

# **ADVERTISING AND DISTRIBUTION POLICY**

## **Frequently Asked Questions (FAQ)**

Calculated Industries has a new Advertising and Distribution Policy (ADP) covering many of its products (Covered Products). These Frequently Asked Questions are meant to help you understand why CI has implemented the ADP, what the ADP applies to, and how it works. If after reviewing these FAQs you have questions about the ADP, please send those questions in writing to:

**Calculated Industries**  
**Attn: Advertising and Distribution Policy Administrator**  
**4840 Hytech Drive**  
**Carson City, NV 89706 USA**  
**Fax: 1-775-885-4949**

**1. *Why has CI implemented the ADP?***

CI recognized that it is in its best interests to take steps to protect and enhance the quality image and the goodwill of its products, brand names and trademarks. The ADP is designed to give the resellers CI selects to do business with ("Resellers") sufficient margin to enable them to offer outstanding customer sales support. It is also designed to discourage "free riding" and other activities that tend to "commoditize" CI's products. Steps like these support CI's brand mission to design, develop and deliver best-in-class calculating and measuring products and outstanding customer support.

**2. *What CI products are subject to a Minimum Advertised Price (MAP) under this ADP?***

See Addendum 1 on the last page of the ADP for the complete list of Covered Products that are subject to MAP. Or visit <http://www.calculated.com/existingreseller.asp> for the latest update.

**3. *Does this mean this ADP applies only to Resellers that sell the Covered Products?***

Yes. This ADP states the terms and conditions on which CI may choose to sell the Covered Products to Resellers.

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**4. *What does "advertised price" in the ADP mean?***

"Advertised price" means the price communicated to consumers outside of a "brick and mortar" physical store. On the Internet, "advertised price" means Internet banner or pop-up ads, the Internet site home page, and any section of an Internet site, other than the shopping cart or later steps in the checkout process, including where products other than CI branded products may be listed, displayed, represented or advertised. As to email, displaying a price for the Covered Products in a mass email campaign also comes within the meaning of "advertised price".

**5. *Can I still sell CI's Covered Products at the prices I choose in light of the ADP?***

Absolutely. At all times, Resellers have the sole right to determine the selling prices of CI's Covered Products, including in-store and point of purchase signage and materials. However, if the externally advertised price of CI's Covered Products is below the MAP price, CI may choose not to continue to sell CI's Covered Products to that Reseller.

**6. *Can I advertise the Covered Products without a price and still comply with the ADP?***

Yes, however Resellers that wish to sell the Covered Products product line must first obtain CI's approval through CI's Authorized Reseller Program.

**7. *Can I advertise, offer to sell or sell CI's Covered Products on the Internet and still comply with the ADP?***

Yes; however Resellers that wish to sell the Covered Products must first obtain CI's approval through CI's Authorized Reseller Program.

**8. *Can a Reseller advertise, offer to sell or sell CI's Covered Products using eBay or other Internet auction sites on the Internet and still comply with the ADP?***

No, such activities with eBay or other auction sites, chat rooms, Craig's List, user groups, member forums, listservs, etc. do not comply with the ADP. In such event, CI may choose, in its sole discretion, not to continue to do business with a Reseller.

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**9. What will CI do if I follow MAP on some ads but not others or if I otherwise misapply the ADP's MAP terms?**

CI may, in its sole discretion, choose not to sell to Resellers that comply with the ADP on some ads but not others or that, for one reason or another, including the misapplication of the ADP by the Reseller's agents or employees, do not follow the ADP. While Resellers have the discretion to choose whether to follow the ADP or not, a Reseller wishing to follow the ADP is responsible for taking adequate steps to ensure that its employees and agents understand and correctly apply the ADP at all times.

**10. Can I issue coupons for the Covered Products and still comply with the ADP?**

Yes. So long as a Reseller does not advertise the Covered Products at a price below MAP, the Reseller may issue a coupon that results in the net sales price to the customer at a price less than MAP and still comply with the ADP. The ADP only applies to advertised prices, not to the consumer's net sales price.

**11. Is the ADP lawful?**

The ADP is both a business and a legal document. Its legal basis is the United States Supreme Court's 1919 decision in *United States v. Colgate & Co.*, 250 U.S. 300 (1919) ("Colgate"). In *Colgate*, the Supreme Court held it was lawful for a supplier to pre-announce the terms and conditions on which it would continue to deal with a customer. One of these terms and conditions may be the price at which a reseller advertises a product purchased from the supplier, to be resold to the reseller's customer. These two features are incorporated in the ADP. The ADP gives CI the right to refuse to deal, or deal further, to Resellers that do not follow CI's preannounced terms and conditions, including Resellers that advertise the Covered Products at prices below MAP.

