

Advertising and selling

As part of good trading practice, businesses of all types need to follow some basic rules set out in the consumer protection provisions of the Trade Practices Act.

Consumers often rely on what businesses tell them about their products and services, and they expect businesses to be knowledgeable about what they sell. The Act inspires confidence in consumers that they are being dealt with fairly by business.

The consumer protection provisions prevent businesses from behaving in a way that misleads or deceives or is likely to mislead or deceive. The law applies across a broad range of activities, such as:

- representations made orally (in person and over the phone), in brochures, leases, contracts and advertisements;
- predictions about risk, profitability or value;
- statements on labelling;
- claims of association with other products, persons or organisations; and
- mimicking of products or names.

By outlawing such behaviour the Act ensures that most businesses operating lawfully do not suffer an unfair competitive advantage from businesses prepared to breach the TPA.

Business should be especially careful with the following.

Fine print and disclaimers



ERR... I WAS WONDERING - CAN I QUALIFY THE "I DO" WITH A VERY BRIEF "CONDITIONS APPLY"?

When making an offer, you can stipulate terms and conditions but they should not contradict the first impression.

For example, advertisers will often use an asterisk (*), followed by 'Conditions apply' to limit consumers' expectations.

The associated fine print should not include:

- conditions at obscure locations;
- text that is too small;
- text that is flashed on screen for only a moment; and
- voiceovers that are too quick or too quiet.

If you put qualifications in a message, they should be easily found. Consumers shouldn't have to be lawyers, speed-readers or detectives to work out exactly what the offer is.

Bait advertising

Bait advertising at its worst is when a business offers a fantastic deal on a product that it doesn't have, just to get people through the door. Or they only have one, or a very limited supply of it. Consumers have little or no hope of actually getting what's offered, no matter how early they get to the store.

For example, a used car dealer advertises a certain vehicle at a very special price. When interested customers arrive they are falsely told that the vehicle is already sold or is on a test drive. The salesperson then tries to sell a similar but dearer vehicle to customers.

It should be obvious that this is unfair to consumers, especially those who travel long distances, spending time and money, to get there. That's why bait advertising is prohibited.

Competing businesses would also be justified in feeling unfairly treated as well, because consumers may buy something from the offender to save the journey from being a wasted one.

Warranties and refunds

The Act contains certain warranties and conditions that apply to every consumer transaction (sale). These are statutory rights.

If they aren't met, a consumer may be entitled to a replacement or to have the services performed again. In some circumstances they may be entitled to a refund.

For example, a consumer can expect a second-hand vacuum cleaner to work without any repairs if it has been sold for the purpose of vacuuming as opposed to spare parts. Depending on circumstances such as price and age, it may not be expected to last as long, or perform to the same standard as a new one.



Many businesses have their own policies about exchanges and refunds. They should not give consumers the impression they have no basic statutory rights. For example, a 'no refunds' sign may mislead consumers to believe that they have no right to a refund in any circumstances.

Comparative advertising

Consumers like comparative advertising because it says that a business is confident about its product being superior to others.

However, comparisons need to be accurate — a top of the range car needs to be compared to another top of the range car.

» For example, a supplier of international telephone services runs advertisements comparing its special Chinese New Year rate with the standard rate of a competitor. However, the competitor actually had three different rates available including a corresponding special rate.

Businesses need to think about how competitors will react. If you begin a two-week campaign advertising price comparisons, a competitor could change its own prices overnight, rendering your campaign misleading. You would need to change your advertising immediately.

Country of origin advertising

Highlighting the place or country of origin of a product can be a real selling plus.

Under the Trade Practices Act you don't have to state where your goods are from. However, other laws may say you must indicate origin, such as the *Commerce (Trade Descriptions) Act 1905*.

» For example, for an apple and cranberry juice to be able to carry a 'produce of Australia' label, both juices would have to be sourced from Australia. This is despite the cranberry juice being, on average, about 5 per cent of the total volume.

What the Trade Practices Act says is that if you do make these claims they must be accurate.



Keep these in mind to avoid misleading consumers.

What is the overall impression you have created?

Step into the shoes of a consumer and take another look at your message. If they really want the product or service are they going to read the message differently? Are all of the important details included? Is the message ambiguous or 'technically accurate' (i.e. if you read the offer one way it says one thing, if you read it another you see that it may say something else)?

Who is likely to see your message?

You may have a target audience in mind but there may be others who are likely to respond to your message. Remember you may not be able to control who gets the message. Could your message be read differently?

What are the right media for your message?

Is your offer simple or complex? Can you get all of the important details of a leasing arrangement into a short commercial? Would it be better to use the commercial to advertise your company and then have information that you can send to interested customers?

Using agents such as sales people, advertising people and newspapers

If someone is acting on your behalf or providing you with advice, they also need to follow these basic rules. They can be held responsible if they adopt, endorse or advise you to put out a misleading message. And you can still be held responsible if they mislead consumers on your behalf.

More information?

The ACCC has publications on advertising and selling, warranties and refunds, and country of origin claims. They are available from all ACCC offices, or check out the publications range on the ACCC website at <http://www.accc.gov.au>. A training video on advertising and selling will be available soon.