

THE FAIR TRADING ACT

BAIT ADVERTISING

The Fair Trading Act prohibits false or misleading representations about goods or services, including representations made about the availability of goods. Advertising goods and services that cannot be supplied in order to lure people into a shop is known as 'bait advertising' and is a breach of the Act.

REASONABLE TIMEFRAME, REASONABLE QUANTITIES

Businesses must supply advertised goods or services at the advertised price for a reasonable or stated period of time and in reasonable or stated quantities.

There is no precise definition of what is meant by a 'reasonable period of time' or 'reasonable quantities'. In practice, it will depend on the market in which the business is operating, the likely demand based on experience, the attractiveness of the offer and the nature and extent of the advertising.

QUALIFYING STATEMENTS

General qualifying statements such as 'while stocks last' could still leave a business open to charges of bait advertising if reasonable quantities of the advertised product are not available. Any limits on an offer should be stated, for example, 'one per customer', 'offer ends 1st March'. If stock is not available and consumers are being invited to place orders for it, then any advertising needs to make this clear.

EXAMPLE

A company advertised a sale of beds on the radio and in newspapers. The newspaper advertisements noted that, for some lines, stocks were limited, but the radio advertisements did not. Two of the cheaper lines of beds were in fact sold out while the radio advertisements for them continued to run. The company was convicted and fined.

ADVERTISING DEADLINES

Because of advertising deadlines, some businesses place advertisements for goods before they actually have them on hand. Sometimes, advertisements for goods ordered from overseas are placed in anticipation of their arrival. Businesses should be careful to make sure they have reasonable grounds to believe the goods will be available when the advertisement appears.

EXAMPLE

A furniture store experienced shipping delays on two containers of desks for a promotion. As a result there was insufficient stock available of the desk models promoted in television and newspaper advertisements. The advertising stated that the desks had just arrived. The company was aware of the delay two weeks prior to the advertising campaign, but failed to amend or stop its advertising. The company was convicted and fined.

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RAINCHECKS

There may be times when, through no fault of its own, a business is unable to supply goods or services as advertised. Businesses should have a 'raincheck' system in place to ensure that if this happens, they are able to offer to supply or procure the supply of the goods or services, or the equivalent goods or services, at the advertised price, as soon as possible. The goods or services should be provided within a reasonable time if the raincheck is accepted by the customer.

A proper raincheck system not only ensures that customers' needs are met, but is also a defence against prosecution when goods or services are not available as advertised.

ONLINE CLAIMS

If you have an online presence, it is important that your website is kept up to date so that stock or special offers that are no longer available are not promoted.

To check for updates to this fact sheet visit:
www.comcom.govt.nz/fair-trading

This fact sheet is part of a series looking at the Fair Trading Act. Other fact sheets can be downloaded from
www.comcom.govt.nz/fair-trading

CONTACT

Contact the Commerce Commission with information about false or misleading trading practices.

TELEPHONE

Our Contact Centre during office hours on 0800 943 600

WRITE

To us at Contact Centre,
PO Box 2351, Wellington 6140

EMAIL

Us at contact@comcom.govt.nz

This fact sheet is a guideline only, and reflects the Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is traders' responsibility to remain up to date with legislation.

The Commerce Commission enforces legislation that promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.

Only the courts can make an authoritative ruling on breaches of the Fair Trading Act. Courts may fine companies found guilty of breaching provisions of the Fair Trading Act up to \$600,000 and individuals up to \$200,000.