Consumer protection

The objective of consumer protection law is to strengthen the position of consumers in their everyday dealings with suppliers of goods and services who often have stronger bargaining positions.

The Trade Practices Act prohibits unfair practices such as: misleading and deceptive conduct; false representations; misleading statements; harassment and coercion; bait advertising; referral selling; and pyramid selling.

Consumer (and many business) transactions are automatically given warranty protection by the law, whether or not suppliers give their own warranties or guarantees. This protection includes the right to refund if goods are defective.

All States and Territories have their own fair trading laws which mirror or partly mirror these parts of the law. So many issues or concerns that consumers have in dealing with suppliers can be successfully taken up by State departments of fair trading or consumer affairs.

On the other hand, the ACCC focuses on industry-wide conduct and conduct that affects large numbers of consumers.

Some of the areas which especially concern the ACCC are outlined below.

Advertising and selling — what you should expect

Sometimes it's hard to believe some of the advertising you see. Sometimes it's difficult to believe what you're told by a salesperson.

Difficult to believe or not, you should be able to rely on it — because part V of the Trade Practices Act has some basic rules that advertisers, marketers and salespeople should adhere to.

Businesses are supposed to act fairly by giving consumers accurate information about products and services. Consumers rely on the information they're given because they expect the business to be knowledgeable about their own products and services.

What falls into the scope of advertising and selling? The following are some examples:

- information provided by call centres;
- promises and negotiations;
- terms of leases, contracts and agreements;
- predictions about risk, profitability or value;
- statements in labelling and packaging;
- descriptions of goods or services;
- silence or omissions which 'mean something' in a given context;
- claims of association with other products or persons;
- mimicking of products or names; and
- distribution of financial, mortgage or insurance documentation.

Broadly put, part V of the Act tells businesses not to engage in activities that actually mislead or deceive; or are likely to mislead or deceive. Take the example below.

example

A student wants a computer that can be used for high resolution graphic design. The computer salesperson recommends a particular model but fails to explain that it doesn't have the processing capacity needed to run certain graphics applications.

The student buys the computer and finds it doesn't do the job. Therefore, the student was misled because the information provided by the salesperson gave the impression that it was the right product for the job.

Disclaimers and fine print

A perennial problem area to watch out for is disclaimers and fine print in advertising. These are designed to limit expectations that might be created by the first impression. However, all conditions should be easy to see. You shouldn't have to look in obscure locations, be able to speed read or search exhaustively for these details.

Comparative advertising

This is a form of advertising that highlights the differences between products. It can be very appealing because it may show that one product is better than another. But businesses

need to be extra careful with it because comparisons should only be made when the products or services are reasonably similar. They also need to consider how soon their competitors are likely to respond because if a competitor moves quickly to change its own prices the original comparative campaign could become misleading.

To avoid misleading consumers, businesses need to consider these principles:

Your intent is not important.
Many complaints about misleading conduct are explained by businesses as an error or an oversight, e.g. a computer error that leads to overcharging or an inexperienced sales person. Either way consumers may still be misled and suffer as a result. The Trade Practices Act protects consumers regardless of intent, and places responsibility on the business to avoid such conduct.

Is the target audience the only audience that will receive your message ?
Marketers may have very specific target audiences in mind, but can't always control who receives the message and who is likely to be influenced by it. They must consider the likely audience, how they could be influenced, and what impression they could take away with them.

The overall impression you create.
Businesses should always step back from their marketing and advertising to look at the overall impression that has been created. They need to ask: How is a consumer likely to look at it? Is the emphasis correct? Have any important details been left out? Can there be more than one meaning?

Marketers and the media

Most businesses that provide goods or services directly to consumers would know about their obligations. But marketers also need to know about the law so they can help clients to avoid bending the truth. Similarly, if the media adopts, advises or endorses a misleading message that it has been asked to carry, it may be breaching the Trade Practices Act.

Penalties

Presently the penalties for offences are up to $40 000 per offence for individuals and $200 000 per offence for companies.

On 18 June 2001 the Australian Senate agreed to increase them to about $1 million for corporations and $200 000 for individuals. The new penalties will only apply to future conduct.

If you would like to know more, look up the ACCC's publication Advertising and Selling at <http://www.accc.gov.au>. At the moment it is only available on the website but an updated print version will be published later this year.