

Julie Brill, Commissioner
Federal Trade Commission
March 4, 2013
Page 1

March 4, 2013

Julie Brill, Commissioner
Federal Trade Commission
Office of the Secretary
Room H-113 (Annex C)
600 Pennsylvania Avenue, NW
Washington, D.C. 20580

RE: Cooling-Off Rule Regulatory Review, 16 CFR 429
Comment, Project No. p087109

Dear Commissioner Brill:

On behalf of the Office of the Attorney General for the Commonwealth of Massachusetts (the “Commonwealth”), we respectfully submit the following comment in response to the Federal Trade Commission’s (“FTC”) request for comment regarding its proposal to raise the exclusionary limit below which 16 CFR Part 429 (“Cooling-Off Rule”) will have no effect from \$25 to \$130.

As you noted in your letter, dated January 8, 2013, the proposed increase to the exclusionary limit is a significant change to the scope of the Cooling-Off Rule, as it contemplates a five-fold increase in the amount necessary to trigger the Rule. The Commonwealth appreciates the opportunity to comment.

The Commonwealth urges the FTC to maintain the exclusionary limit at \$25. The Commonwealth recognizes that \$25 is worth less, in real terms, than it was in 1972, when 16 CFR Part 429 was enacted. Nevertheless, the Commonwealth does not believe that \$25 is an insignificant amount, especially in the door-to-door context, where borrowers who may never have expressed an interest in a product are confronted in their own home by a salesman who attempts to convince them to purchase a product.

Many products that are the subject of door-to-door sales pitches cost between \$25 and the proposed exclusionary limit of \$130, and will be exempt from the Cooling-Off Rule if it becomes law. Magazine subscriptions are a good example of one such product. In August of 2012, the United States Better Business Bureau (“BBB”) announced that it

had received more than a thousand complaints concerning door-to-door magazine sellers and dealers, a number on pace to double the 1,300 complaints the BBB received about door-to-door magazine sellers and dealers in 2011. In fact, the BBB reported that many of the complaints it received concerning door-to-door sales concerned lower-priced items, including food (produce or meat products), cosmetics, photography services, and cleaning supplies. Many of these products, particularly magazine subscriptions, were explicitly contemplated by the enactors of the Cooling-Off Rule. See: *Cooling Off Rule Statement of Basis and Purpose*, 37 FR at 22936, 22939-40, 22945. Even subject to inflation, some of these products are commonly sold for less than \$130. The BBB has specifically identified the FTC's Cooling-Off Rule and its \$25 exclusionary threshold as one way consumers can avoid being harmed by unscrupulous marketers of these products.

Although the FTC has stopped tracking door-to-door sales complaints as a discreet category, the latest FTC Sentinel Annual Report shows a steady increase in complaints concerning magazines and books. See: FTC, *Consumer Sentinel Network Data Book for January-December 2011*, February 2012, at 80. In fact, complaints in this category have nearly doubled over the course of two years from 11,095 in 2009 to 21,636 in 2011. The Massachusetts Attorney General does not receive a large amount of consumer complaints regarding door-to-door sales of items under \$130. This is due partly to consumers complaining first to the FTC, BBB, or local consumer agencies, but may also indicate that the Cooling-Off Rule's rescission power is effectively limiting the number of consumer problems stemming from door-to-door sales.

The enactors of the Cooling-Off Rule were particularly concerned with the propensity of door-to-door salespeople to target economically disadvantaged individuals and communities. See: *Cooling-Off Rule SBP*, 37 FR at 22939. The BBB has also noted that the elderly are often the targets of door-to-door solicitations, as they are more likely to be at home to answer the door. For many individuals on moderate or fixed incomes, the difference between \$25 and \$130 is substantial. The Federal and state governments have a responsibility to protect consumers, especially those who are most vulnerable, the elderly, and those on a fixed income, who cannot afford to lose even \$25.

Julie Brill, Commissioner
Federal Trade Commission
March 4, 2013
Page 3

For the reasons stated above, the Commonwealth urges the FTC to retain \$25 as the exclusionary limit below which 16 CFR Part 429 (“Cooling-Off Rule”) will have no effect. If the Commonwealth can provide any further information or assistance related to the FTC’s Proposed Rule Amendment, or any other of our common objectives, please do not hesitate to contact us.

Respectfully Submitted,

COMMONWEALTH OF MASSACHUSETTS

MARTHA COAKLEY
ATTORNEY GENERAL

By: /s/ Gabriel O’Malley
Gabriel O’Malley
Jeffrey Walker
Monica Brookman
Assistant Attorneys General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108
(617) 727-2200