d (CMA) 78.

Failure to afford manufacturer final opportunity to repair. Simmons–Dixon v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 74.

Failure to prove that intermittent hard shifting constituted nonconformity. Thornton v. Mercedes–Benz of North America, 94 N.J.A.R.2d (CMA) 73.

No nonconformity; car's condition was remedied on fifth repair. Pajaro v. Hyundai Motor America, 94 N.J.A.R.2d (CMA) 69.

Failure to prove that brake chatter was nonconformity. Hoe v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 67.

Inability to repair nonconformity within a reasonable time. Shin v. Mitsubishi Motor Sales of America, Inc., 94 N.J.A.R.2d (CMA) 63.

Failure to show that problems were attributable to defect in starter. Velez v. General Motors Corporation, 94 N.J.A.R.2d (CMA) 59.

Rumble and vibration of transmission at certain speeds did not constitute nonconformity. Hurff v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 55.

Testimony refuted claim of substantial impairment affecting the use and safety of the vehicle. Valentin v. Hyundai Motor America, 94 N.J.A.R.2d (CMA) 53.

Manufacturer failed to correct faulty brake system and overcharged keyless entry system; defects substantially interfered with the safety and enjoyment. Kolody v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 52.

Failure of seat belts to buckle and rear air conditioning to perform; Lemon Law. McGlynn v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 47.

Engine noise; substantial impairment in value, use, or safety of vehicle. Esposito v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 42.

Automatic cutoff of air conditioner; no substantial impairment in value, use, or safety of vehicle. Casey v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 40.

Engine noise; substantial impairment of use, value, or safety of vehicle. Collado v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 39.

Transmission problem; no substantial impairment of substantial impairment of use, value, or safety of vehicle. Collura v. General Motors Corporation, 94 N.J.A.R.2d (CMA) 35.

Leaking transmission; substantial impairment of the use, value, or safety of vehicle. Parker v. Subaru of America, 94 N.J.A.R.2d (CMA) 33.

Engine and radio noise; no substantial impairment of use, value, or safety of vehicle. Smith v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 31.

Insufficient evidence; transmission defect. Shook v. Hyundai Motor America, 94 N.J.A.R.2d (CMA) 26.

Value, use and safety unimpaired and owner failed to complain after repairs. Zwerin v. Ford Motor Corporation, 94 N.J.A.R.2d (CMA) 24.

Insufficient evidence; brake, steering and paint defects. Geller v. Mitsubishi Motor Sales of Amenia, Inc., 94 N.J.A.R.2d (CMA) 23.

Loss of engine oil was substantial defect affecting use of vehicle. Schoppmann v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 16.

Fog light failure not a substantial defect or nonconformity. Terkovich v. Mercedes Benz of North American, Inc., 94 N.J.A.R.2d (CMA) 13.

Claim of transmission problem not substantiated. Barton v. Ford Motor Company, Inc. 94 N.J.A.R.2d (CMA) 11.

Petitioner failed to meet burden of proof required for Lemon Law relief. Dachisen v. American Honda Motor Company, Inc., 94 N.J.A.R.2d (CMA) 4.

Automobile's air conditioning design was not a defect which substantially impaired use or value of vehicle. Sanchez v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 3.

Complaint of car's vibrations or jerkiness at slow speeds failed to meet the requirement for a Lemon Law claim. Reaves v. Ford Motor Company, 94 N.J.A.R.2d (CMA) 1.

Fogging condition on car's windows constituted a safety hazard entitling car's purchaser to refund of the purchase price. Federico v. Mitsubishi Motor Sales of America, 93 N.J.A.R.2d (CMA) 148.

Defective power steering belt entitled owner to full restitution. Pelle v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 145.

Alleged excess oil consumption was not substantial nonconformity that impaired the use, value or safety of the petitioner's vehicle. Doyle v. American Suzuki Motor Corp., 93 N.J.A.R.2d (CMA) 142.

A consumer was not entitled to relief under New Jersey Lemon Law where the consumer failed to present evidence that misalignment in dashboard affected use, safety and value of vehicle. Cascetti v. Chevrolet Motor Division — GM, 93 N.J.A.R.2d (CMA) 138.

Claimant could not recover absent presence of actual defects. Schulke v. Chrysler Motor Corp., 93 N.J.A.R.2d (CMA) 137.

Vehicle owner failed to establish substantial impairment. Kay v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 132.

Repeated engine problems; nonconformity. Soto v. Nissan Motor Corporation in U.S.A., 93 N.J.A.R.2d (CMA) 129.

Seat belts; no nonconformity. Warren v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 125.

Pulling to right was nonconformity. Miele v. Chrysler Motor Corp., 93 N.J.A.R.2d (CMA) 123.

Steering problem; no nonconformity. Rooney v. Toyota Motor Distributors, 93 N.J.A.R.2d (CMA) 121.

Traction system failure; nonconformity. Maffeo v. Mercedes Benz of North America, 93 N.J.A.R.2d (CMA) 115.

Dash light, air conditioning and mirror problems; proof of defect. Kwiatkowska v. Mitsubishi Motor Sales of America, Inc., 93 N.J.A.R.2d (CMA) 111.

Brake, vibration and transmission problems; failure to show defect. Katz v. Mazda Motor of America, Inc., 93 N.J.A.R.2d (CMA) 108.

Vehicle noise and power steering problems; safety impairment. Hanley v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 105.

Battery acid drip; failure to show impairment. Tetlow v. Chrysler Motor Co., 93 N.J.A.R.2d (CMA) 103.

Engine vibration; no Lemon Law relief. Vallillo v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 101.

Pulling to right; no Lemon Law relief. Knoblauch v. American Iszu Motors, Inc., 93 N.J.A.R.2d (CMA) 97.

