

False and misleading representations

What are false and misleading representations?

It is unlawful to make false claims or misleading descriptions:

- about the supply or possible supply of consumer goods or services
- when promoting the supply or use of goods or services.

For instance, a business must not make false or misleading representations

- the standard, quality, value or grade of goods or services
- the composition style, model or history of goods
- whether the goods are new
- a particular person agreeing to acquire goods or services
- testimonials by any person relating to goods or services
- the sponsorship, approval, performance characteristics, accessories, benefits and uses of goods or services
- the price of goods or services
- the availability of repair facilities or spare parts
- the place of origin of a product - for example, where it was made or assembled
- a buyer's need for the goods or services
- any guarantee, warranty or condition on the goods and services.

Courts have found false and misleading representations in these cases:

- a manufacturer sold socks, which were not pure cotton, labelled as 'pure cotton'
- a retailer placed a label on garments showing a sale price and a higher, strikethrough price. However, the garments had never sold for the higher price
- a business made a series of untrue representations about the therapeutic benefits of negative ion mats it sold
- a motor repairer told a customer more repair work was needed on their car than was necessary.

Whether a representation is considered false or misleading will depend on the circumstances of each case. A representation that misleads one group of consumers may not necessarily mislead another group.

For example – misleading depends on circumstances. People concerned about their body image may be more vulnerable to claims a product will enhance beauty.

A representation can be misleading even if it is true. For example, an advertisement falsely claiming a person has benefited from using a product, even though they have never used it. The product may work but the advertisement is still misleading, because the person has never used the product.

Testimonials

It is unlawful to make false or misleading testimonials.

Testimonials are statements from previous customers about their experience with a product or service.

These can give consumers confidence in a product or service on the basis that another person - particularly a celebrity or well-known person - is satisfied with the goods or services.

Misleading representations can persuade customers to buy something to their detriment, based on belief in the testimonial.

For example - false and misleading representations about testimonials. A supplier published a newspaper advertisement about a 'nasal delivery system' to treat impotence or erectile dysfunction. The advertisement quoted an interview with a celebrity that falsely claimed he had suffered from impotence and the nasal delivery system had assisted in dealing with this condition.

For example, advertisements falsely representing actors as real people, such as a family claiming they have reaped financial benefits from distributing health care products.

In court, a representation about a testimonial is presumed to be misleading but not false.

A business accused of making a misleading representation has to provide evidence to show it is not.

Sale or grant of an interest in land

A business must not make false or misleading representations about the sale or grant of an interest in land.

They must not:

- represent that a business has a sponsorship, approval or affiliation when it does not
- make false or misleading representations about the:
 - nature of the interest in land
 - price, location, characteristics or use that can be made of the land
 - availability of facilities.

For example – misleading representation about sale of land. A real estate agent would be misrepresenting the characteristics of a property if advertising beachfront lots that do not front the beach.

Employment and business activities

It is unlawful to make false or misleading representations about the:

- availability, nature or terms and conditions of employment
- profitability, risk or other material aspect of any business activity that requires work or investment by a person.

For example – misleading representations about employment and business activities. A second-hand truck dealer falsely told buyers they could get employment from certain places if they bought the dealer's trucks. The truck dealer was found guilty of misleading the buyers and fined.

Offering rebates, gifts, prizes and other free items

It is unlawful to offer rebates, gifts, prizes or other free items without intending to provide them, or not providing them as offered.

The rebate, gift, prize or other free item must be provided within the specified time or, if no time was specified, within a reasonable time.

For example – misleading representations about a promotion. A stereo equipment retailer held a promotion. Customers went into a draw to win prizes when they bought stereo equipment. The retailer felt the promotion had not been a financial success, so the closing date was extended and fake names were added to the draw. The retailer pleaded guilty and was fined.

Misleading conduct as to the nature of goods and services

A business must not engage in conduct likely to mislead the public about the:

- nature
- manufacturing process
- characteristics
- suitability for purpose or
- quantity

of any goods or services.

For example – misleading conduct about the nature of goods. An importer sells bicycle helmets with labels indicating the helmets met a mandatory safety standard, even though the helmets were not tested during manufacture.

Unconscionable conduct

Generally, unconscionable conduct is a statement or action so unreasonable it defies good conscience.

A business must not act unconscionably when:

- selling or supplying goods and services to a consumer
- supplying or acquiring goods and services to or from a small business.

For example - unconscionable conduct by a trader:

- not properly explaining the conditions of a contract to a person they know does not speak English or has a learning disability
- not allowing sufficient time to read an agreement, ask questions or get advice
- using a friend or relative of the customer to influence the customer's decision
- inducing a person to sign a blank or one-sided contract
- taking advantage of a low-income consumer by making false statements about the real cost of a loan
- failing to disclose key contractual terms
- using high pressure tactics, such as refusing to take no for an answer.

Note: these are examples and not a complete list of unconscionable conduct. Sometimes these instances will not be unconscionable – it depends on the circumstances.

Bait advertising

Bait advertising usually happens when a business advertises goods at a certain price but does not have a reasonable supply for customers to buy, and urges them to buy higher-priced or lower-quality goods.

For example – bait advertising. An electronics retailer runs a major national campaign, advertising 50-inch televisions at a low price of \$799 for a week-long sale. The retailer usually sells about 30 televisions of this type every week.

The retailer only stocks two televisions at the advertised price and refuses to take customer orders. When customers attempt to buy the television at the advertised

price, they are told it is out of stock and are offered a more expensive unit for \$999. This is likely to be bait advertising as the retailer does not have a reasonable supply.

Wrongly accepting payments for goods or services

Businesses must not accept payments for goods or services:

- they do not intend to supply
- if they know, or should have known, they would not be able to supply the goods or services in a timely manner.

For example - wrongly accepting payment for goods. A landscaper contracts to provide yellow paving stones, knowing that only grey paving stones are available at the time of the agreement.

This part of the law is not intended to affect businesses who genuinely try to meet supply agreements. A business may avoid prosecution if:

- the failure to supply was due to something beyond its control, and
- it exercised due diligence and took reasonable precautions.

Consumer guarantees - guarantees, conditions and warranties

It is unlawful to make false or misleading representations about consumer guarantees.