

A Guide for Advertisers & Traders

2002



The Fair Trading Act: A Guide for Advertisers and Traders



COMMERCE COMMISSION

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INTRODUCTION

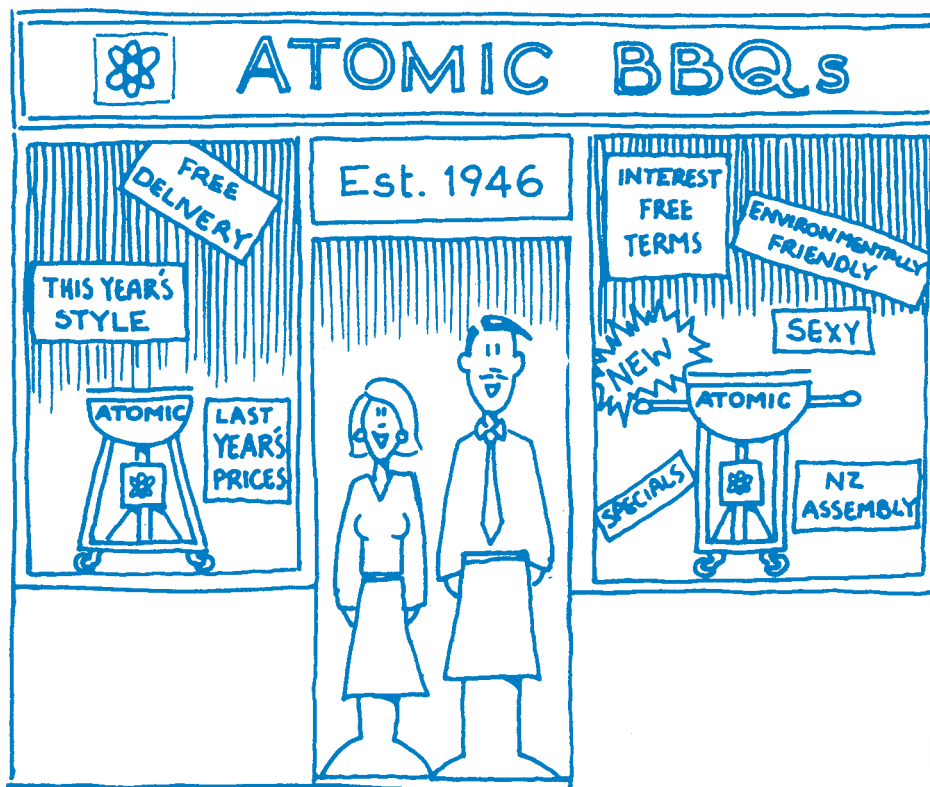
If you are in business, it is important that you understand how the Fair Trading Act affects your day-to-day operations.

The Act applies to all aspects of the promotion and sale of goods and services — from advertising and pricing to sales techniques and finance agreements.

This book aims to provide guidance on how to operate your business without breaking the law. It gives examples of unlawful trade practices that breach the Act, and explains the role of the Commerce Commission in enforcing the Act and product safety and consumer information standards.

Compliance with the Act benefits consumers. It also protects traders who ensure they comply with the Act. In addition to any action the Commerce Commission might take in relation to a breach, consumers and competitors can take their own legal action against a trader breaching the Act.

The book is a guideline only. It is not intended to be definitive, and should not be used instead of legal advice.

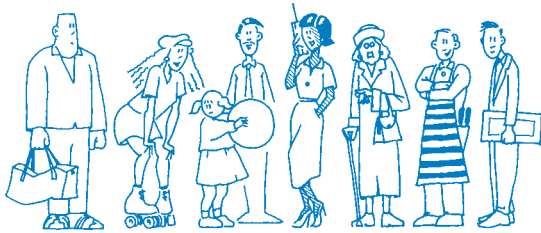


1. THE FAIR TRADING ACT

The Fair Trading Act came into force on 1 March 1987, replacing earlier laws relating to misleading and deceptive conduct, unfair trading practices and consumer information.

When making claims about products you manufacture or sell, you must remember that your audience will include some people who are more easily misled than others.

The courts have said the Act is there to protect everyone, including those who may be gullible, of less than average intelligence or poorly educated.



Certain groups, by reason of language difficulties, age or lack of education, may be susceptible to being misled or deceived. If your customers include such people, you must take this into account and be especially careful when preparing your advertising.

The Fair Trading Act:

- prohibits people in trade from engaging in misleading or deceptive conduct generally (section 9);
- prohibits certain types of false or misleading representations about employment (section 12), goods or services, including false and misleading claims that goods or services are of a particular price, standard, quality, origin or history, or that they have particular uses or benefits, or that they have any particular endorsement or approval (section 13);
- prohibits certain unfair trading practices (sections 17 to 24); and
- provides for consumer information and product safety standards and unsafe goods notices (sections 27 to 33).

In practice, if you are found to have breached the Fair Trading Act, it is likely you have breached both the misleading and deceptive conduct provisions and the false or misleading representations provisions of the Act. You can therefore face both criminal and civil actions.

Important points to note about the Act are:

- It protects both consumers and law-abiding traders.
- In most cases it is not relevant whether a trader intended to deceive or mislead, rather the issue is whether their actions did or could deceive or mislead.
- It does not need someone to suffer or be directly affected by the trader's behaviour for action to be taken, as the Act applies not only to conduct which has actually misled or deceived somebody, but also to conduct likely to mislead or deceive.
- Both companies and individuals can be prosecuted for breaching the Act. Where a company acts unlawfully, the directors, managers and employees can be held liable. Anyone else who aided and abetted the offending conduct may also be held liable. This includes, for example, advertising agents who design and prepare misleading or deceptive advertisements for their clients, or wholesalers and retailers who sell misleadingly or deceptively labelled goods.

Definitions of terms used in the Fair Trading Act

In trade

This term has a broad meaning, and covers all commercial activities. Few undertakings except “one-off” private transactions — for example, selling your own car — escape the jurisdiction of the Act.

Mislead

This means “to lead astray in action or conduct; to lead into error; to cause to err”. A representation may be true but misleading: for example, “This product has been tested to the New Zealand Standard” implies the product passed the test. Even if the product was tested, this would be a misleading representation if the product had failed the test.

Deceive

This means “to cause to believe what is false as to a matter of fact, to lead into error; to impose upon, delude, take in”.

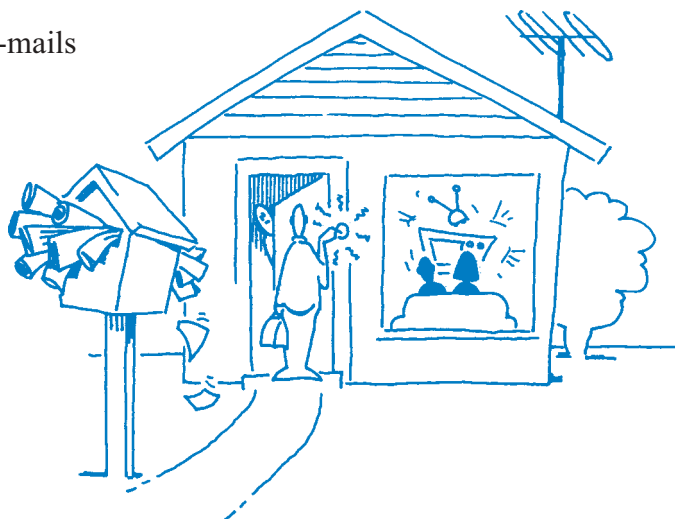
False

This means “contrary to fact”. Incorrectly believing a false representation to have been true may in most circumstances not be a defence for the trader.

Representations

A representation is anything said about a product or service, either orally or in writing. A representation may also be an impression given by pictures, advertisements, promotional material or a sales pitch, or by something which is not said — that is, by critical information being omitted. It includes:

- TV, radio, newspaper and other advertisements
- brochures and flyers
- point-of-sale and other display material
- mail drops
- sales pitches
- websites and e-mails



2. TRADE PRACTICES COVERED BY THE FAIR TRADING ACT

The sale of goods and services involves many different steps — from the setting of the price, to advertising and promotion and making the final sale. At each step traders may break the law if their trade practices are likely to mislead or deceive customers. The examples below include advertising, pricing and sales techniques which may breach the Fair Trading Act, but traders must remember that any misleading or deceptive conduct may be in breach of the Act and result in court action.

A. False or misleading advertising

Availability of goods advertised

You should not advertise goods or services that you know you cannot or may not be able to supply. Because of advertising deadlines, some traders place advertisements for goods before they actually have them on hand. Occasionally, they place advertisements for goods ordered from overseas in anticipation of their arrival. You should not do this unless you reasonably expect the goods will be available when the advertisement appears.



Advertising goods and services which you cannot supply in order to lure people into your shop is known as “bait advertising”. It is a breach of the Fair Trading Act. The Act requires traders to supply advertised goods or services at the advertised price for a reasonable (or stated) period and in reasonable quantities. Websites also need to be kept updated so that stock that is no longer available is not promoted.

Example:

A company was fined for continuing to advertise *Cartier* watches on its website when it had sold out of them.

There is no precise definition of what is meant by “reasonable quantities” and “reasonable time”. In practice, it will depend on the size of the retail outlet, the market in which it is operating, the likely demand based on experience, and the nature and extent of the advertising.

Qualifying statements such as “while stocks last” may still leave you open to charges of bait advertising if reasonable quantities of the advertised product were not available. Any limits on an offer should also be stated: for example, “one per customer”, “offer ends 1st March”.

There may be times when, through no fault of your own, you cannot supply the goods advertised. If this happens, you should promise to supply the goods — at the advertised price — as soon as you can. You should have a “raincheck” system in place to ensure that, if your supply of advertised goods runs out, customers are offered similar goods at the same price or given an assurance that they will be provided with the advertised goods within a reasonable time.

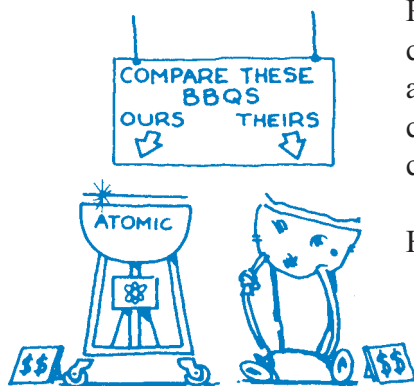
A proper raincheck system not only ensures that your customers’ needs are met, but can also be a defence (under section 19 (3) of the Fair Trading Act) against prosecution when goods or services are not available as advertised. (See section on defences, p.42.)

Examples

A retail hardware store advertised bags of cement at a special discount price. Although the trader had ordered extra bags, demand for the cement was greater than expected and the store had run out within half an hour of opening on Saturday morning. A number of customers arrived later in the day, and complained there was no cheap cement to buy. The trader agreed to supply cement at the special price to those who had missed out. The trader was not prosecuted.

