

CONSUMER LAW

AUGUST 2018

Most businesses know (or should know!) about the Fair Trading Act 1986 (FTA) and the Consumer Guarantees Act 1993 (CGA) – essentially they impose loads of obligations on people who are “in trade”. In case your memory is a bit hazy, we’ve summarised **10 key points** you need to know about these consumer laws.



1. MISLEADING AND DECEPTIVE CONDUCT

A key provision of the FTA says that businesses cannot engage in misleading or deceptive conduct. We have created a handy flow chart (find it [here](#)) which you can use to check for misleading behaviour. However, ultimately the requirement not to be tricky isn’t itself tricky. If you say something that isn’t true – or is only partly true and doesn’t paint the whole picture for consumers – chances are you will breach the FTA.

2. SALES AND DISCOUNTS

Kiwis love a bargain but businesses must be very careful to get their advertising and marketing in this area right. When advertising a discount, make sure the “usual price” you say is being discounted did in fact apply before the promotion started and it isn’t out of date. There are no hard and fast rules about what a “usual price” is but it is generally the price that something is usually sold, or the price that was offered before it was marked down. A usual price will generally become out of date when it has not been charged for a reasonable period of time.



3. FREEBIES

Who doesn’t like a freebie every now and then? Surprise surprise, there are rules around offering freebies to customers too! Businesses offering a “gift with purchase” cannot try to claw back the cost of the gift by increasing the selling price of the purchased item. Similarly, never replace a freebie with a discount for those who don’t want the freebie – this shows the cost of the freebie is actually built into the price.



4. MEDICAL AND NUTRITIONAL CLAIMS

Making claims about the medical and nutritional benefits of products can be a great way of attracting customers. Who could refuse a product that will “remove all wrinkles, reverse all hair loss and make you look 22 again”? However, such claims must not mislead consumers and consumers should be able to take them at face value. Also, any such claims must be supported with credible, scientifically rigorous evidence.



5. SUBSTANTIATION

Speaking of evidence, don’t talk the talk if you can’t walk the walk. If you make a claim about a product or service, you must have reasonable grounds for believing the claim is true at the time you make it. Any claim should be supported as much as possible by facts, figures and credible sources of information. Claims made on the back of guesses or unsupported opinions will not cut it!



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6. FINE PRINT

Fine print (yawn)... who reads that stuff anyway? Certainly not the average consumer. For just that reason, fine print cannot be used to hide any important information that would change the impression made by the advertising or would be crucial to a person's decision to buy a product or service. People make decisions based on their first impression – that is why any important information needs to be presented as clearly as possible, at the forefront of any advertising.



7. CONSUMER GUARANTEES

The CGA gives consumers certain rights if they experience a problem with a product or service. These include the right to obtain repairs, replacements or refunds if products are faulty. Businesses need to fully understand their CGA obligations to consumers.



8. STANDARD FORM CONTRACTS

Does your business use standard form consumer contracts? If so, make sure they do not contain any "unfair contract terms" (see our earlier article [here](#) which explains what these are). Big businesses such as electricity and phone companies use these contracts, but so do many other industries which smaller businesses operate within (e.g. childcare centres, gyms and motor vehicle sales). So don't assume you won't be caught by these provisions just because you aren't a big corporate!



9. YOU CAN'T AVOID THIS...

Also, don't think you can avoid your obligations under consumer laws by "contracting out" of them (or, in other words, agreeing with consumers that these laws do not apply). The FTA and CGA state that these Acts will apply, and this overrides any agreement you make with consumers to the contrary.

10. PENALTIES

If the first 9 points didn't spur you into action to check your advertising and consumer contracts for compliance, we're sure the prospect of the possible penalties will! If you breach the FTA you could face fines of up to \$200,000 as an individual and up to \$600,000 as a company, making these very costly mistakes to make. That's in addition to the reputational damage that businesses can suffer from a Commerce Commission prosecution – or the media getting wind of consumers being treated badly.



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