

# The Fair Trading Act 1986

## 9 Checkpoints for Compliance

Given the wide scope of the law, no list can be exhaustive and you should take specific advice in respect of your particular business. This checklist is therefore a guide only. Here are some things to look out for in your advertising.

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## 1. Overall Impression

- Is the overall impression created by your advertisement accurate?
- Have you provided all information necessary for a customer to make an informed decision about the goods, their cost, and the value they represent?
- Are any limits/conditions on the offer clearly stated?
- Is what is advertised what the customer will actually get?
- Are the representations made actually true? (eg if your advertisement represents that the product is "Made in New Zealand", was it, in fact, made in New Zealand?)
- Are there any aspects, which if disclosed, would change the so-called "truth" of the advertisement? (eg "Stay at Hotel Bella, in a magnificent beach view room" – when, in fact, another hotel is under construction which, by the time of the holiday, will have blocked out that view.) Check the box if there are no such "half truths" in your advertisement.

## 2. Price

- Does your advertisement disclose the **real** price that the customer will be required to pay, including taxes, duty and GST?
- If the price does not include GST does the advertisement specify this?
- It is misleading and deceptive to advertise something as not attracting tax or duty, when it does **not** do so in normal circumstances. Are you sure your advertisement does not breach this rule?

## 3. Images/Get-Up

- Are images used an exact portrayal of the advertised product? (eg you cannot advertise your \$15 dinner special with a picture of a diner eating crayfish, when the special is for spaghetti bolognese only.)
- Have you obtained permission from others whose copyright material or trademark has been used to promote your product?
- Are you sure you are not using someone else's image, such as a celebrity, to promote your product, without their permission? This is likely to be unlawful.
- Are you certain that the "get-up" of your product is not identical or very similar to that of a rival? This may be "misleading and deceptive".

## 4. Availability

- Is there a reasonable quantity of the advertised goods or services available for the length of the promotion, to enable the expected demand to be met?
- Are you certain that the offer is genuine, not simply a "ruse" to lure customers to your business?



## 5. Fine Print

- Fine print is acceptable but must not be used to conceal important information that is critical to a customer's decision to buy the advertised goods. Are you certain that your advertisement does not seek to conceal important information in the fine print?
- Where important aspects of the offer are referred to in fine print, is the public clearly referred to the fine print?
- Is any fine print reasonably prominent?

## 6. Representations

- Are you certain that all representations about your goods or services generally are true, including those that address the following matters: 
  - (a) That they are of a particular kind, standard, quality or quantity?
  - (b) That they will be supplied by any particular person, or by a person of a particular trade, qualification or skill?
  - (c) That anyone else has agreed to acquire the goods or services?
  - (d) That goods are new or reconditioned?
  - (e) That goods or services have any sponsorship, approval or endorsement?
  - (f) That goods or services have any performance characteristics, uses or benefits?
  - (g) The need for any goods or services?
  - (h) The existence, exclusion or effect of any condition, warranty, right, guarantee or remedy? Are the effect of these fully and clearly explained?
  - (i) The place of origin of the goods or service?
- Can you verify your representations by independent, objective evidence (eg if you say "This Lodge has been rated as one of the top 10 in the world by Mystery Holidayer", can you produce the Mystery Holidayer survey results? Was a survey actually carried out? Was the survey relatively recent? (If you were in the top 10 twenty years ago the statement, implying that the top 10 rating is recent, will be misleading and deceptive.)
- Does the advertisement suggest scientific research, or a scientific basis? Was the research independent/unbiased? Have you presented the results accurately?

## 7. Price Comparisons

- Are price comparisons made in your advertisement based on normal retail prices, in respect of identical goods?
- Where you are using a previous price as a comparison, that price must have applied for a "reasonable" time before the reduction. You must not raise the price of a good and then



quickly lower it again to claim larger savings. Were your previous prices applicable for a reasonable time?

- Can you verify the advertised savings?
- If you are comparing your prices with that of another trader, you can only do so if the prices you charge are in the same market. For example, Auckland prices may be significantly different from those of Sydney. Are your price comparisons based on the same market?

#### 8. “Free” Goods and Competitions

- Is the item you advertise as “free” truly free?
- Are you sure that customers are not required to pay more or required to buy something else to get the “free” item?
- Is the “free” item provided automatically, not only if requested by the customer?
- Is there genuinely a “competition”?
- Have you checked any “draw”-type competition complies with the Gaming and Lotteries legislation?

#### 9. Compliance with Legislation in Addition to the Fair Trading Act

- Is the product or service advertised subject to specific legislation? (eg claims about food are subject to the Food Act and Regulations.) If so, does it comply with that legislation?
- Is the product the subject of a Product Safety or Consumer Information Standard under the Fair Trading Act? (This would cover most clothing, footwear, textiles, toys for children under 3 years old, children’s nightclothes, cigarette lighters and bicycles.) If so, does it comply?
- Are all mandatory instructions required by law included?
- You can not contract out of the Fair Trading Act 1987. It is also unlawful to try to contract out of the Consumer Guarantees Act when dealing with “consumers”. So, you must not assert that “No refunds will be provided” or similar when dealing with the general public.