A company advertised a sale of waterbeds on the radio and in newspapers. The newspaper advertisements noted that, for some lines, stocks were limited, but the radio ads did not. Two of the cheaper lines of waterbeds were in fact sold out while the radio ads for them continued to run. The company was convicted and fined under the Fair Trading Act.

Comparative advertising



Promoting goods and services by comparing them to competing products and services is now a common and accepted method of advertising. Comparisons can help consumers judge the relative merits of competing products and choose the one which best suits their needs and budgets.

However, as with all advertising, comparative advertising must not mislead or deceive. The comparisons made must be accurate, and must be of “like” products or services available in the same market.

As a trader, you are in the best position to know whether your product can reasonably be compared to a competitor’s. If you use comparisons in your advertising, you must tell the full story and not leave out information that is necessary for a true and fair comparison to be made.

Example

A furniture manufacturing company made a comparison between its product, which was finished in plain customwood, and that of a rival company. The rival’s product was laminated, and the court decided that the comparison was misleading. The rival obtained an injunction stopping the advertisements being run.

Condition of goods — new or used?

You must accurately convey in your advertising the condition of the goods you are selling — whether they are new, reconditioned, reworked, shop soiled or secondhand.

In different circumstances, the word “new” can have different meanings — including “not second-hand”, “not old or antique”, “not excessively used”, or “the latest model”. Make sure that the way you describe your goods does not mislead or deceive customers about what they are getting.

Examples

A motor vehicle dealer sold two cars as new. However, the cars were not new, as one had a second-hand transmission and the other had travelled more than 1,500 kilometres. The company was convicted and fined \$50,000.

A retailer advertised cordless telephones as “second selection”. The advertising was misleading, as the term “selection” failed to alert customers to the fact that the telephones were second hand. The retailer was convicted and fined \$2,500.

If the goods have been used for display or promotion purposes, or have been previously sold and then put back out for sale alongside stock which is new, you will be at risk of breaching the Act, as customers are likely to assume that the goods are new, unless there is a statement that tells the real history of the goods.

Example

A retailer sold a computer that was later returned by the owner because it was defective. The fault was repaired and the computer put back into stock. A new owner purchased the computer after being told it was a shop display model for customers to play with. The retailer had breached the Fair Trading Act by misrepresenting the history of the computer.

Description of goods

Any description of goods must be accurate to avoid breaching the Fair Trading Act. This includes any description made in promotional material, invoices, in advertisements or by staff.

Example

A company selling computer motherboards would invoice its customers. On the invoice it stated that the motherboard had 256K of cache memory. In addition, every time a computer with one of the motherboards in it was turned on it would state that 256K of cache memory was present. The motherboard did not have 256K of cache memory. The company was fined \$50,000.

Employment advertisements

The Fair Trading Act specifically prohibits anyone from misleading or deceiving others about the availability, nature, terms or conditions, or any other matter relating to a job opportunity.

If you place employment advertisements, or are an employment agency, you must take care that your advertisements accurately describe what, if any, jobs are available. Additionally, this section covers information given about the job at an interview with prospective employees.

People placing employment ads can be prosecuted even though they are not “in trade”.

Examples

A job was advertised with a base salary of \$30,000 plus a generous commission. In fact, the job was “commission only”. The advertiser was convicted and fined under the Fair Trading Act.

A sales job was advertised with the representation “Our marketing team are making MORE LEADS than our sales staff can see!!” This was false. Other misrepresentations about the number of leads were made during the job interview. The company was convicted and fined \$23,000.

First impressions

With all advertising, the first impression made on a potential customer is vital. People reading, seeing or hearing an advertisement react to and make decisions based on that first impression.

In making that impression, sometimes what is not said is just as important as what is said. Obviously, the amount of information that can be included in any advertisement is limited and every word or picture has to count. But you must include all the information necessary for a potential customer to make an informed choice about the goods or services and the value they represent. Failure to reveal vital information could be misleading or deceptive, and may breach the Act. You must also make sure that the information cannot be easily overlooked. Any conditions or important points must be presented in a clearly comprehensible form.

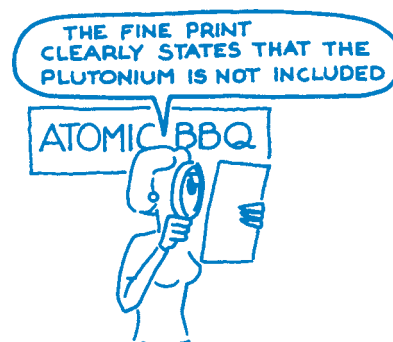
Example

A trader offered inexpensive travel packages to Hawaii. However, the marketing failed to disclose that there was a minimum stay which had to be in specified hotels. The conditions meant that the “inexpensive travel packages” were in fact more expensive than those available through travel agents. The Commerce Commission was granted an injunction restraining the trader from advertising or promoting the travel to individuals or the public.

Fine print

Many advertisements include fine-print sections containing details of conditions and qualifications. However, you must not use fine print to conceal important information which would be critical to people’s decision to buy your goods or services. Fine print cannot be used to modify a claim made in the “big print” or headline.

If the overall impression given by an advertisement is misleading, information contained in fine print may not save you from prosecution for breaching the Act. If there are important conditions on a sale, or on other transactions such as finance agreements, these should be shown in a bold, clear and compelling way in the advertisement. “Special Conditions Apply” does not protect you when the conditions are inconsistent with or modify the main message.



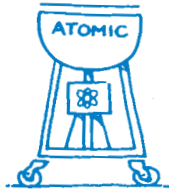
Examples

A bank advertised a mortgage product on television and in the newspapers. In both cases there was fine print at the end of the advertisement which modified the offer that was represented in the body of the advertisement. The bank was convicted and fined \$16,000 under the Fair Trading Act.

Fine print is also often used in contracts. In a number of cases, courts have decided that you cannot rely on fine-print conditions in a contract if you previously made false or misleading statements to encourage the signing of the contract. You should also take care that fine print in your contracts does not conflict with any statutory obligations. In particular, you should not attempt to limit a consumer’s rights under the Consumer Guarantees Act.

Image advertising

Image advertising is the use of appealing images to influence how consumers view products. The hope is that people will buy the product because they associate it with the memorable, appealing image. A company may seek to convey an image of concern about the environment by using “a clean green image” in its advertisements, or designs featuring dolphins or plants. The image may be strengthened by using well-known personalities, with appropriate associations, to promote the product.



You may think that because nothing is actually said or written to create the “image” so important in image advertising, it cannot be accused of being a false or misleading representation. However, a representation has been made, and it may be in breach of the Fair Trading Act if it is found to create an impression which cannot be substantiated.

In other words, do not use advertising to create an image for your product or service which cannot be backed up by the facts.

Examples

A company marketed a canned ham product which stated it was “90% fat free”, “Light Deli Ham” and “Healthier Eating”. However, the product had up to three times more fat than comparable products. The company was convicted.

An injunction was granted against a retailer to prevent it from carrying on business adopting a look and style that was so similar to those of a franchised group of shops that the public were confused as to whether the shop was a member of the franchise. The case was taken by the franchisor.

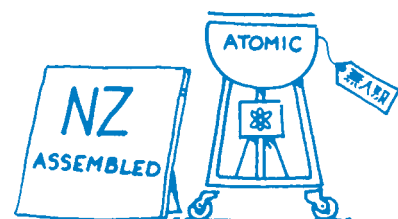
Origin of goods

When deciding to purchase goods, customers will often be influenced by the origin of those goods. They may prefer to buy New Zealand-made products, or believe that goods made in certain countries are preferable to others.

You must, therefore, avoid misleading customers about where goods are made. It is not just words that can be misleading. Symbols such as kiwis, flags or other national emblems can also convey false or misleading impressions.

A place of origin can be defined as the country or region where the product was created in its final form from its raw materials or constituent parts. In other words, it is the country or region where the product’s “essential quality” was created. It is not necessarily the place where the most money was spent on a product — and it is definitely not the place where only final assembly or packaging was done.

When a product has been worked on, or added to, in several places, it can be difficult to decide which place should be claimed as the place of origin. In such cases, to avoid making misleading claims about where the product was made, use explicit terms such as “assembled”, “packaged” or “blended”.



Example

Orange juice which is made from imported concentrate which has water added to it and is bottled in New Zealand could be labelled “Bottled in New Zealand from imported concentrate”. It is the concentrate which gives the juice its essential character, not the water or the bottling.

The Commerce Commission encourages the placing of company contact details on goods, but care needs to be taken to ensure that these details do not create a misleading impression about the origin of the product. The Commission’s approach is that where contact details suggest a place of origin that is different from where a product gained its essential quality, sufficient information should be put as prominently as possible on the label to indicate that the product came from elsewhere.

If you are an importer, you should also note that the Customs Act 1966 prohibits the importation of goods which are falsely described — and this includes labels deceptive about their place of origin.

Special regulations cover the labelling of clothing and footwear. These are briefly covered on pages 31-32 and 35-37.

Examples

A retailer was fined \$26,000 for falsely representing that clothing was made in New Zealand when it was imported from China.

A distributor was fined \$2,500 for falsely representing that canned tomatoes from Spain were of New Zealand origin. Although “Espana” was stamped on the top of the can, the wrap-around label said “Product of New Zealand”.

A trader was fined for falsely representing the place of origin of jackets by removing a “Made in Korea” label, leaving attached a label marked “Christchurch New Zealand”, and affixing a swing tag which included the name and New Zealand address of the manufacturing company which imported the clothing.

Want more information?

See the Commission’s publication, *Place of Origin and the Fair Trading Act*.

Pictorial representations

It is possible to mislead or deceive customers — and therefore breach the Act — with pictures as well as with words.

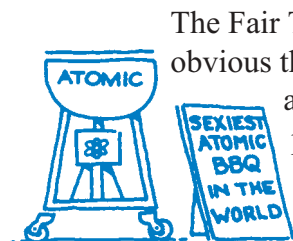
You must ensure that any illustrations used in your advertisements relate specifically to the goods being promoted. The picture in the advertisement must not be, for example, of a more popular or expensive model. Similarly, any pictures used on packaging must show the exact product contained inside.

If the product illustrated is different from the one offered, fine-print explanations are unlikely to prevent people being misled. In that case, the picture or illustration would be likely to breach the Act.

Examples

A company was convicted for placing an advertisement for beds depicting a top-of-the-range bed. The beds available at the advertised price were an in-house brand.

Puffery



The Fair Trading Act does not prohibit “puffery” — exaggerations which are so obvious that they are unlikely to mislead anyone. Humorous and imaginative advertisements often use this technique. Examples are a claim that a product is “the best-looking”, or a car driving up a wall. Such statements reflect personal opinions, and no objective test can be used to determine their truth or otherwise, or are obvious exaggerations.