Claimed steering defect; no nonconformity. Hsueh v. Toyota Motor Distributors, 93 N.J.A.R.2d (CMA) 94.

Noise not shown to constitute nonconformity. Horan v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 92.

Failure to establish alleged brake defect. Boccanfuso v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 88.

Rough idle and transmission grinding; no nonconformity. Sullivan v. General Motors Corp., 93 N.J.A.R.2d (CMA) 85.

No recovery under the Lemon Law; normal wind noise. N.J.S.A. 56:12–29 et seq. Peritz v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 83.

Odor rendered automobile nonconforming and unsafe. N.J.S.A. 56:12–30. Gerson v. BMW of North America, Inc., 93 N.J.A.R.2d (CMA) 80.

Noise did not substantially impair the value. N.J.S.A. 56:12–29 et seq. Wasserman v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 78.

Wheel noise did not constitute nonconformity. Wasserman v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 78.

There was failure to prove alleged transmission defects. N.J.S.A. 56:12–29 et seq. Gall v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 76.

Failure to show that the vehicle had defects that were not repaired. N.J.S.A. 56:12–29 et seq. Bartoli v. Mazda Motor of America, Inc., 93 N.J.A.R.2d (CMA) 74.

Maintaining Lemon Law claim against manufacturer for dealer's neglect repair even though repainted auto hood was not nonconformity. N.J.S.A. 56:12–31. Anderson v. American Honda Motor Co., Inc., 93 N.J.A.R.2d (CMA) 71.

Vehicle noise and steering vibration; nonconformity. Stine v. Chrylser Motor Corporation, 93 N.J.A.R.2d (CMA) 67.

Engine noise was not nonconformity, Dacko v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 64.

Vehicle performance; no nonconformity. Miles v. Mitsubishi Motor Sales of America, Inc., 93 N.J.A.R.2d (CMA) 63.

Vehicle noise; no nonconformity. Rubell v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 59.

Rear-end hum; no Lemon Law relief. Pasqua v. Ford Motor Co., 93 N.J.A.R.2d (CMA) 57.

Repair corrected claimed nonconformity. Citarella v. Chrysler Motor Co., 93 N.J.A.R.2d (CMA) 53.

Brake defect; failure to repair. Schutzbank v. Mitsubishi Motor Sales of America, Inc., 93 N.J.A.R.2d (CMA) 50.

Steering defect; customer mistreatment; Lemon Law. Pak v. Hyundai Motor America, Inc., 93 N.J.A.R.2d (CMA) 47.

Normal vibration; not nonconformity. Soueid v. American Honda Motor Co., Inc., 93 N.J.A.R.2d (CMA) 43.

Clicking noise and difficulty of engagement of brake constituted an impairment in use, value and safety of vehicle. Batista v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 41.

Vehicle drift did not substantially impair use, safety or value of vehicle. Grillo v. Chrysler Motor Corporation, 93 N.J.A.R.2d (CMA) 39.

Sulphureous odor preventing use of heater and air conditioner was a substantial impairment. Edwards v. Mitsubishi Motor Sales of America, Inc., 93 N.J.A.R.2d (CMA) 37.

Ability to shift gears without difficulty and never having been towed did not show transmission problems impairing the use, value or safety of vehicle for a claim under the Lemon Law. Millar v. Chrysler Corporation, 93 N.J.A.R.2d (CMA) 34.

Air leak and whistling noise in door did not constitute a nonconformity. Kozma v. Chrysler Motor Corp., 93 N.J.A.R.2d (CMA) 28.

Vibration not shown to have impact on the use, value or safety of the vehicle. Villagomez v. Toyota Motor Sales, U.S.A., Inc., 93 N.J.A.R.2d (CMA) 31.

Vehicle drift was not substantial impairment in use, safety or value under provisions of Lemon Law. McConnell v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 27.

Foreign substances which caused the engine to seize substantially impaired the use, value or safety of the vehicle due to abuse, but was not caused by the dealer or manufacturer. Booker v. Hyundai Motor America, 93 N.J.A.R.2d (CMA) 25.

Brakes which squeal or grind do not rise to the level of nonconformity under the Lemon Law. Tirre v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 21.

Veering on brake application substantially impaired use, value and safety of the vehicle. Montesian v. Chrysler Motor Corporation, 93 N.J.A.R.2d (CMA) 19.

Uncorrected shimmying constituted substantial impairment. Umbach v. Volkswagen of America, 93 N.J.A.R.2d (CMA) 11.

Claim under Lemon Law for failure of rear defroster to work dismissed. Singh v. Ford Motor Company, 93 N.J.A.R.2d (CMA) 7.

Slight rightward drift of minivan did not impair the safety, use or value of vehicle so as to entitle owner to relief under Lemon Law. Thompson v. Chrysler Motor Corporation, 93 N.J.A.R.2d (CMA) 5.

Leak was not substantial and did not entitle owner to relief under Lemon Law. Drayton v. Sterling Motor Cars, 93 N.J.A.R.2d (CMA) 3.

Transmission problems of stalls and lost power substantially impaired the safety of the vehicle. Bello v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 208.

No defect which constituted a nonconformity under the Lemon Law existed in a car that pulled to the right and drifted to left. Dente v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 204.

Evidence that vibration and involuntary downshifting substantially impaired the use, value or safety of the vehicle demonstrated no claim was available under the Lemon Law. Manzi v. BMW of North America, Inc., 92 N.J.A.R.2d (CMA) 195.

Rough idle and rattle was not impairment in use, value and safety as to constitute a nonconforming vehicle. Scanlon v. Volkswagen of America, Inc., 92 N.J.A.R.2d (CMA) 190.

Excessive bounciness and swaying and creaking noises did not constitute nonconformity. Ostrovsky v. Toyota Motor Sales, 92 N.J.A.R.2d (CMA) 187.