**12. Isn't it unlawful for a supplier and a Reseller to agree on the price the Reseller must resell the product to its customer?**

Yes it is. Section 1 of the Sherman Antitrust Act of 1890 (Sherman Act) and its state law counterparts condemn vertical minimum resale price maintenance (RPM) where the prices are agreed upon by the supplier and Resellers. A supplier and a reseller would both be liable under Section 1 and state law for agreeing on RPM.

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**13. So how is the ADP different from this?**

First, in the ADP, there is no agreement between CI, the supplier, and its Reseller. There is no contract. There is no offer to form a contract or an agreement. All the ADP does is pre-announce the terms and conditions on which CI has unilaterally chosen to select Resellers it may do business with. Resellers may choose whether or not to follow it. However, if a Reseller chooses not to abide by CI's pre-announced set of terms and conditions, CI may determine not to sell its products to that Reseller. But there still is no agreement. Second, CI's ADP only pertains to advertised prices, not minimum resale price. In the case of the Covered Products, Resellers' advertised prices may differ from transaction prices. Plus, MAP policies, unlike RPM agreements, are not per se unlawful under the antitrust laws.

**14. How do "pre-announced unilateral terms and conditions" differ from an agreement between CI and the Reseller?**

In a unilateral statement, CI pre-announces, in writing, the terms and conditions on which it may supply its products to a Reseller. This is the essence of a lawful Colgate policy. A Colgate policy does not seek, and will not accept any statement or expression of agreement or assent by a Reseller. It is up to the Reseller whether or not it wishes to abide by the pre-announced terms and conditions. Should a Reseller offer a statement of agreement, and should it be accepted by the supplier, the lawful Colgate policy could be "morphed" into an unlawful RPM agreement. This is why it is important to be clear, as the ADP states:

**"This ADP is not a contract, an offer to form a contract, or an agreement, express or implied. It is a policy statement of unilateral terms and conditions upon which CI may exercise its discretion. CI is not asking for and CI will not accept any agreement about a Reseller's compliance with this ADP. This ADP is a corporate policy of CI and cannot be waived, interpreted, or discussed with any Reseller by any agent, employee, representative or other third parties, except as stated herein."**

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**15. Can I ask questions about or discuss the ADP with CI's employees and sales reps?**

CI's employees and sales reps are prohibited from discussing or answering questions about MAP with Resellers. This is because such discussions could be misunderstood, misrepresented or both. Discussions could supply evidence from which a judge or jury might determine that the ADP was the product of an agreement, prohibited by the antitrust laws, and not the unilateral pre-announcement of terms and conditions, which is lawful under Colgate. This is in the Reseller's interest too because the Reseller would likewise be liable for entering into an agreement that is prohibited by the antitrust laws. By directing all communications concerning pricing, advertised prices, and the ADP to Calculated Industries' Advertising and Distribution Policy Administrator, a Reseller may obtain a complete, accurate and documented response to a question without exposing itself to the risk that another person could use a discussion of the ADP as evidence of an unlawful agreement.

**16. What can I do if I find out that another Reseller is not advertising the Covered Products at or above the MAP prices or if I believe a competing Reseller is not complying with the ADP's other terms and conditions?**

First, as the ADP says, CI will not "seek or accept any complaints or comments from its Resellers about the pricing or business practices of any other Reseller." CI's employees and sales reps are not authorized to discuss a Reseller's pricing, advertised prices, or business practices with a competing Reseller.

Second, if you wish to talk to someone at CI about MAP or the ADP, please write to CI's Advertising and Distribution Policy Administrator. CI will independently investigate any information it receives, from any source, about noncompliance with the ADP. However, CI does not seek such information. Any action CI takes relating to Reseller noncompliance will be handled independently by CI and will not be communicated to third parties.

**17. If I have a question relating to the ADP where should that question be directed?**

Any and all questions relating to the ADP should be submitting in writing to Calculated Industries, Attn: Advertising and Distributor Policy Administrator, 4840 Hytech Drive, Carson City, NV 89706, Fax: 1-775-885-4949.

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A current list of Covered Products can be found at

<http://www.calculated.com/existingreseller.asp>