You should, however, be careful when using exaggerated statements. Representations and claims that appear to relate to facts rather than opinion, particularly regarding quality and price, may break the law. Claims that a product is “the best”, “the fastest” or “the most economical” would not be mere puffery if the product was sub-standard or a second. Where a claim is solely an expression of opinion, it is probably puffery and unlikely to contravene the Act. The more factual or seemingly factual (and therefore the more capable of being proved or disproved) a claim is, the more likely it is to be a representation which, if misleading or deceptive, could break the law.

You should also bear in mind the sophistication or otherwise of your target audience when making exaggerated claims which seem to be obvious puffery.

Claims about qualifications and skills

Any claims which you, as a trader, make about qualifications or skills you or your employees possess must be truthful and accurate.

Do not claim membership or approval of trade organisations unless your membership has been approved and is current. Do not base such claims on pending applications or part membership.

Do not claim the endorsement of fictitious or disbanded bodies.

Sponsorships and endorsements



To promote your product or services, you may decide to seek an endorsement from a prominent person or organisation.

The Fair Trading Act prohibits false claims that a product or service has the support or endorsement of any person or group.

If you claim that someone uses your product, this claim must be true. It must also be current; such a claim would be false if that person had stopped using the product.

Any claims made by someone endorsing your product or service must be true.

Example

A trader supplied free exercise books to schools, recovering the cost from advertising which appeared on the books. One of his employees falsely claimed to be the chairman of the local school committee when approaching potential advertisers. The trader also falsely claimed that the scheme had been endorsed by the Department of Internal Affairs and the Education Board. He was fined a total of \$4,900 plus \$1,230 costs.

You must also describe accurately the support given to your products or services by a reputable organisation. Such endorsements include Standards Association accreditation, or medical or product safety certification.

Example

A trader displayed for sale a hot-water cylinder marked with the NZ Standards Association “S” Mark. The cylinder did not meet the relevant standard, and had not been passed by the Association. The trader was convicted and fined \$3,500.

The Commerce Commission does not endorse or approve any organisation, person, scheme or marketing strategy. Claiming Commerce Commission approval will breach the Fair Trading Act.

Example

A trader claimed to members of the public that the Commission had approved its “interest free” – type promotion. This was not the case. The trader was convicted and fined \$4,000.

Statements about the future

As with all claims, any statements which you make about what is likely to happen in the future must be truthful. This is particularly applicable to anyone selling a franchise, “work from home” enterprise or a business.



Section 22 of the Act prohibits misleading representations about the profitability or risk of a business activity. Advertisements which create false or unrealistic expectations about the income potential of such ventures breach the Act. To avoid breaching the Act, you must reasonably believe that the claims you make about the likely future profits of the business, or the potential sales of the franchised product, are true. If challenged, the truth of your claim will be tested on what was known and believed at the time the claim was made, and not with the benefit of hindsight. You will have to show on what information you based your claim, such as a record of the sales of the product under franchise.

If you reasonably believed that the claims you made would turn out to be true, but were let down by reasons beyond your control, you may have a defence to criminal charges laid under the Act. If you had no reasonable basis for your predictions, you will not. However, you may not have a defence to a civil action.

Examples

An advertisement was run for a soft-toy business for which people paid \$85 for a starter kit. The advertisement claimed they could make money by making the toys and selling them back to the advertiser. When taken to court, the person responsible admitted the scheme was not commercially viable. He was convicted and ordered to pay almost \$12,000 in fines and compensation.

A trader made a projection of income for inclusion in a prospectus promoting the sale of a video library. The court found that if a statement as to future events is made, then there must be a proper basis for it; it must be based on an honestly held belief and, if made by an expert or one who claims to be an expert, that belief must be honestly held on rational grounds. The trader was found to have made the projection of income with “reckless indifference”, and was convicted and fined by the court. Half of the fine was to be paid to the complainant.

Tests and surveys

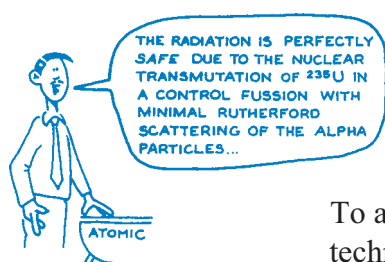
You may quote in your advertising the results of tests or surveys which are favourable to your product or service. If you do so, you must not distort the results to make them appear more favourable to you.

Surveys should ideally be conducted by an independent and reputable organisation, and tests by a recognised testing authority. You should also be able to provide evidence to support the accuracy and relevance of the results, should they be questioned. Any in-house tests you conduct yourself should be able to be independently replicated and verified.

Alluding to a non-existent test or survey will breach the Fair Trading Act.

Words with special meanings

You should avoid using words or “trade terms” with special meanings if the average consumer is unlikely to be familiar with them.



This includes terms such as “endowment” or “indemnity” when selling insurance, or tube size rather than screen size when selling television sets. Without additional information or explanation, they could mislead customers.

To avoid breaching the Act, you must ensure that words with a technical meaning are easily understood and not used in a false or misleading way.

Visual, verbal and written representations

Under the Act all discussions, demonstrations, displays and so on are considered to be part of the transaction. They must all be accurate.

The Act has a much broader application than contract law. Using the fine print of a contract or other documents to correct an earlier false or misleading representation will be unlikely to protect a trader against action under the Act. Disclaimers or “hidden” terms and conditions on a website are also unlikely to protect a trader against a Fair Trading Act action if a misrepresentation has occurred.

It is important to note that a business is responsible for its staff. The manager, or anyone else, cannot simply say “staff acted without permission”. Even if the manager’s statement is true, it may not protect the company from prosecution for a false or misleading representation made by its staff.

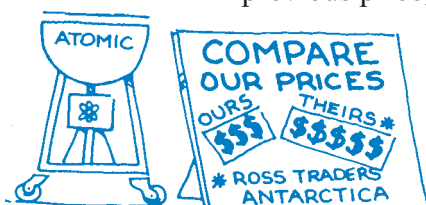
B. False or misleading representations about price

Price is usually a major factor in a customer’s decision to buy, and false or misleading representations about the price of goods and services are prohibited by section 13(g) of the Fair Trading Act.

Under the Act, the definition of the “price” offered by a trader is not limited to that stated in advertising. It can also include special concessions, bonuses or deals which in some way affect the actual and final price a buyer pays for goods or services.

Comparative pricing

Price comparisons can take a number of forms. You may compare a special price with a previous price, such as: “was \$250, now only \$199”. Or you may compare your price with that charged elsewhere, with a statement like “our price \$14.95, elsewhere \$19.95”.



All comparisons must be based on actual market prices. When using comparisons based on your previous prices, you must not mislead consumers about those earlier prices. As a general rule, the product should have been available for sale at that price for a reasonable time immediately before the reduction.

What will be considered a “reasonable time” depends on the individual market circumstances for the products involved. It will be affected by the value of the goods and their rate of turnover. As a rule of thumb, the Commerce Commission considers a reasonable time to be around 30 days. However, high-priced goods, which typically have a low turnover, would be expected to be on sale at the previous price for a longer period than lower-priced items.

Raising your prices, and quickly lowering them again in order to claim larger “savings”, is deceptive and would be a breach of the Act. Once a price has been charged for a reasonable time, it then becomes the normal price. Comparisons should not be made with the original price unless the basis for the comparison with the original price is made clear – for example, “Originally \$45, previously \$40, now \$30”. Stating “was \$45, now \$30” is misleading, as the actual saving is only \$10 on the previous price.

The basis for your price reduction should be made clear, especially if the reason for the reduction is common to all traders in a market. Customers are attracted to a particular shop because they expect to save more there than if they bought an identical product elsewhere. They can be misled if the basis for the reduction is the removal of a tariff, tax or duty, and this is not stated, or because the comparison is between different models.

Comparisons with other traders’ prices can be misleading. Any comparison must be between prices charged in the same market. Central Auckland traders could not usually compare their

prices with those charged by Waiheke Island traders who face higher transport costs. You must also be sure that you are comparing identical products or services. The local market is the area that an average person would travel to buy the advertised product. Therefore, the market will vary depending on the product being sold. For example, people may be willing to travel further to purchase an upmarket stereo system than they would for a packet of Easter eggs.

If you are advertising “elsewhere” prices in a nationally distributed flyer, then you need to be sure that the “elsewhere” or “was” prices are valid for all the areas the flyers are delivered to. It would be misleading to use a high “elsewhere” or “was” price in the flyer that was not a true representation of the saving in a more competitive market.

If you have not previously sold an item, but on stocking it you wish to charge a competitive price to attract new customers, you can compare your price with that charged for the same product by your competitors. However, you must ensure the comparison is based on current prices being charged by your competitors and is clearly stated to be a comparison with prices charged elsewhere (for example, “elsewhere \$5, our price \$3.50”). You cannot compare the price to one you might have charged if you had stocked the product earlier. A statement “was \$5, now \$3.50” would be misleading, as the “was” price of the product has not been established by you because you have not sold the good previously.

It is not acceptable to use the wholesale price plus a mark-up as the basis of a price comparison. The prices used must actually have been established in the marketplace. Comparisons with a purely hypothetical benchmark, such as the “manufacturer’s price” or “recommended retail price”, can give a misleading impression of the true savings to be made. The Commerce Commission believes that you should not use these terms unless the goods in question were available for sale at the recommended retail price in the local market.

Likewise, comparisons with a product’s “worth” or “value” are meaningless and misleading unless they reflect true market prices.

Examples

An appliance retailer advertised a number of sales over a period of four months. Each product advertised had a stated RRP, with the retailer’s “sale” price which was significantly cheaper, and the percentage saving. The RRP’s were not the retailer’s normal selling price; in fact the sale price was the normal selling price. The company was convicted and fined \$63,000.

A retailer advertised a massive half-price diamond ring sale. The advertisement featured “was” and “now” prices. However, no sales had been made at the “was” prices on 18 of the items advertised. The retailer was fined \$10,800 plus costs of \$1,350.

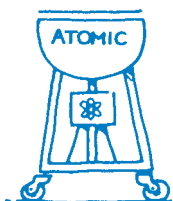
A retailer promoted an appliance sale through the newspaper by comparing sale prices with normal prices. In nine instances there was no reduction of the price in force over the preceding two-month period. The retailer was convicted and fined \$4,500 plus costs of \$595.

Want more information?

Refer to the Commission’s comparative pricing checklist at the back of this publication.

“Free” goods or services

If you advertise something as free, it must be truly “free”. This means there must be no extra cost to the customer, whether up-front or built into the price. The same applies to the use of words and phrases such as “extra”, “give-away” or “two for the price of one”.



If you advertise that customers buying a certain item will receive a free gift, you are breaching the Act if the cost of the item being sold is inflated to cover part or all of the cost of the “gift”. Likewise, if a free item is replaced by a discount for those who don’t want the item, this also may breach the Act, as it can indicate that the cost of the free item is actually built into the price.



You should not advertise an item as free if it requires the purchase of installation services or additional features.