Sudden excessive revving was defect or nonconformity which substantially impaired use, safety or value of vehicle. Bertucci v. Chrysler Motor Corp., 92 N.J.A.R.2d (CMA) 185.

Stalling and electrical failures interfered with reasonable enjoyment and safe operation of vehicle entitling owner to relief under Lemon Law. Baccigalupi v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 182.

Oil pump rotor damage and consequences following oil changes by owner was substantial defect for which neither the dealer nor the manufacturer was liable under the Lemon Law. Purcell v. Kawasaki Motors Corporation, U.S.A., 92 N.J.A.R.2d (CMA) 177.

Rattles did not use to a level for which Lemon Law relief was appropriate. George v. Acura Div.–American Honda Motor Co., Inc., 92 N.J.A.R.2d (CMA) 175.

Vehicle pulling and vibrating was substantially impaired in use, value and safety. Kaufman v. Mercedes–Benz of North America, 92 N.J.A.R.2d (CMA) 171.

Rough engine idle was not substantial impairment. Wilson v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 169.

Emission of odor and low gasoline mileage constituted substantial impairment. Ryan v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 165.

Vehicle pulling sideways at least three feet within a 60 foot stop entitled the owner to relief under the Lemon Law. Cranston v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 160.

Vehicle contained fuel pump defect which constituted a nonconformity. Stanford v. Toyota Motor Sales, U.S.A., Inc., 92 N.J.A.R.2d (CMA) 155.

Failure of anti-lock brake system constituted a nonconformity. Slusarczuk v. Chrysler Corporation, 92 N.J.A.R.2d (CMA) 151.

Neither squealing noise nor a "popping" noise constituted a condition which substantially impaired the use, safety or value of the vehicle. Kuras v. Chrysler Motor Corp., 92 N.J.A.R.2d (CMA) 149.

Pulsating/knocking noise would not impair the safety or use of vehicle. Ruff v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 147.

Steering mechanism had design defect substantially impairing the value of the vehicle. Watkins v. Chevrolet Motor Division, General Motors Corporation, 92 N.J.A.R.2d (CMA) 144.

Nonconformity as defined in the Lemon Law existed in vehicle with steering problems. Shannon v. Buick Motor Division, General Motors Corporation, 92 N.J.A.R.2d (CMA) 142.

Proof failed to establish veering of vehicle on sudden braking. Breitman v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 140.

Failure of judge to hear noise on a test drive and continued driving of the vehicle after report of problem indicated that nonconformity did not exist. Compolo v. Chrysler Corporation, 92 N.J.A.R.2d (CMA) 138.

Continued repair efforts did not prove nonconformity of the vehicle under the Lemon Law. Bennett v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 137.

Clanging, rumbling and vibration in the drive shaft substantially affected the use of sports utility vehicle and entitled the purchaser to relief under Lemon Law. Ward v. Chrysler Motor Corp., 92 N.J.A.R.2d (CMA) 133.

Continuing tire air loss constituted a nonconformity which entitled owner of vehicle right to restitution under Lemon Law. McCarthy v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 132.

Smell from the air conditioning and wind noise from the windows was not substantial impairment of the use of the vehicle. Galvano v. American Honda Motor Co., Inc., 92 N.J.A.R.2d (CMA) 130.

Rattle was not a substantial impairment of the value of the car. Hirschorn v. Acura Division–American Honda Motor Co., Inc., 92 N.J.A.R.2d (CMA) 129.

Leak was a nonconformity under the Lemon Law. Black v. Volvo North America Corporation, 92 N.J.A.R.2d (CMA) 123.

Vibration due to transmission with a lock-up torque converter was not nonconformity within the Lemon Law. Gentile v. Chevrolet Motor Division, General Motors Corporation, 92 N.J.A.R.2d (CMA) 120.

Vehicle contained a defect which constituted a nonconformity which impaired the use, safety and value of the vehicle. Berrie v. Toyota Motor Sales, U.S.A., Inc., 92 N.J.A.R.2d (CMA) 117 affirmed 267 N.J. Super. 152.

Leak was a nonconformity which substantially impaired the value of the vehicle. Cappuccio v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 114.

Intermittent rattle and claimed vibration in the steering column failed to establish right to relief under the Lemon Law. Longa v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 111.

Finish of car did not constitute a nonconformity within the Lemon Law. Rottenberg v. Volkswagen of America, Inc., 92 N.J.A.R.2d (CMA) 109.

Squeaking brakes substantially impaired vehicle use, value or safety, and entitled owner to full restitution. Pardo v. Chevrolet Motor Division, 92 N.J.A.R.2d (CMA) 105.

Corrected nonconformity of exterior paint of car was not basis for relief under the Lemon Law. Ferrara v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 93.

Transmission slippage was not a sufficient defect to constitute a nonconformity under the Lemon Law. Roe v. Chrysler Motor Corp., 92 N.J.A.R.2d (CMA) 91.

Repair of rattle negated any claim for nonconformity under the Lemon Law. Pagano v. General Motors Corporation, 92 N.J.A.R.2d (CMA) 87.

Transmission defects caused by impact of external force, and results of repair and/or maintenance not authorized by the manufacturer, did not allow the owner the right of recovery under the Lemon Law. Lugo v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 84.

Uncorrectable water leak constituted a substantial impairment of value which allowed the owner to relief under the Lemon Law. Pak v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 80.

Vehicle noisier than the owner desired, and without the gas mileage which the owner expected, was not so defective as to constitute a nonconformity. Frison v. Toyota Motor Sales, U.S.A., 92 N.J.A.R.2d (CMA) 75.

Noises were not nonconformity which would impair use, value or safety of vehicle. Dogra v. Mitsubishi Motor Sales of America, Inc., 92 N.J.A.R.2d (CMA) 73.

