

The Fair Trading Act

Fine print



With all advertising, the first or overall impression made on a potential customer is very important. People reading, seeing or hearing an advertisement can react to and make decisions based on that first or overall impression. In making that impression, sometimes what is not said is just as important as what is said.

Many advertisements include fine print sections containing details of conditions and qualifications. Fine print should not be used to conceal important information which would be critical to a person's decision to buy goods or services. If the overall impression given by an advertisement is misleading, it will breach the Fair Trading Act no matter what information is provided in fine print.

The courts have indicated that they will not take into account the confines of any advertising medium in deciding whether a particular advertisement is misleading. Businesses need to ensure that the main message conveyed in any advertisement – whether in print, on TV, radio, or online – is accurate rather than relying on the fine print to correct a misleading impression.

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EXAMPLE

Fined for the Fine Print

A power company advertised a bundled electricity and internet service. The advertising was run on television, online and on billboards, with the offer: \$49 a month for 12 months unlimited data broadband plan.

However, fine print significantly changed and limited the offer, which made the advertisement misleading:

- The \$49 price was available only to customers who signed up for power and broadband at the same address on a 24 month contract term.
- For the second 12 months the cost of broadband would be up to \$79 a month.
- If customers wished to cancel the contract at any time during the 24 month period they would incur an exit fee of \$195.

The company was convicted of breaching the Fair Trading Act and fined.

Special conditions apply

If there are important qualifying, limiting or unusual conditions on a sale, or on other transactions such as finance agreements, any advertising should show these in a bold, clear and compelling way which cannot be easily overlooked.

Stating that 'special conditions apply' will not protect a business when the conditions are unusual, inconsistent with, or modify, in an unexpected manner, the main message. Fine print can elaborate on the main selling message, but not contradict it.

EXAMPLE

A motor vehicle dealer promoted a special cash back offer in a series of print advertisements in a trade magazine. The banner headline promoted the offer alongside pictures of a number of vehicles. In the majority of the advertisements, the fact that the offer did not apply to the pictured vehicles was referred to in the small print at the foot of the advertisements. In one of the advertisements, the only reference was that 'special conditions apply'. The company was convicted and fined.

Additional costs

When consumers see an advertised price for a good or service, they are entitled to assume that that price is the full price they will be expected to pay. Fine print should not be used to disclose additional costs or charges associated with a purchase.

Attempts to advise in fine print that GST or on-road costs are additional are unlikely to prevent consumers from being misled.

Contracts

Fine print is often used in contracts. The Fair Trading Act has a much broader application than contract law. In a number of cases, courts have decided that fine print conditions in a contract cannot be relied upon to avoid liability under the Act if false or misleading statements have been made previously to encourage the signing of the contract. Businesses should also take care that fine print in contracts does not conflict with any statutory obligations.

EXAMPLE

A finance broker included a clause in contracts for lending money stating that the borrower agreed that they were obtaining the broker's services for business purposes, when in fact some of the loans were for personal financial matters. The broker was convicted of misleading consumers as to their legal rights by attempting to contract out of the Consumer Guarantees Act in circumstances where that was prohibited.

This fact sheet provides guidance only. It is not intended to be definitive and should not be used in place of legal advice. You are responsible for staying up to date with legislative changes.

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Phone: 0800 943 600 **Write:** Contact Centre, PO Box 2351, Wellington 6140 **Email:** contact@comcom.govt.nz