You must also provide free items which you advertise automatically, and not wait for customers specifically to request them.

Examples

A shipping line advertised that New Zealand passengers would be flown free of charge to Sydney to join a cruise. However, the New Zealand passengers learnt that the Australian passengers on the cruise ship had been charged about \$500 less. The flight to Sydney was, therefore, not free and the price of the cruise was falsely represented. The company was convicted and fined \$5,000.

A cycle shop advertised a “buy one get one free” promotion. The shop increased the selling price of the bicycles involved for the length of the promotion. If a customer did not want the “free” bicycle, they paid a lower price. The Court of Appeal ruled that if the price of the good purchased had been raised to cover the cost of the free good, then the good was not free.

Want more information?

Refer to the Commission’s guideline, *Free Offers: Avoiding Conflict with the Fair Trading Act*.

Duty free

The term “duty free” implies to customers that there is a price advantage in comparison to prices charged by other retailers. Tourists and people travelling overseas are entitled to assume that they will get the benefit of this price advantage. You need to take care when using this term that the goods described as duty free do attract duty, and that the duty free price advantage is passed on to the customer.

The range of goods attracting import duty has declined quite considerably in recent years, and it is common for duty-free stores to have a mixed stock of dutiable and non-dutiable goods available both for export and at retail. Once you claim to make duty free sales customers could be entering your store with the impression that all the stock is duty free, so it is important that those goods which do not attract duty are clearly identified.

Examples

A trader advertised cellphones at a low price. However, the price was available only if the purchaser was a new connection to a particular cellular network. There were also additional charges for joining and disconnecting from that network. The trader was convicted and fined under the Fair Trading Act.

A car dealer advertised a car with low weekly repayments. The advertisement did not disclose that the final payment was thousands of dollars. The trader was convicted and fined under the Fair Trading Act.

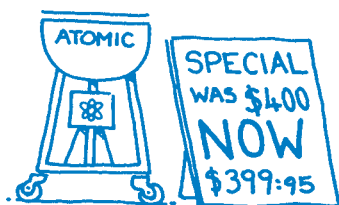
Price ranges

You must be careful not to mislead customers when advertising a range of prices. An example is a claim that goods are on sale “from \$9.99” or have “up to \$50 off”, when only a few items in the sale actually qualify for that description. While literally true, the claim could mislead consumers.

If possible, you should give more details: for example, “\$10 off possum brand dresses, \$20 off weta brand shirts”. If there is not enough space to list individual prices, the most common saving should be indicated: for example, “up to 50% off, most items 30% off”. Your promotional material should be kept up to date to reflect changes in price ranges.

Price ranges are also commonly used in the advertising of property.

“Price reductions”



A claimed price reduction may be literally true yet still mislead. This includes “specials” which are reduced by a negligible amount, such as a product that normally sells for \$10 reduced to the “special price” of \$9.95.

Another example that is literally true but misleading is advertising “was \$499, now \$199” when the “was” price was not the previous price but the price charged some time prior to that. A “was” price should refer to the price charged immediately prior to the special.

A claim that goods are being sold “below cost” or “below wholesaler’s price” would be misleading when it is not true once bonuses, commissions, discounts or rebates affecting the cost price are taken into account. It is dangerous to claim that prices are “the lowest in town”. Sudden price changes by competitors can make such claims instantly untrue.

When advertising “x% saving” you need to ensure that the percentage saving is correct. It may seem obvious, but the Commission has found percentage-off claims that have inflated the actual saving.

Promoting a sale — sale types and duration

In the mind of the ordinary shopper, the word “sale” means an opportunity to buy goods at reduced prices for a limited time.

There are many different types of sales, including “liquidation”, “receivership” or “fire” sales. To avoid breaching the Act, the goods or services you are offering as part of the sale must be priced below normal levels. You must also be able to prove that the description of your sale is truthful. You cannot, for example, advertise a “closing down” sale when you have no intention of closing your store.

A sale represents a special buying opportunity which, if missed, cannot be reasonably expected to appear again in the short term. For this reason, many buyers may change their ordinary shopping habits in order to take advantage of this opportunity. To avoid misleading shoppers, the sale must be for a short duration only. If you advertise the “last three days of the sale” for several weeks, shoppers would be misled about the opportunity available to them. There cannot be a permanent, or semi-permanent, sale.

Example

A trader advertised a “12 hour sale”. However, the “special prices” shown in the advertisement had been available before the start of the sale. The trader was convicted, and fined \$7,200 plus court costs of \$1,170.

Special offers

An advertisement referring to “special offers” or “specials” would be misleading unless there is truly something special — such as a lower price or additional features — about what is being offered.

If a special offer is advertised widely when only a few people are able to take it up, this would be misleading. An example is an advertisement for cheap credit by a finance company which does not specify that the offer is available only to those with incomes over \$60,000 a year.

Any limitation or qualifications to a special offer should be clearly shown. Examples of such limitations are if the offer applies only to cash purchases, if there are limits on the number of items per customer, if it applies only to purchases over a minimum value, if there are limited stocks available, or if the offer is only for a limited time.

Price displays

Although businesses are not obliged to display prices, the Commission encourages businesses to price goods clearly. When consumers see price stickers on goods or shelf prices, they are entitled to assume that those prices will be what they are charged at the checkout.

The Commission is often told by traders that they do not need to sell goods at the displayed price, as that price is simply an “invitation to treat”. It is true traders do not have to sell goods at the displayed price. A trader can refuse a consumer’s offer to buy goods at the price displayed. However, a trader who displays prices which are lower than the actual price at which they are willing to sell is likely to be committing an offence under the Fair Trading Act. This is because they are misleading consumers about the true cost of goods.

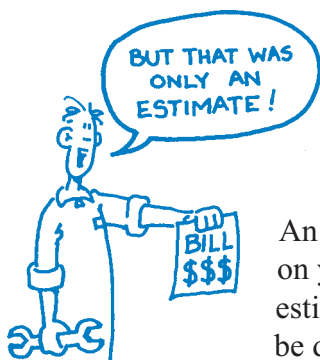
They may also be liable for any costs the consumers may have incurred in visiting their store in order to take advantage of an inaccurately advertised special.

Example

A supermarket charged higher prices for bananas, broccoli and kiwifruit at the checkout than at their point of display. The supermarket was convicted and fined \$3,500 under the Fair Trading Act.

Quotes and estimates

You must take great care not to mislead potential customers when giving quotes and estimates. When you quote a price to customers, they must be able to rely on that figure. It is on the basis of your quote that they decide whether to purchase your goods or services.



The Fair Trading Act makes no distinction between an oral quote and a written quote. A quote is an offer to do a job for a certain price. If accepted, then the work must be done for that price, unless the parties agree to a change in the price to cover extra work not covered by the original quote.

An estimate is the nearest price, or range of prices, that you can give based on your past experience. It is good business practice to put quotes and estimates in writing, and any charge for giving a quote or estimate should be disclosed before agreeing to provide it.

If you have any doubts about your ability to do the work or provide the goods for the price, you must make this very clear to the customer. All limits and conditions must be clearly spelled out. If the quote excludes GST this must be clearly stated next to the quoted price.

C. Sales techniques, finance agreements and unfair practices

Claims that goods or services are needed

Any claim you make that goods or services are needed must be based on fact. You may establish the need for goods or services through the existence of a law or regulation, or through some mechanical requirement. Misleading or deceiving customers about any such laws or requirements would breach the Act.



Debt collecting

There will be times when customers do not pay on time for the goods or services you provide. When you, or a collection agency you have employed, seek to recover debts, you must take care to comply with the law.

You should not seek any collection or late-payment fees on top of the original debt unless the debtor was made aware before incurring the debt that they may face such charges. If the debtor was not warned that, in the event of non-payment, they would have to pay extra charges, any attempt to make them believe they have to pay additional collection and late-payment fees would be misleading.

If costs are demanded in a misleading way by a debt collector acting on your behalf, you may be responsible.

If you wish to recover additional costs from your customers when they do not pay for the goods or services you have provided, you could inform them of this by placing large notices in your office or shop, by providing written notice of your terms of trade, and by having customers endorse cheques agreeing liability for collection costs.

If debtors still do not pay their debts, you are entitled to take legal action to recover the debt and any other costs, such as collection and late-payment fees, which relate to the non-payment of the debt. It is up to the court to decide whether to order the payment of such costs, or any other penalties, and the debtor has the right to challenge your claim before the court. You should, therefore, take care that in your warnings to debtors you do not represent the possible legal consequences of non-payment as inevitable.

Debt-collection documents must not mimic court or other official notices or orders.

Example

A debt-collecting agency added a \$50 collection fee to a debt it was recovering. Its client had not told the customer a collection fee would be added if the debt was not paid on time. The company was convicted and fined.

Delivery of goods

The promise that you will deliver goods to customers can be an important inducement for them to make a purchase. If, however, you mislead customers about the conditions applying to the delivery of goods, you risk breaching the Fair Trading Act.



Any conditions on an offer to deliver should be made clear: for example, if you deliver free only within the central city and only goods over a certain value.

“Free delivery” must be just that. It is deceptive to add the cost of delivery into the price and then to claim that delivery is free. If another customer who picked up the goods would pay a lower price, then delivery is not free.

You must not accept payment if you know that you cannot supply the goods or services ordered within the specified period. If no time limit is set, you must deliver within a reasonable time. (What is deemed “reasonable” will depend on circumstances.)

If there is an unexpected delay in delivery, you should consider contacting customers who have placed orders. A string of broken promises about delivery dates may result in compensation orders being made against you.

If you are involved in a direct-marketing, telemarketing or mail-order business where goods are not supplied at the time of purchase, you must ensure that delivery conditions are clear and that you stick to them. This is particularly important in a business where delivery is the only form of supply.

Example

A firm advertised prices for its computers. However, customers could not buy the computers at the prices advertised – they always had to pay a \$45 delivery fee. This fee was either only disclosed in the fine print at the bottom of the advertisement or was not disclosed at all. The company was convicted and fined \$21, 500 under the Fair Trading Act.

“Interest free”, “free credit” and lay-by offers

The offer of “easy payment terms” to customers may well be the deciding factor in their purchase of your goods or services. If you are providing financial services to customers, you must ensure that you make clear all the terms and conditions to avoid breaching sections 9, 11 and 13(g) of the Fair Trading Act. Such services include providing credit or loan finance, or operating lay-by accounts or hire purchase schemes.



You must check the accuracy of all promotional material about financial services and ensure that it does not give a false or misleading impression. Customers’ rights and obligations when buying on lay-by are set out in the Lay-by Sales Act 1971 and must be accurately represented.

Make sure that customers know whether interest rates are fixed or variable. If you are offering “interest-free terms”, they must be truly interest free.