Transmission slippage and whining and clanking did not constitute a condition or defect which substantially impaired the use, value or safety of the vehicle. Valentini v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 70.

Transmission with design defect entitled owner to restitution under the Lemon Law. Mills v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 68.

Failure of the headlights and wipers entitled the owner to relief under the Lemon Law. Marley v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 62.

Engine noise did not constitute a nonconformity. Spadavecchia v. Toyota Motor Corporation, 92 N.J.A.R.2d (CMA) 59.

Leaks of water into the passenger compartment and engine starting defect constituted a nonconformity under the Lemon Law. Hartzell v. Porsche Cars North America, Inc., 92 N.J.A.R.2d (CMA) 55.

Grinding and noisy brakes demonstrated a nonconformity which substantially impaired the use, safety and value of the vehicle. Davis v. Mazda Motor of America, 92 N.J.A.R.2d (CMA) 53.

Racing of engine failed to establish a nonconformity under the Lemon Law. Quairoli v. Chrysler Motor Corporation, Inc., 92 N.J.A.R.2d (CMA) 51.

Screeching brakes did not substantially impair use, value or safety of vehicle. Friedberg v. Volvo Cars of North America, 92 N.J.A.R.2d (CMA) 47.

Vehicle was not subject to the defect of a "body boom", but was the normal condition for the vehicle as modified, and did not constitute a nonconformity under the Lemon Law. Palamara v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 45.

Neither rattling noise, ignition switch problem, nor misalignment of the steering wheel constituted a nonconformity under Lemon Law. Kochie v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 39.

Transmission problems constituted a nonconformity which substantially impaired the use, safety or value of the vehicle and entitled the purchaser to restitution. Caprio v. American Honda Motor Company, Inc., 92 N.J.A.R.2d (CMA) 36.

Transmission problem was nonconformity which substantially impaired the use, safety or value of the vehicle and entitled the buyer to full restitution. Hopke v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 33.

Transmission and other claimed defects did not establish the existence of a bona fide defect or condition substantially impairing the use, value or safety. Deitelbaum v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 30.

Acid rain damage is not covered by Lemon Law. Mavuro v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 26.

Transmission drag did not rise to the level of a substantial impairment to the use, safety, or market value of the vehicle. Boyd v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 24.

Stalling for no apparent reason was not substantial impairment in use, value and safety within the statutory standard for relief under the Lemon Law. Cortes v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 23.

No sufficient evidence that a defect or nonconformity which affected its use, safety or value existed. Trifun v. World–Wide Volkswagen Corp., 92 N.J.A.R.2d (CMA) 20.

Absence of testimony to the effect on value or safe use made a claim under the Lemon Law unavailable. Rosko v. General Motors Corporation, 92 N.J.A.R.2d (CMA) 18.

Clicking noise was not a substantial impairment under the Lemon Law. Greenbaum v. Ford Motor Co., 92 N.J.A.R.2d (CMA) 16.

Unauthorized modification or alteration did not constitute a "nonconformity" within the Lemon Law. Mount v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 13.

Unsuccessful repair entitled the owner to a claim under the Lemon Law. Quinton v. GMC Truck, D.M.A.C. Operation, 92 N.J.A.R.2d (CMA) 5.

Convertible having water leak was not "nonconformity" under the Lemon Law. Chudzinksi v. Chrysler Motor Corporation, 92 N.J.A.R.2d (CMA) 1.

Rattle and rumbling noise did not cause motor vehicle to be a "nonconformity" under the Lemon Law. Stewart v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 1.

Evidence was insufficient to find that motor vehicle had any unusual vibration. N.J.S.A. 56:12–30, 56:12–31, 56:12–32, 56:12–40, 56:12–33. Nolin v. Ford Motor Co., 91 N.J.A.R.2d (CMA) 19.

Automobile used excessive amounts of oil; nonconformity which substantially impaired its safety, use, and value. N.J.S.A. 56:12–29, 56:12–30, 56:12–31, 56:12–32, 56:12–34, 56:12–42. Antunes v. Mitsubishi Motor Sales of America, Inc., 91 N.J.A.R.2d (CMA) 14.

Rattle in wheels presented a safety hazard with respect to use of the vehicle. N.J.S.A. 13:45A–26.11, 56:12–29 et seq., 56:12–33. Sager v. Nissan Motor Corp., 91 N.J.A.R.2d (CMA) 11.

Humming and vibrations substantially impaired use and value of the vehicle under the Lemon Law. N.J.S.A. 56:12–29 et seq. Zuelch v. Ford Motor Co., 91 N.J.A.R.2d (CMA) 7.

Gear noise was not defect. N.J.S.A. 56:12–29 et seq., 56:12–30. Weaver v. Hyundai Motor America, 91 N.J.A.R.2d (CMA) 6.

Overheated engine and loss of fluids, malfunctioning air conditioning system, and smell of exhaust fumes inside car, did not justify refund of purchase price. N.J.S.A. 56:12–29 et seq., 56:12–31. Gilliard v. Ford Motor Co., 91 N.J.A.R.2d (CMA) 4.

Excessive vibration was not a defect. N.J.S.A. 56:12–29 et seq. McClintock v. Chrysler Motor Corp., 91 N.J.A.R.2d (CMA) 2.

Pick-up was not a passenger vehicle under the state Lemon Law. N.J.S.A. 39:1–1, 56:12–29 et seq. Hund v. Ford Motor Co., 91 N.J.A.R.2d (CMA) 1.