The Commerce Commission considers that in the minds of many customers the terms “interest free” and “free credit” have the same meaning. Although the terms “interest” and “credit” have different meanings, in terms of the Credit Contracts Act it is the Commission’s view that many customers would not understand this in the context of “free” offers. Any promotions made on the basis that customers do have a more detailed awareness of what these terms mean may be at risk under the Fair Trading Act.

Example

A company ran a promotion that represented that home appliances were available for purchase on credit at an interest rate of 10%, but did not disclose the additional costs of credit applicable to such purchases. The applicable finance rate was around 17 %.

In interest-free and free-credit promotions, the interest-free or free-credit price should be equivalent to the cash price.

The Commission also considers that where an interest-free or free-credit period is offered as part of a longer period of repayment, interest should be calculated on the basis of the reduced principal after the interest-free period.

The Commission considers that, to remove any possibility of misleading your customers, additional charges (such as booking fees and compulsory credit insurance) should not be included where an interest-free or free-credit offer is made.

Any penalties that customers may face for failing to meet agreed terms must also be disclosed, as should any eligibility requirements. For example, you should make it clear in

your promotional material if “no deposit” offers are available only to existing customers, or if “interest-free terms” are available only for purchases over a certain amount.

Although it may be impossible to give more than limited information in an advertisement, the effect must not be to mislead or deceive potential customers. For example, if interest-free terms apply only to items over \$500, it would be misleading to include a picture of a toaster in the advertisement. Make sure that you keep your advertising up to date, and include any new rates or conditions. Brochures and other “long-life” advertising should be dated, so customers can tell how current the information is.

Examples

An appliance retailer used newspaper advertisements to promote an “interest-free terms for two years” offer on video players. However, a customer who wanted to take up the offer found that he would have to pay \$304 more than the cash price to get the interest-free deal. The so-called “free” offer was 28 percent more expensive than the \$1,095 cash price. The trader was convicted and fined.

An appliance retailer advertised a “we will pay your interest” promotion. However, customers who offered to pay cash were charged a lower price than those who accepted the “we will pay your interest offer”. The court found that there was no effective difference between these promotions and interest-free offers. The company was convicted and fined.

Want more information?

Refer to the Commission’s guideline, *Free Offers: Avoiding Conflict with the Fair Trading Act*.

Harassment and coercion



You must not attempt to sell goods, services or any interest in land through the use of harassment, coercion or physical violence.

Although many people may associate such practices only with door-to-door salespeople, normal retail traders should take note of this section of the Act. There is often a fine line between hard-sell techniques and harassment and coercion. You must take care not to use, or let your sales staff use, techniques which could possibly make customers feel harassed or forced in any way to make a purchase.

The Act also prohibits the use of physical violence, harassment or coercion to extract payment for goods or services supplied.

Offering gifts and prizes

Traders who, when promoting or selling goods or services, offer gifts or prizes which they do not intend to provide, or do not intend to provide as offered, are breaching the Act.

When running contests and other promotions offering gifts or prizes, you must clearly state all the conditions that apply, including any relevant time limit. You must also describe the gifts and prizes accurately, and not mislead people into thinking that what they stand to gain or win is better than it actually is.

Examples

A cycle shop advertised a “buy one get one free” promotion. However, the “free” bicycle was not necessarily the same as the one purchased. The company was convicted and fined.

A company advertised on television free items. The impression from the advertisement was that these were available with all the items advertised; however, that was not the case. The company was convicted and fined.

Packaging

Attractive packaging helps sell a product. But the packaging must not deceive consumers about the nature or size of the product.

The packaging of your product should give a reasonable indication of the size, quantity and characteristics of the product, otherwise you risk breaching the Act.

There are many ways in which packaging may be deceptive. It may have unusually thick walls or a false bottom; it may have hidden cavities bigger than reasonably needed to house accessories; or more layers of padding than are needed to protect the product. The Commission recommends that, where a package contains a single article of an irregular shape, the packaging should be as close as possible to the size and shape of the enclosed product.

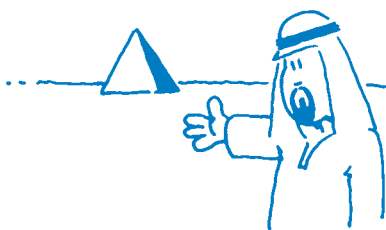


Example

A company imported Easter eggs from the United States. The marshmallow eggs were packaged in shrink-wrapped polystyrene cartons similar in shape to cardboard egg cartons. The company, and the retailers they sold to, believed the cartons contained whole oval-shaped eggs, but the eggs were, in fact, round on the visible side but flat on the other. Only a third of the packaging was filled by the eggs; the rest was empty space. The court found that the importer should have checked the product more carefully. The company was convicted, and ordered to pay \$2,000 costs.

Photographs and pictures on packaging may also be misleading. They may depict a serving suggestion which indicates that the quantity of food in the package is greater than it is, or show a product with accessories not included in the package.

Pyramid selling



Pyramid selling schemes are specifically prohibited by the Fair Trading Act, because of the risk of people being misled about the likely financial returns. Because the potential reward offered depends on the recruitment of new people to pay into the scheme, someone will always be at the bottom of the pyramid and will not achieve the advertised return on their “investment”. Only the initial participants are likely to make money, since the number of possible new recruits in any community is limited.

A pyramid scheme can take many forms, but has the following essential elements:

- it offers a financial return based on the payments of new recruits;
- the return is dependent primarily on the continued recruitment of new members, not sales of a product or service.

Examples

A brother and sister promoted a scheme called Maximus Intermediaries Ltd nationally as a retail discount scheme. Behind this façade, Maximus relied on each person who bought into the scheme recruiting more people, who would recruit others and so on. A finance company was set up to lend money to people who wanted to borrow to buy into Maximus. People paid \$506.25 to buy into Maximus, and some people bought in several times. A loan of \$506.25 cost \$600 over 30 weeks. The court ordered that Maximus Intermediaries Limited was a pyramid selling scheme and entered judgment against the defendants who were liable to pay more than \$3.1 million to people who had bought into the scheme. However, the over 12,000 people who bought into the illegal scheme were highly unlikely to get any of their money back.

A person promoted two pyramid schemes, Joker 88 and Liberty Bonds Group. She was convicted and fined \$30,000 and ordered to pay a compensation order of \$200,000 to the 1,901 people whose orders for certificates were not processed after paying money into her schemes.

Chain letters which request the sending of money are covered by the definition of pyramid schemes, and are therefore illegal.

There are a number of multi-level marketing schemes operating in New Zealand which are not pyramid schemes. These schemes involve the sale of rights to sell a product or products in different market levels. Income expectation is limited by the number of sales, not by the number of new sales representatives. Such multi-level marketing schemes are not prohibited by the Act.

Want more information?

Refer to the Commission's guideline, *Pyramid Selling*.

Referral selling

“Referral selling” is the practice of offering potential customers some form of reward if they provide the names of other people who then buy goods or services from you.

It is prohibited by the Act because the customer will receive the reward only if sales are made to the people whose names were supplied. If no sale is made, then the original customer receives no benefit.

Referral selling differs from the legitimate practice of offering a rebate or other benefit at the time of the sale. It is not referral selling to offer rewards for names of other potential customers if the offer is made after the first customer paid for their goods or services.

Pro-forma invoicing

You cannot supply goods or services to a person, and bill them, without that person agreeing to the transaction. Billing without the clear agreement of the “buyer” is known as “pro-forma invoicing”.

Example

A company producing a magazine lifted advertisements from other publications. Its employees telephoned businesses and told them they had agreed to purchase advertising space when this was not the case. The company then ran the advertisements without the agreement of the traders, and charged them for the advertising space. The company director and his four companies were convicted and fined \$130,000.

To counter the threat of false invoices, companies must have effective systems for ordering goods and services, checking that what was ordered was received, and authorising payments.

Want more information?

Refer to the Commission's *Compliance* August 1997; *Protect Yourself from False Invoices*.

Inertia selling

Inertia selling is the practice of sending goods or providing services to people who have not requested them. The "customers" are often told that, unless the goods or services are expressly rejected, payment is expected.

Under contract law, the silence of a consumer is not enough to indicate they have accepted the goods or services. Buyers must actually state they want to buy. You will break the law if, at the time you supply goods or services to a consumer, the consumer is not also told of their right to communicate acceptance before payment can be demanded.

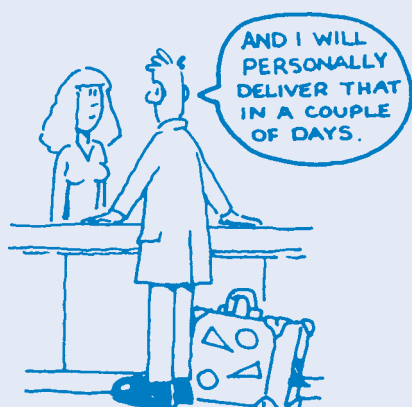
It is prohibited by the Fair Trading Act to make misrepresentations about other Acts. In the case of inertia selling, the Door to Door Sales Act and the Unsolicited Goods and Services Act set out consumers' rights.

Taking payment without intending to supply as ordered

You must not request, or accept, payment for goods or services you do not intend to supply at all, or if you intend to supply goods or services which are materially different from those for which payment is being demanded or accepted. You must not accept or request payment if you know or believe that you cannot supply the goods or services within a reasonable time, or the time specified.

Example

A photographer accepted payment for delivery of a set of proofs within six weeks. He also accepted payment from another customer for a photographic sitting for which no date was set. Neither of the photographer's customers received what they ordered, and he was convicted after the court found that he had no reasonable grounds for believing that the proofs could be provided within the six weeks, or that the sitting would take place within a reasonable time.



Warranties, guarantees and remedies



The Consumer Guarantees Act 1993 applies to goods and services that are:

- of a kind normally bought for personal, domestic or household use; and
- purchased in trade (not in private sales).

It:

- sets minimum guarantees about quality and fitness of goods and standards of service;
- sets remedies which can be used against sellers and service providers and, in some cases, against manufacturers whose goods or services do not meet the guarantees; and
- prevents sellers and service providers contracting out of the minimum guarantees, except in certain circumstances.

The Consumer Guarantees Act is self-enforcing. However, the Commerce Commission has a role to play when traders may have breached the Fair Trading Act by misleading consumers about their rights under the Consumer Guarantees Act.

The terms of any guarantee that you provide are over and above those which a customer has a right to under the Consumer Guarantees Act, and your guarantee should make that clear. You cannot attempt to limit your liability to your guarantee.

Example

A trader replaces a switch in a heater and offers a “one month warranty on parts and labour”. The length of time the part or repair will last depends on all the circumstances and may be longer than one month. Customers’ rights do not expire automatically at a time set by the trader, as rights provided by the Consumer Guarantees Act may go beyond the one-month period.

Exaggerating the cover provided by a warranty, or telling customers that they cannot return goods under any circumstances, would breach the Fair Trading Act. Attempting to sell an extended warranty on the basis that the customer would otherwise have no comeback would also breach the Fair Trading Act.

Example

A car dealer offers for sale an extended warranty on an ex-overseas car and states, “The car has no warranty (under the Motor Vehicle Dealers Act) as it is ex-overseas, therefore you have no protection if something goes wrong”. While there is no statutory warranty under the Motor Vehicle Dealers Act, the car is still covered by the Consumer Guarantees Act. Therefore the comments of the car dealer are misleading.

Telling customers to claim on the extended warranty, when they have the right to claim against you directly, would breach the Fair Trading Act, as would telling customers to go back to the manufacturer when they have the right to choose to claim either from the trader or the manufacturer.

Warranties for cars, machines and most appliances must comply with the Consumer Guarantees Act, and must include labour and compensation for loss or damage. Only the parts of a warranty which provide more than the legally necessary guarantees can exclude labour. If a warranty is in fact a form of insurance it should be marketed as such.

Example

A motor vehicle dealer advertised a three-year guarantee with every purchase of a second-hand car. However, car buyers did not get a guarantee. They got a mechanical breakdown insurance policy with claim limits and exclusions, and they had to pay a \$100 excess on every claim. The company was convicted and fined \$8000.

The Sale of Goods Act applies to goods sold that do not fall within the Consumer Guarantees Act. It gives customers the right to a refund if the goods are faulty, not fit for the purpose intended, or not the same as those shown at the time the sale was made. A right to compensation exists where there is loss or damage to the customer from these causes. Remedies are also available under the Fair Trading Act for customers who are misled or deceived in the course of buying goods or services.

Examples

A shop owner places a “No Refunds” sign on the shop counter. This is an illegal attempt to deprive customers of their rights. Customers are entitled to a refund if the goods have some basic or serious fault which they could not have known about when they bought the goods, or if the trader has made a misrepresentation about the goods. You do not have to give a refund if customers simply change their minds or damage the goods themselves.

“No Refund” signs should include more information to avoid liability under the Fair Trading Act. An acceptable example would be: “Choose carefully. We will not refund if you are unhappy about style or colour, unless the mistake was ours”.

A company was selling computer software that had a label attached to it which stated no refund would be given if the package had been opened. The company was misleading people about their rights under the Consumer Guarantees Act and was convicted and fined \$3,000.

Want more information?

The Ministry of Consumer Affairs has produced resources on the Consumer Guarantees Act for retailers and service providers, manufacturers and importers, and motor vehicle dealers. Resources can be ordered by faxing the Ministry on 04 473 9400, phoning 04 474 2750, or writing to PO Box 1473, Wellington, or can be ordered through its website www.consumer-ministry.govt.nz

3. CONSUMER INFORMATION STANDARDS

Consumer information standards are regulations requiring the disclosure to a specified standard of certain information about goods and services. They are enforced by the Commerce Commission under section 28 of the Fair Trading Act.

Currently there are three consumer information standards:

- Country of Origin (Clothing and Footwear) Labelling Regulations 1992;
- Fibre Content Labelling Regulations 2000; and
- Care Labelling Regulations 2000.

You will breach the Fair Trading Act if you fail to comply with the requirements of any consumer information standard covering goods or services you provide. You must ensure that you are aware of the requirements of any such standards which are relevant to your business. Plain-language guides are available free from the Commission, and copies of the standards can be bought from Standards New Zealand, Private Bag 2439, Wellington, phone (04) 498 5990.

The following is only a guideline, and does not include much of the detail that is contained in the related standards and regulations. You need to know this detail to ensure you comply with the relevant consumer information standard. This booklet is not intended to be definitive, and should not be used instead of legal advice.

Country of origin labelling



The Fair Trading Act does not require all products to be labelled with a place of origin. However, where a product is labelled, any claims made about its origin must not be misleading or deceptive.

The Act requires that most items of clothing and footwear supplied by traders be labelled with their country of origin.

The standard requires that:

- articles of clothing and footwear must be labelled or marked to show the country in which they were made or produced;
- the label or marking must be in English with letters of a clear medium width that are not less than 1.5mm in height;
- clothing must be labelled with a permanent label which can be examined by a consumer (there are special labelling requirements where clothing is packaged, displayed or folded, or where it is not possible for a particular article to be labelled permanently); and
- the country of origin must be printed, stencilled, branded or marked on each item of footwear so it can be seen by the consumer. Where it is not possible, for reasons of design, composition or construction, to label an item of footwear, there are other special labelling requirements.

The standard does not apply to second-hand clothing and footwear.

Example

A shoe shop was warned that one range of its shoes did not have country of origin labelling. Some time later, the Commerce Commission noted that the shoes were still not labelled. The company was convicted and fined \$1,000.

Want more information?

Refer to the Commission's publication, *Place of Origin and the Fair Trading Act*.

Fibre content labelling

From 1 October 2000 to 1 October 2001 traders must comply with either the Consumer Information Standards (Fibre Content Labelling) Regulations 1992 or the Consumer Information Standards (Fibre Content Labelling) Regulations 2000. The 2000 regulation requires most new textile goods to comply with AS/NZS 2622:1996, with certain additions and variations that are set out in the regulation. After 1 October 2001 traders must comply with the 2000 regulation.

The standard (AS/NZS 2622:1996) sets out two methods of designating fibre content, and specifies the way in which the products must be labelled. A method for assessing fibre content is also specified.

It covers most textile goods including carpets. Second-hand goods are not covered.

Want more information?

Refer to:

- the Consumer Information Standards (Fibre Content Labelling) Regulations 2000 in conjunction with AS/NZS 2622 1996.

Care labelling

From 1 October 2000 to 1 October 2001 traders must comply with either the Consumer Information Standards (Care Labelling) Regulations 1992 or the Consumer Information Standards (Care Labelling) Regulations 2000. The 2000 regulation requires most new textile goods to comply with AS/NZS 1957:1998, with certain additions and variations that are set out in the regulation. After 1 October 2001 traders must comply with the 2000 regulation. The standard (AS/NZS 1957:1998) sets out the words, phrases and symbols that you must use to indicate the correct way to care for textile goods, including drycleaning and washing.

The standard covers:

- clothing, household textiles, furnishings, upholstered furniture, bedding, mattresses and bed bases;
- piece goods and yarns made from textiles;
- plastics and plastic-coated fabrics; and
- suede skins, hides, grain leathers and furs.

It does not apply to second-hand goods.

Want more information?

Refer to:

- the Commission's publication, *Care Labelling and the Fair Trading Act*;
- the Consumer Information Standards (Care Labelling) Regulations 2000 in conjunction with AS/NZS1957:1998.

4. PRODUCT SAFETY STANDARDS

Regulations setting safety standards for certain products — bicycles, children’s night clothes, children’s toys, cigarette lighters and cots — are also enforced by the Commerce Commission.

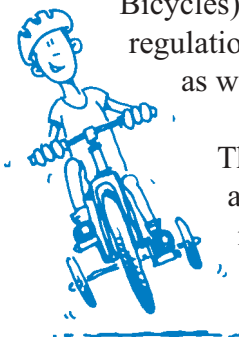
Section 32 of the Fair Trading Act gives the Minister of Consumer Affairs the power to order the compulsory recall of goods which do not comply with a relevant product safety standard, or which may cause injury. Such a recall will be at the trader’s expense. Traders may also be required to publicise the recall, and replace or repair the goods or provide refunds.

Information relating to the enforcement of safety standards through the Fair Trading Act is available from the Commission. Copies of the standards can be bought from Standards New Zealand, Private Bag 2439, Wellington, phone (04) 498 5990.

The following is only a guideline, and does not include much of the detail that is contained in the related standards and regulations. You need to know this detail to ensure you comply with the relevant product safety standard. This booklet is not intended to be definitive, and should not be used instead of legal advice.

Bicycle safety standard

From 15 October 2000 to 15 October 2001 traders must comply with either the Product Safety Standards (Pedal Bicycles) Regulations 2000 or the Product Safety Standards (Pedal Bicycles) Regulations 1991. After 15 October 2001 traders must comply with the 2000 regulation. This includes importers and retailers of both new and second-hand bicycles as well as those selling bicycles privately, or giving them away as gifts or prizes.



The standard (AS/NZS 1927:1998) applies to most types of bicycles and sub-assemblies of bicycles having a wheelbase of 640mm or greater. (Wheelbase is defined as the distance measured horizontally between the centres of the front and back axles. Bicycles with a wheelbase of less than 640mm are considered to be toys and are covered by another standard.)

A bicycle is defined as “a two-wheel pedal vehicle that is solely human-powered”. The regulations do not apply to custom-made bicycles, engine-powered bicycles, recumbent bicycles or certain types of bicycles designed and intended primarily for use in competitions.

The safety standard:

- requires that where a bicycle is sold either in a kitset or partially assembled, the parts or the packaging containing the parts must be labelled as follows —

“WARNING. In the interests of safety it is recommended that you have this cycle assembled by a skilled cycle mechanic.”

The lettering of the word “WARNING” shall be in block capitals at least 20mm high, and the other words shall be in lettering at least 10mm high;

- sets out the performance requirements which bicycles (including children’s bicycles and sub-assemblies) need to meet when the specified tests are carried out; and
- requires an owner’s manual to be provided for any bicycle or partially assembled bicycle sold.

The owner’s manual must contain instructions on use and maintenance. For partially assembled bicycles, instructions on assembly must be included to ensure the assembled bicycle conforms with the standard. For maintenance and adjustments beyond the capability of the consumer, advice on where such service can be obtained must also be supplied.

Example

A trader had been warned by the Commission to improve its checking systems after nine out of 16 bikes inspected at one shop did not appear to comply with the bicycle safety standard. Three weeks later Commission investigators bought three bikes at different stores of the same trader. All three were tested and all failed the bicycle safety standard. The trader was fined \$25,000.

Want more information?

Refer to:

- the Commission’s publication, *Safety Standards for Bicycles*;
- the Product Safety Standards (Pedal Bicycles) Regulations 2000 in conjunction with AS/NZS 1927:1998.

Children’s night clothes safety standard

From 14 November 1999 to 14 October 2001 traders must comply with either the Product Safety Standards (Children’s Nightwear and Limited Daywear Having Reduced Fire Hazard) Regulations 1999 or the Children’s Night Clothes (Product Safety Standard) Regulations 1990. After 14 October 2001 traders must comply with the 1999 regulations. The regulations apply to all businesses involved in the manufacture, distribution and sale of children’s nightwear and some daywear.

The product safety standard aims to ensure that all garments that are suitable for nightwear are either designed to reduce fire danger or are made of fabrics that are less likely to burn if they do catch fire. For example, a thin cotton ankle-length nightgown would catch fire very quickly; a fitting pair of cotton pyjamas would not.