13:45A–26.3 Statements to consumer; other notices

(a) At the time of purchase or lease of a motor vehicle in the State of New Jersey, the manufacturer, through its dealer or lessor, shall provide the following written statement directly to the consumer on a separate piece of paper, in 10–point bold-face type:

> "IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER NEW JERSEY LAW TO A REFUND OF THE PURCHASE PRICE OR YOUR LEASE PAYMENTS. FOR COMPLETE INFORMATION REGARDING YOUR RIGHTS AND REMEDIES UNDER THE RELEVANT LAW, CONTACT THE NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF CONSUMER AFFAIRS, LEMON LAW UNIT, AT POST OFFICE BOX 45026, 124 HALSEY STREET, NEWARK, NEW JERSEY 07101, TEL. NO. (201) 504–6226."

The manufacturer, through its dealer or lessor, shall maintain a record substantiating compliance with this section and shall make the record available to the Division upon request.

(b) If a motor vehicle is returned to the manufacturer under the provisions of the Lemon Law or a similar statute of another state or as the result of a legal action or an informal dispute settlement procedure, the motor vehicle shall not be resold or released in New Jersey unless the following steps are taken:

1. Immediately upon receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall cause the words "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING" to be clearly and conspicuously stamped on the face of the original certificate of title, the manufacturer's statement of origin, or other evidence of ownership.

2. Within 10 days of receipt of the vehicle, the manufacturer, its agent, or a dealer who accepts the vehicle shall submit a copy of the stamped document to the Special Title Section of the Division of Motor Vehicles to indicate that title to the vehicle shall be permanently branded.

3. The manufacturer shall provide to the dealer or lessor, and the dealer or lessor shall provide to the consumer prior to the resale or release of the motor vehicle a copy for the consumer's records of the following statement on a separate piece of paper, in 10–point boldface type:

> NOTICE OF NONCONFORMITY
>
> "IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S WARRANTY AND THE NONCONFORMITY WAS NOT CORRECTED WITHIN A REASONABLE TIME AS PROVIDED BY LAW."

(This notice is required under the New Jersey "Lemon Law", N.J.S.A. 56:12–1 et seq., for vehicles that have been replaced or repurchased by the manufacturer as the result of any one of the following: a court judgment, or a final decision pursuant to a hearing or settlement by the Office of Administrative Law, or an arbitration proceeding between the manufacturer or its agent and a consumer.)

4. Upon delivery to the consumer of the statement in (b)3 above the dealer or lessor shall obtain from the consumer a signed receipt, on a separate sheet of paper, which shall state the following, in underlined 10–point boldface type:

> "I ACKNOWLEDGE RECEIPT OF NOTICE OF NONCONFORMITY OF THIS VEHICLE, VIN NO. _____ AS REQUIRED BY N.J.S.A. 56:12–35 (THE 'LEMON LAW')."

Alternatively, the dealer or lessor may fulfill this requirement by making the following notation in underlined boldface type on the front page of the vehicle buyer order form or the lease form:

> "NOTICE OF NONCONFORMITY OF THIS VEHICLE, VIN NO. _____, HAS BEEN PROVIDED TO THE PURCHASER OR LESSEE, AS REQUIRED BY N.J.S.A. 56:12–35 (THE 'LEMON LAW')."

5. The manufacturer, dealer or lessor shall notify the Special Title Section of the Division of Motor Vehicles of the resale or release of the vehicle by requesting transfer of the branded title to the new owner or lessor, in writing.

(c) Each time a consumer's motor vehicle is returned from being examined or repaired during the term of protection, the manufacturer through its dealer shall provide to the consumer an itemized, legible statement of repair which indicates any diagnosis made and all work performed on the vehicle; the statement of repair shall provide at least the following information:

1. A description or identification of the problem reported by the consumer or an identification of the defect or condition;

2. A specific description of the repair work performed.

3. The amount charged for parts and the amount charged for labor, if paid by the consumer;

4. The date and the odometer reading when the vehicle was submitted for repair; and

5. The date and the odometer reading when the vehicle was made available to the consumer.

(d) Failure to comply with the provisions of this section shall be a violation of the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq.

Administrative Change.
See: 25 N.J.R. 1516(b).
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).
Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A–26.4 Lemon Law Unit

(a) There is established within the Division of Consumer Affairs a section processing Lemon Law matters, to be known as the Lemon Law Unit (LLU).

(b) The Lemon Law Unit shall upon request provide consumers with a brochure setting forth:

1. Information regarding a consumer's rights and remedies under the relevant law; and

2. The procedure to be followed in order to participate in the various dispute resolution systems.

(c) All correspondence by consumers or manufacturers to the Division of Consumer Affairs regarding Lemon Law matters shall be directed to the attention of the Lemon Law Unit, as follows:

Division of Consumer Affairs
Lemon Law Unit
Post Office Box 45026, 124 Halsey Street
Newark, New Jersey 07101
Telephone (201) 504–6226

Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).
Revised (c).
Administrative Change.
See: 25 N.J.R. 1516(b).
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

13:45A–26.5 Preliminary steps

(a) To initiate a claim under the Lemon Law, written notification of the potential claim must be sent certified mail, return receipt requested, by or on behalf of a consumer, to the manufacturer of a nonconforming motor vehicle if either of the following occurs during the first 18,000 miles of operation or within 24 months after the date of original delivery, whichever is earlier:

1. Substantially the same nonconformity has been subject to repair two or more times by the manufacturer or its dealer and the nonconformity continues to exist; or

2. The motor vehicle has been out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, and a nonconformity continues to exist.

(b) The manufacturer by law has one more opportunity to repair or correct the nonconformity within 10 days following receipt of notification from the consumer of a potential claim; if the nonconformity continues to exist after expiration of the 10–day time period and the manufacturer refuses to replace or refund the price of the vehicle, the criteria necessary to pursue a Lemon Law claim have been met. The consumer may then:

1. Refer the matter to the manufacturer for resolution through the manufacturer's informal dispute settlement procedure;

2. Refer the matter to the LLU for dispute resolution; or

3. File an action in the Superior Court. Any party to an action asserting a claim, counterclaim or defense based upon violations of the Lemon Law shall mail a copy of the initial or responsive pleading containing the claim, counterclaim or defense to the Attorney General within 10 days after filing the pleading with the court.

Case Notes

Failure to tell repairer that malfunction occurred only when the headlights were turned on required the manufacturer be given last chance to repair the nonconformity. Measley v. Volkswagen of America, Inc., 93 N.J.A.R.2d (CMA) 1.

Failure to send correct last chance notice required the complaint under the Lemon Law be dismissed without prejudice. Millar, Patrick J., v. Chrysler Corporation, 92 N.J.A.R.2d (CMA) 180.

Settlement agreement was in full force and effect after the manufacturer honestly and in good faith performed its duties under the agreement. Guarino v. Ford Motor Company, 92 N.J.A.R.2d (CMA) 99.

13:45A–26.6 Eligibility

(a) To be eligible for the Dispute Resolution System, a consumer must provide the following items to the LLU by certified mail, return receipt requested:

1. A photocopy of the consumer's notification to the manufacturer of a potential claim; and

2. A completed Application for Dispute Resolution; the form will be supplied upon request by the LLU.

(b) During any periods when forms are not available, any written request for dispute resolution shall be accepted by the LLU provided all information, items and statements listed in N.J.A.C. 13:45A–26.7 are included.

(c) A consumer is eligible for dispute resolution by the Division as to a specific motor vehicle only once; no further applications from that consumer relating to the same motor vehicle will be accepted if a final decision has been rendered pursuant to N.J.A.C. 13:45A–26.12(b).

Administrative correction to (b). Effective July 3, 1989.
See: 21 N.J.R. 1831(a).
Phrase "following the term of protection" deleted.

13:45A–26.7 Application

(a) Application for dispute resolution shall require submission of the following:

1. Information as follows:

i. The name and address of the consumer and lienholder, if any;

ii. The date of original delivery of the motor vehicle to the consumer;

iii. The mileage on the date the nonconformity was first reported to the manufacturer or its dealer; and

iv. The mileage on the date the application is mailed back to LLU.

2. A written account of the events resulting in the dispute, including description of the claimed nonconformity(s) and a chronology of the repair attempts.

3. A photocopy of the notification of a potential claim sent by or on behalf of the consumer to the manufacturer after two or more attempts to repair or 20 calendar days out of service, and a photocopy of the return receipt signed by the manufacturer's agent.

4. Photocopies of the statements of repair required by section 6(b) of the Lemon Law, to be given to the consumer by the manufacturer through its dealer, each time a motor vehicle is returned from being examined or repaired.

5. Photocopies of the agreement of sale or lease, including any stated credit or allowance for the consumer's used motor vehicle, the receipt for payment of any options or other modifications arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery, receipts for any other charges or fees including but not limited to:

i. Sales tax;

ii. License and registration fees;

iii. Finance charges;

iv. Towing;

v. Rental of a motor vehicle equivalent to the consumer's motor vehicle for the period when the consumer's motor vehicle was out of service due to a nonconformity; and

vi. Any other documents related to the dispute.

(b) The application must contain a statement as to the following:

1. That the consumer believes the motor vehicle's use, market value or safety is substantially impaired by the nonconformity(s) complained of;

2. That the nonconformity(s) complained of is not the result of abuse, neglect, or unauthorized modifications of the motor vehicle by anyone other than the manufacturer or its dealer;

3. That within the term of protection the manufacturer, its agent or authorized dealer failed in at least two attempts to correct the same substantial defect, or the vehicle was out of service by reason of repair for at least 20 days;

4. That within the term of protection the consumer gave the manufacturer written notification by certified mail, return receipt requested, of a potential claim pursuant to the Lemon Law, section 5(b);

5. That within the term of protection:

i. The consumer gave the manufacturer or its dealer at least three attempts (including the post-notification attempt) to repair substantially the same nonconformity and the nonconformity continues to exist; or

ii. The vehicle was out of service by reason of repair for one or more nonconformities for a cumulative total of 20 or more days since the original delivery of the motor vehicle, the manufacturer has been given the post-notification opportunity to repair, and a nonconformity continues to exist; and

6. Whether the consumer wishes to appear at the hearing in person or instead will allow a decision to be rendered by the OAL on the papers submitted by both parties, if the manufacturer does not object to a proceeding on the papers in its response pursuant to N.J.A.C. 13:45A–26.10(f).

Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Manufacturer may not insulate itself from Lemon Law responsibilities by having subcontractors undertake separate warranties. McCarthy v. Hyundai Motor America, 92 N.J.A.R.2d (CMA) 132.

13:45A–26.8 Filing fee

(a) A consumer whose application for dispute resolution is accepted by the Division shall pay a filing fee of $50.00 by certified check or money order payable to the "New Jersey Division of Consumer Affairs". The filing fee shall be nonrefundable but is recoverable as a cost if the consumer prevails.

(b) The filing fee shall be requested by the LLU when it has determined that the consumer's application is complete and that it complies with this subchapter and the Lemon Law.

Case Notes

The Lemon Law filing fee is not part of purchase or lease price, but is recoverable as a cost. Montesian v. Chrysler Motor Corporation, 93 N.J.A.R.2d (CMA) 19.

13:45A–26.9 Processing of applications

(a) Submitted applications shall be reviewed by the LLU for completeness and compliance with the Lemon Law and this subchapter.

1. Incomplete applications shall be promptly returned for completion to the consumer.

2. Applications not in compliance with this subchapter and the Lemon Law (including but not limited to the required number of repair attempts or the number of days out of service) will be rejected. The reason for the rejection will be sent to the consumer. No judgment will be made by the LLU as to whether the claimed defect(s) are substantiated by the evidence or whether they substantially impair the use, market value or safety of a motor vehicle.