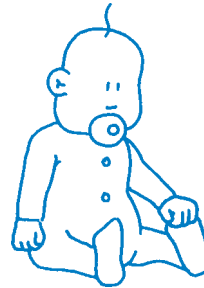
The standard sets out four categories of garments:

- garments made of low fire-danger fabric – there are strict fabric requirements for this category;
- garments of a form-fitting style such as pyjamas – there are strict design specifications for this category;
- all knitted all-in-ones sizes 00-2 with a mass of less than 280g/m²;
- category four garments are garments that do not comply with the requirements for categories one to three. That does not mean that all garments that are suitable for nightwear can be supplied under the regulations. Some garments will not meet the requirements of any of the four categories because they are considered too much of a fire hazard (for example, 100% full-length flannelette nightgowns).

The standard (AS/NZS 1249) defines children's night clothes as any garments suitable for nightwear for children's sizes 00-14.

This definition includes:

- Pyjamas
- Pyjama-style overgarments
- Nightdresses
- Nightshirts
- Dressing gowns
- Bathrobes
- Infant sleepbags
- Knitted all-in-ones in sizes 00-2 irrespective of style
- Knitted all-in-ones sizes 3-14 that are of a style that identifies them as nightwear
- Woven all-in-ones if they are of a style that identifies them as nightwear
- Boxer shorts of a loose style which may be used as nightwear or daywear.



The definition is not exclusive. Garments which may be used as nightwear should conform to the standard, even if they were not designed for that use, except if they are specifically excluded under the standard.

All garments covered by the standard must have labels permanently attached and clearly visible. If the garment consists of two or more pieces, such as pyjamas, then both pieces must be labelled.

Category 1, 2 and 3 garments must be labelled:

LOW FIRE DANGER

The wording must be clearly legible in upper case (capitals), monoline, geometric lineale typeface of medium width characters not less than 2.5mm high.

Category 4 garments must have a red label – 537 Signal Red (NZS 7702) – with the following printed in black:



The wording must be clearly legible in upper case, monoline, geometric lineale typeface of medium width characters not less that 2.5mm high. The word “**WARNING**” must be in bold, upper case typeface. Each statement on the label must start on a separate line.

The triangle symbol must be not less than 17mm high and not less than 33mm in length. No other information can appear on this label.

Example

A trader had a range of nightgowns and pyjamas which were labelled as low fire danger fabric. This was not the case. The trader was told by the Commission that the night clothes had failed the flammability tests, and agreed to tighten its quality controls. However, one month later a romper suit being sold in the nightwear section of the shop was purchased and it had no fire warning label sewn into it. The company was convicted and fined \$6,500 plus costs of \$1,295.

Want more information?

Refer to:

- the Commission's brochure, *Safety Standards for Children's Nightwear and Some Infant Daywear*;
- the Product Safety Standards (Children's Nightwear and Limited Daywear Having Reduced Fire Hazard) Regulations 1999 in conjunction with AS/NZS 1249:1999.

Toy safety standard

All businesses involved in the manufacture, distribution and retail of toys for children under three must comply with Product Safety Standards (Children's Toys) Regulations 1992.

This covers the sale, exchange, lease, hire and hire purchase of toys, as well as "giveaways", such as toys given away as prizes at side-show stalls and toys in breakfast cereal packets.

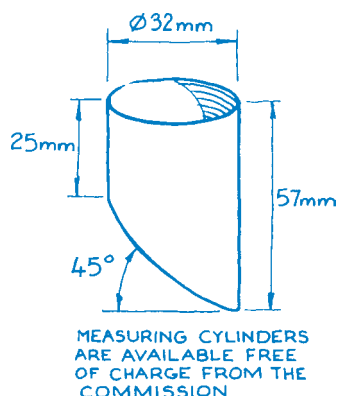
Private sales of second-hand toys are not covered.

The safety standard states toys should not:

- be of a size that creates a hazard if swallowed or inhaled;
- have small parts designed to be removed from the toy that create a hazard if swallowed or inhaled;
- have pieces that can break off in normal use or during reasonably foreseeable abuse and that create a hazard if swallowed or inhaled.

The standard refers to a cylinder for measuring whether toys or toy parts are too small. If a toy, or a part of a toy, can fit completely into the cylinder, then it is too small and does not meet the standard. Generally, anything smaller than a 35mm film cannister will not meet the standard.

Measuring cylinders are available free of charge from the Commission.



The standard also sets out in detail tests designed to simulate "use and reasonable abuse" of toys by children and to discover if any small parts will break off and become a hazard if swallowed or inhaled.

The safety standard applies to children under three years old because children up to that age do not have a coughing reflex when they choke. If they swallow or inhale an object which sticks in their throat, they do not cough and must be helped or they can choke to death.

You cannot label out of the standard. For example a baby's rattle labelled as "not suitable for children under three years" would still be covered by the standard.

The safety standard excludes the following things:

- balloons, marbles and records;
- books and other articles made of paper;
- writing materials including crayons, chalk, pencils and pens;
- finger paints, water colour paints and other paints;
- modelling materials, including clay, plasticine and play-dough;
- flotation aid toys;
- bicycles having a wheelbase of not less than 640mm;
- toys that are made wholly from highly porous fabric material such as cheese-cloth;
- playground equipment for park, school and domestic use, including swings, see-saws, slides, agility apparatus, climbing, swinging, rotating and rocking apparatus, play houses, sand pits, apparatus for use in sand, sliding poles and ladders;
- goods supplied in a kitset or partially assembled state for later assembly by an adult, provided that when assembled (according to written instructions supplied with the goods) the goods comply with the standard.

Examples

A toy manufacturer was prosecuted for supplying toy wooden puzzles for children under three years which had pieces that were an ingestion or inhalation hazard. About 2,500 toys were supplied, and although the manufacturer undertook a product recall resulting in the return of about 1,000 puzzles, and pleaded guilty, it was fined \$15,000 with costs totalling \$3,000.

A supermarket sold a baby rattle which did not meet the toy safety standard. The company said it relied on its supplier to ensure the toys met the safety standard and said this was common practice in the industry. This was rejected by the court. The company was convicted and fined \$8,500 plus costs of \$2,055. In setting the fine the judge took into account the cost of recalling the rattles and the adverse publicity from the recall.

A toy importer was ordered by the court to pay \$9,260 in fines and costs after it supplied unsafe teddy bears. The teddy bears had seams that broke open easily, and small beads with which the bears were stuffed spilled out. The beads were a choking hazard to young children.

Want more information?

Refer to:

- the Product Safety Standards (Children's Toys) Regulations 1992 in conjunction with NZS 5822 1992.

Cigarette lighter safety

The Product Safety Standards (Cigarette Lighters) Regulations 1998 make it illegal to import or supply disposable and cheap refillable cigarette lighters that do not meet the child resistance requirements of the American standard (CFR 16 Part 1210) and the general safety requirements of ISO 9994:1995.

Importers

You need to provide a certificate of compliance with your imported product. This certificate does not have to be in any special format, but must state:

1. that the product meets the child resistance requirements of the American standard as set out on CFR 16 Part 1210;
2. the name and address of the manufacturer or importer issuing the certificate;
3. the date (within one month) of manufacture; and
4. the physical address of manufacture if different from 2 above (i.e. the factory address).

You may make this statement yourself or have the overseas supplier make it. You need, however, to be able to validate the statement with supporting documentation (such as test results and product specifications) if challenged.

Retailers

You need to be able to produce a copy of the certificate provided by the importer within 10 days of being requested to do so by an officer of the Commerce Commission. You do not need to physically hold the certificate on your premises, although doing this will save you time.

Want more information?

Refer to:

- the Commission's publication, *Safety Standards for Cigarette Lighters*;
- the Product Safety Standards (Cigarette Lighters) Regulations 1998, in conjunction with: American Standards CFR 16 Part 1210 — available on the internet site <http://www.access.gpo.gov/nara/cfr.waisidx/16cfr1210.html>;
- ISO 9994:1995. This can be purchased from Standards New Zealand, Private Bag 2439, Wellington, phone (04) 498 5991.

Cots

The Product Safety Standards (Household Cots) Regulations 2000 came into force on 1 October 2000. They cover cots designed or intended for use in the home. If you supply, manufacture or hire cots you must ensure they comply with the regulations which cover both new and second-hand cots. However, second-hand cots are exempted from certain durability, strength-testing, packaging and labelling requirements.

The regulations do not apply to antique cots or collectible cots but both must have a warning that is displayed in a conspicuous position on the cot or on any packaging: "Warning this cot may not be suitable for use as a sleeping facility for infants or children". The standard also does not cover folding cots, carry cots, cradles and bassinets.

The standard (AS/NZS 2172:1995) sets out maximum and minimum gaps for various aspects of the cot, as well as a range of other requirements including stability and durability requirements. Some of the key requirements are:

- the gaps between the bars or slats at the base of the cot should be 50-85mm wide;
- there should be no gaps bigger than 95mm for a child to fall through;
- the corner posts should not stick up by more than 8mm – clothing can get caught;
- the cot should be more than 600mm deep – measure from the base of the mattress to the top of the cot side;
- there should be no bars, ledges or other footholds a child can use to climb out.

Want more information?

Refer to:

- the Product Safety Standards (Household Cots) Regulations 2000 in conjunction with AS/NZS 2172:1995 Cots for Household Use.

Unsafe goods notices

Importing, supplying or advertising goods declared by the Minister of Consumer Affairs to be unsafe is an offence under the Fair Trading Act. The Minister may declare any goods unsafe where it appears they may cause injury.

Indefinite bans apply to:

- liquids known as “disappearing ink”, “fade away ink” and to any other liquid having a pH less than pH3 or greater than pH10 and which is intended for squirting by children during play;
- tubular plastic arm bangles, containing silver-coloured metallic flakes or glitter suspended in liquid, intended for use as jewellery for children, and commonly known as “Glitter Bangles”;
- Ninja pistol crossbow, Barnett Phantom pistol crossbow, and any pistol crossbow which does not have a safety catch on the firing mechanism;
- plastic or other containers of liquid described as “wipe-out magic liquid”, plastic or other containers of liquid described as “Zap-It”, any plastic or other container of liquid having a pH less than pH3 or greater than pH10 and intended for use in toy pistols.

Unsafe goods notices apply to:

- Candles containing lead in their wicks, and candlewicks containing lead.

Want more information?

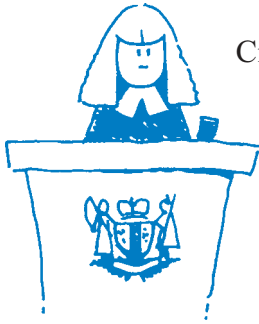
Refer to:

- the Commission’s flyer, *Some candles and candlewicks are banned*.

5. ENFORCEMENT OF THE FAIR TRADING ACT

Consequences of contravention

The Commerce Commission, or anyone else, can take court action under the Act.



Civil proceedings under the Act can take place in the High Court, the District Court or the Disputes Tribunal, depending on the type of order sought and the amount of the claim. Criminal proceedings are taken in the District Court.