(b) Upon receipt of the filing fee of $50.00, the application shall be date-stamped to indicate its acceptance for dispute resolution.

13:45A–26.10 Notification and scheduling of hearings

(a) Within 10 days after the effective date of this subchapter, each manufacturer of motor vehicles sold or leased in New Jersey shall forward to the Division of Consumer Affairs, Lemon Law Unit, the name, address, and telephone number of the person designated by the manufacturer to receive notices under this dispute resolution process. It shall be the duty of the manufacturer to update this information, as necessary.

(b) On the day that an application is accepted for resolution by the LLU, a notice shall be sent by certified mail, return receipt requested by the LLU to the consumer and manufacturer's designee. This notice shall indicate that the consumer's request for resolution has been accepted, and shall provide general information about the resolution process.

(c) The LLU shall immediately thereafter refer an accepted application for dispute resolution to the OAL and arrange a hearing date acceptable to all parties. The dispute resolution shall be conducted as a contested case by the OAL in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B–1 et seq., the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and Special Rules, N.J.A.C. 1:13A.

(d) The date of the hearing shall be no later than 20 days from the date of the notice of acceptance unless a later date is agreed to by the consumer.

(e) Notice of the date, time, and location of the hearing shall be mailed by the OAL to both parties.

(f) A copy of the application materials shall be sent by the LLU simultaneously with the notice of acceptance of the application, to the manufacturer's designee. Within 10 days of the notice of acceptance of the consumer's application for dispute resolution, the manufacturer shall mail by certified mail, return receipt requested, to the consumer and to the clerk of the Office of Administrative Law at 185 Washington Street, Newark, New Jersey 07102, a response to each of the statements set forth in the consumer application. The response shall also state whether the manufacturer objects to a proceeding on the papers if requested by the consumer.

(g) Applications by the consumer or the manufacturer with consent of the consumer for adjournments or rescheduling of the hearing shall be made in accordance with N.J.A.C. 1:1–9.6.

13:45A–26.11 Computation of refund

(a) The refund claimed by a consumer pursuant to section 4(a) of the Lemon Law, whether through the Division of Consumer Affairs automotive dispute resolution system or a manufacturer's informal dispute resolution process, shall include:

1. The total purchase or lease price of the motor vehicle including finance charges, sales tax, license fees, registration fees, and any stated credit or allowance for the consumer's used motor vehicle, provided that:

i. The full refund of purchase price that may be claimed by a consumer under section 4(a) shall not include any portion of a stated credit or allowance for the consumer's used motor vehicle that grossly exceeds the true value of the consumer's used motor vehicle.

ii. During the Office of Administrative Law hearing, a manufacturer may challenge the stated credit or allowance for the consumer's used motor vehicle. The manufacturer shall bear the burden of proof, and shall provide evidence that the purchase price included a trade-in allowance grossly disproportionate in amount to the true value of the consumer's used motor vehicle. Such evidence shall include, but not be limited to, the value of the motor vehicle as listed in the N.A.D.A. Official Used Car Guide.

2. The cost of any options or other modification arranged, installed or made by the manufacturer or its dealer within 30 days after the date of original delivery.

3. Other charges or fees, including, but not limited to:

i. Reimbursement for towing, if any;

ii. Reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle for the period during which the consumer's motor vehicle was out of service due to a nonconformity;

iii. Filing fee for participation in the Division's dispute resolution system; and

iv. Reimbursement for reasonable attorney's fees, fees for reports prepared by expert witnesses, and costs.

(b) From the total sum of the items in (a) above, a deduction shall be made, representing an allowance for vehicle use. This deduction shall be calculated as follows:

1. Multiply the mileage at the time the consumer first presented the motor vehicle to the dealer or manufacturer for correction of the nonconformity(s) in question by the total purchase price of the vehicle (or the total lease price, if applicable), then divide by 100,000 miles.

Correction: "manufacturer's" was spelled "manufacturers' ".
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

Case Notes

Classification of vehicle as "lemon" due to abnormal rumbling noises; Lemon Law filing fee as added cost. Law v. Chrysler Motor Corporation, 94 N.J.A.R.2d (CMA) 7.

Agreement of parties; total restitution. N.J.S.A. 56:12–29 et seq. Stine v. Chrysler Motor Corp., 93 N.J.A.R.2d (CMA) 74.

Hourly rate of $150 was reasonable for attorney's fees in Lemon Law action. Pardo v. Chevrolet Motor Division, 92 N.J.A.R.2d (CMA) 105.

Expert fees and attorney fees would be determined after submission of a proper Affidavit of Services. Sager v. Nissan Motor Corporation in U.S.A., 92 N.J.A.R.2d (CMA) 35.

13:45A–26.12 Final decision

(a) The Director shall review the OAL proposed decision submitted by the administrative law judge who conducts the administrative hearing and shall adopt, reject, or modify the decision no later than 15 days after receipt.

(b) At the conclusion of the 15–day review period, the Director shall mail notification of the rejected, modified or adopted decision to both parties, the lien-holder, if any, the OAL, and, if the vehicle in question is to be returned to the manufacturer, the Special Title Section of the DMV. The mailing to the manufacturer and consumer shall be by certified mail, return receipt requested. Within 45 days of receipt of the final decision, any party may file an appeal in the Appellate Division of the Superior Court.

(c) The manufacturer shall advise the Director as to its compliance with the final decision no later than 10 days following the date stated for completion of all awarded remedies.

(d) If the manufacturer unreasonably fails to comply with the decision within the specified time period, the manufacturer shall be liable for penalties in the amount of $5000 for each day the manufacturer unreasonably fails to comply, commencing on the day after the specified date for completion of all awarded remedies.

Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).