Criminal court action may result in fines of up to \$30,000 per offence for an individual and \$100,000 per offence for a company. Both a company and the individuals involved in a breach may be prosecuted by the Commission. They may also face the costs of adverse publicity and lost sales, as well as of defending themselves in court.

Anyone can apply to the High Court for an injunction to stop the Act being breached. The court can grant injunctions to stop activities that traders are currently engaged in, or are likely to engage in. Where prompt intervention is necessary to minimise damage caused by unlawful conduct, the court may order an interim injunction pending a full hearing of the case.

The Commerce Commission also has the right to apply to the High Court for corrective advertising orders. Where it is satisfied that a trader has contravened the Act, the court may order the trader to:

- disclose information to the public generally, or to an affected section of the public;
- publish corrective statements.

The trader has to bear the costs of this remedial action.

The court may grant a number of other remedial orders, including orders that:

- a contract be altered or made void;
- money be refunded;
- goods be repaired or services supplied.

An application can be made to the court for these orders up to three years after a contravention has occurred. The court may order that money be refunded to a consumer even if that consumer is not party to the proceedings before the court.

Examples

A person was ordered by the court to pay \$202, 039 in compensation and costs for misleading people about franchise schemes. The schemes involved fast-food outlets at petrol stations. The person misled people about the involvement of the major oil companies in the scheme. He claimed that oil companies had signed contracts and “were on-board and ready to go”. In reality there were no contracts and no commitment from any oil company.

A company marketed a window cleaning product called “Glassguard”. The claims about the product were false. Incorrect statements were also made to people who purchased the right to apply the product. The company was convicted and fined. The court also made two compensation orders of \$12,000 and \$3,200.

Defences

Traders are obliged to comply with the Fair Trading Act and not conduct business in a false, misleading or deceptive way.

However, section 44 of the Act provides some general defences to criminal actions taken under the Act.

These defences are that:

- The contravention was due to a “reasonable mistake”. To prove a reasonable mistake, it is necessary to show there was an intention to act correctly. This means some system of checking, such as a compliance programme, should have been in place to detect errors.
- The contravention occurred because the trader “reasonably relied” on information from another person (other than their employee or agent). The person reasonably relied on must be someone outside the control of the defendant.
- The contravention was caused by an “accident” outside the trader’s control, or was caused by the actions of a third party (not an employee or agent), and reasonable and diligent steps were taken to avoid the contravention. The accident must be one which could not have been avoided if reasonable precautions were taken — that is, if the defendant had been diligent. In one instance, the court found that because a shopper had moved a can of soup to a different place on a shelf, the resulting incorrect shelf pricing of the can was due to an accident beyond the defendant’s control.



A trader using the latter two defences must give written notice, including the name of the third person, to the person bringing the case against them no later than seven days before trial.

The Act also provides a number of specific defences:

(i) Publishers and the media

When a broadcaster or newspaper publishes an advertisement which contravenes the Act, the publisher and the advertiser may both be liable. However, a defence is available to the publisher and the person who arranged the publication (for example, the advertising agent) if they can prove that they had no reason to suspect the false or misleading nature of the advertisement.

In addition, the Act provides a special defence for broadcasters and newspaper publishers, excluding them from the consequences of misleading and deceptive conduct and false representations if they appear in editorial comment, articles, forecasts and the like.

(ii) Consumer information standards

A special defence is available to traders charged with failing to meet a consumer information standard. This defence applies only to traders who have acquired the goods from a supplier in New Zealand for the purposes of resupply. In other words, the defence is for the intermediary who has no control over the labelling of the goods.

Traders must show either that they could not have reasonably known that the labelling of the goods did not conform to the standard, or that the supplier told them that no standard applied to the goods.

A trader using this defence must give written notice, including the name of the supplier, to the person bringing the case against them no later than seven days before the trial.

(iii) Bait advertising

In the prosecution of a trader for inadvertently not supplying goods (section 19), a defence is available if it can be established that the trader:

- (a) offered, or arranged, to supply goods or services of the kind advertised in reasonable time and in reasonable quantities (in other words, offered a “raincheck”); or
- (b) offered to supply immediately, or arranged to supply within a reasonable time, equivalent goods or services in reasonable quantities and at the original price.

The role of the Commerce Commission

The Commission’s role is to bring about awareness and acceptance of, and compliance with, the Commerce, Electricity Industry Reform and Fair Trading Acts so that producers and consumers benefit from healthy competition. The Commission does this by providing information about the provisions of the Acts, receiving information about alleged breaches of the Act and, where necessary, taking action against traders who break the law.

Investigative powers

Section 47 of the Fair Trading Act gives the Commission the power to obtain and execute search warrants. Commission officers can, with such a warrant, search premises, and seize and remove goods, documents, computer records and other items.

Obstructing an officer who is executing a search warrant is a criminal offence, punishable by a fine not exceeding \$30,000 for a company and \$10,000 for an individual.



Enforcement

The Commission considers that enforcement of the Act involves a range of activities. These activities are:

- Education through letters, brochures, media publicity and public speaking.
- Giving warnings to traders whose behaviour appears to be at risk in terms of the Act.
- Entering into settlements with traders whom the Commission believes have breached the Act. A settlement will involve the trader changing the way they operate and may include a variety of other things, such as compensation or publicity. An important principle for the

Commission is that it will try to negotiate a settlement only if it is satisfied it could prosecute the trader if a satisfactory settlement is not agreed to.

- Court action where the Commission considers the Act has been breached. Injunctions, fines, orders for disclosure or corrective advertising may, at the discretion of the court, be appropriate.

Court action is not seen as the method of last resort. The Commission will take court action when it is seen as the appropriate method of dealing with a breach of the Act.

Under sections 9 (which covers misleading and deceptive conduct generally), 14(2) and 23 of the Act, civil proceedings only are possible. Such proceedings cannot result in fines. However, the possibility of using statutory defences is also excluded.

Developing a compliance programme

A compliance programme is an in-house checking system designed to ensure that your company and staff do not breach the Fair Trading Act.

The Act applies to both accidental and deliberate conduct, so a compliance programme can pick up mistakes and oversights which could otherwise land your company in trouble. Remember, also, that you are responsible for the actions of your staff.

An essential part of a compliance programme is the training of staff to ensure that, when dealing with the public, they always bear in mind their responsibilities under the Act. Another vital element is the setting up of a system for checking advertising.

It is in every trader's interest to prevent breaches of the Fair Trading Act. The costs of adverse publicity, cancelled promotions and court proceedings are powerful reasons for setting up a compliance programme. When considering complaints against traders, the Commission will take into account whether the trader had a compliance programme in operation. The court may also view favourably the existence of a compliance programme when imposing penalties for breaches of the Act which occurred despite the diligent supervision of the trader.

Want further information?

The Commerce Commission has published a pamphlet, *Compliance Programmes*, which will help you set up a compliance programme.

6. FURTHER INFORMATION

Commission publications

The Commission produces a number of publications about the Fair Trading Act, including:

- *Car Sales and the Fair Trading Act*
- *Care Labelling and the Fair Trading Act*
- *Comparative Pricing and the Fair Trading Act*
- *Compliance Programmes and the Fair Trading Act*
- *Deceptive Packaging and the Fair Trading Act*
- *Environmental Claims and the Fair Trading Act*
- *The Fair Trading Act – A Guide for Advertisers and Traders*
- *Free Offers – Avoiding Conflict with the Fair Trading Act*
- *Place of Origin and the Fair Trading Act*
- *Pyramid Selling and the Fair Trading Act*
- *Safety Standards for Bicycles*
- *Safety Standards for Cigarette Lighters*
- *Safety Standards for Childrens Nightwear and some Infant Daywear.*



One-page fact sheets about safety standards

- *Bicycles*
- *Children's Night Clothes*
- *Cigarette Lighters*
- *Toys for Children up to Three Years Old*

The Commerce Commission also publishes a wide range of guidelines about the Commerce Act. These are available free of charge.

Newsletters

The Commerce Commission publishes two free newsletters.

Fair's Fair is published four times a year and provides topical information about work the Commission is doing or has done recently.

Compliance is also published four times a year, but differs from *Fair's Fair* in that each issue focuses on only one or two topics and explores them in more detail.

Contact the Commission's Wellington office, to be added to mailing lists.
e-mail records@comcom.govt.nz, phone (04) 924 3600, fax (04) 924 3700,
PO Box 2351.

Was or \$xxxx	Have the goods I'm advertising been available for sale in our store at the previous price for a reasonable period of time immediately before this offer? (As a guide, a reasonable period should be around 30 days but this will depend on the sales volume for the product.)
Elsewhere	Can I prove that goods the same as those I'm advertising are currently being sold by another trader in our local market for the elsewhere price I'm stating in my advertising? (As a guide, the local market should only include those areas where an average person would normally shop for the item advertised. For example, if advertising electric jugs in Auckland you should not state an elsewhere price that is being charged in Whangarei.)
Recommended Retail Price	Can I prove that the Recommended Retail Price is the actual Recommended Retail Price suggested by the manufacturer?
If yes then:	Can I prove that the item is available for sale at the Recommended Retail Price I'm using in the local market?
Worth	Can I prove that the item is worth the advertised value in the current market?
Save \$xxxx	Are consumers actually saving the stated amount? Are we or one of our competitors currently charging the higher price?
Sale Price	Are the goods advertised genuinely reduced from their normal selling price? If advertising a storewide sale have we got a substantial proportion of our stock at prices which are lower than before the sale started? Is the reason for the sale genuine? (e.g. you need to have had a fire to advertise a "fire sale".)

(photocopy as required)

COMPARATIVE PRICING CHECKLIST



Was or \$xxxx	Have the goods I'm advertising been available for sale in our store at the previous price for a reasonable period of time immediately before this offer? (As a guide, a reasonable period should be around 30 days but this will depend on the sales volume for the product.)
Elsewhere	Can I prove that goods the same as those I'm advertising are currently being sold by another trader in our local market for the elsewhere price I'm stating in my advertising? (As a guide the local market should only include those areas where an average person would normally shop for the item advertised. For example, if advertising electric jugs in Auckland you should not state an elsewhere price that is being charged in Whangarei.)
Recommended Retail Price	Can I prove that the Recommended Retail Price is the actual Recommended Retail Price suggested by the manufacturer?
If yes then:	Can I prove that item is available for sale at the Recommended Retail Price I'm using in the local market?
Worth	Can I prove that the item is worth the advertised value in the current market?
Save \$xxxx	Are consumers actually saving the stated amount? Are we or one of our competitors currently charging the higher price?
Sale Price	Are the goods advertised genuinely reduced from their normal selling price? If advertising a storewide sale have we got a substantial proportion of our stock at prices which are lower than before the sale started? Is the reason for the sale genuine? (e.g. you need to have had a fire to advertise a "fire sale".)

(photocopy as required)



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To contact the Commission with information about misleading trading practices; anti-competitive behaviour and mergers
CALL FREE 0800 943 600

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