13:45A–26.13 Appeals

(a) A manufacturer or a consumer may appeal a final decision to the Appellate Division of Superior Court; a notice of appeal must be filed with the Director no later than 45 days after the date of the final decision as defined in N.J.A.C. 13:45A–26.12(b).

(b) An appeal by a manufacturer shall not be heard unless the notice of appeal is accompanied by a bond which shall be:

1. For a principal sum equal to the money award made by the administrative law judge, plus $2500 for anticipated attorney's fees and other costs;

2. Secured by cash or its equivalent; and

3. Payable to the consumer.

13:45A–26.14 Manufacturer's reporting requirements

(a) The LLU shall compile a roster of American and foreign manufacturers of passenger automobiles and motorcycles registered, sold or leased in New Jersey.

(b) Manufacturers who establish or participate in an informal dispute settlement procedure shall within 30 days after the effective date of this subchapter:

1. Advise the LLU of the existence of its informal dispute settlement procedure; and

2. Send the LLU an outline of the steps that a consumer must take in order to participate in the manufacturer's informal dispute resolution procedure; the information shall include all necessary addresses and phone numbers.

(c) On January 15 and July 15 of every year, the LLU shall mail a questionnaire by certified mail, return receipt requested, to every manufacturer on the roster compiled pursuant to (a) above, requesting the following information:

1. Any and all informal dispute settlement procedures utilized by the manufacturer. If the informal dispute settlement procedure is an in-house customer assistance mechanism or private arbitration or private buy-back

program instituted by the manufacturer, the information provided shall include the reasons for establishing and maintaining such programs.

2. The number of purchase price and lease price refunds requested, the number awarded by any dispute settlement body or other settlement procedure identified in (c)1 above, the amount of each award and the number of awards satisfied in a timely manner.

3. The number of awards in which additional repairs or a warranty extension was the remedy, the amount or value of each award, and the number of awards satisfied in a timely manner;

4. The number and total dollar amount of awards in which some form of reimbursement for expenses or compensation for losses was the remedy, the amount or value of each award and the number of awards satisfied in a timely manner;

5. The average number of days from the date of a consumer's initial request to use the manufacturer's informal dispute settlement procedure until the date of the decision and the average number of days from the date of the design to the date on which performance of the award was satisfied; and

6. A list of all motor vehicles and their Vehicle Identification Numbers stamped with "R—RETURNED TO MANUFACTURER UNDER LEMON LAW OR OTHER PROCEEDING," which have been reported to the MRS Special Title Section during the previous six months.

(d) Failure of the manufacturer to return the completed questionnaire to the LLU within 60 days of receipt shall be a violation of this subchapter and the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq.

Correction: Inserted comma after Act and deleted extra period at end of sentence, from the February 21, 1989 update.
Amended by R.1992 d.236, effective June 1, 1992.
See: 24 N.J.R. 53(a), 24 N.J.R. 2063(a).
Revised (a).
Amended by R.1994 d.176, effective April 4, 1994.
See: 25 N.J.R. 3939(a), 26 N.J.R. 1535(a).
Amended by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

13:45A–26.15 Index of disputes

(a) The Division of Consumer Affairs shall maintain an index of all motor vehicle disputes by make and model and shall compile and maintain statistics indicating the record of manufacturer compliance with any settlement procedure decisions.

(b) The initial index and statistical record of compliance shall be made available to the public on July 1, 1990 and every six months thereafter.

SUBCHAPTER 26A. MOTOR VEHICLE ADVERTISING PRACTICES

13:45A–26A.1 Scope

Without limiting any other practices which may be unlawful under the Consumer Fraud Act, N.J.S.A. 56:8–1 et seq., the rules contained in this subchapter set forth motor vehicle advertising practices which are prohibited as unlawful under the Consumer Fraud Act; the rules also include mandatory disclosure in advertisements of certain information relating to advertised motor vehicles as well as on-site disclosures relating to advertised motor vehicles.

Recodified from 13:45A–2.1 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Division's adjudication jurisdiction is not limited by a "retail restriction"; Consumer Fraud Act applies to franchising. Morgan v. Air Brook Limousine, Inc., 211 N.J.Super. 84, 510 A.2d 1197 (Law Div. 1986).

Purpose of 1976 amendments examined. Barry v. Arrow Pontiac, Inc., 100 N.J. 57, 494 A.2d 804 (1985).

13:45A–26A.2 Application

(a) These rules shall apply to the following advertisements:

1. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed within this State concerning motor vehicles offered for sale or lease at locations exclusively within this State; and

2. Any advertisement, including radio and television broadcasts, uttered, issued, printed, disseminated, published, circulated or distributed to any substantial extent within this State concerning motor vehicles offered for sale or lease at locations within this State and outside this State, or at locations exclusively outside the State.

Recodified from 13:45A–2.2 by R.1995 d.618, effective December 4, 1995.
See: 27 N.J.R. 3566(a), 27 N.J.R. 4899(b).

Case Notes

Evidence supported finding that dealership engaged in unconscionable business practices in violation of Consumer Fraud Act; fact that sales contract was unenforceable by virtue of statute of frauds did not prevent Consumer Fraud Act award based on ascertainable loss of monies or property; plaintiff entitled to treble damages plus costs and attorneys fees. Truex v. Ocean Dodge, Inc., 219 N.J.Super. 44, 529 A.2d 1017 (App.Div.1987).

Dealer's advertisement of cars "priced well below dealer invoice" found a violation of N.J.A.C. 13:45A–2.2(a)7iv; regulation upheld against First Amendment constitutional challenge. Div. of Consumer Affairs v. Arrow Pontiac, Inc., 7 N.J.A.R. 48 (1981) affirmed 193 N.J.Super. 613, 475 A.2d 632, affirmed 100 N.J. 57, 494 A.2d 804.