

THE FAIR TRADING ACT

MISLEADING CONSUMERS ABOUT THEIR RIGHTS

It is an offence under the Fair Trading Act to mislead a consumer about their contractual or legal rights.

THE CONSUMER GUARANTEES ACT

The Consumer Guarantees Act sets minimum guarantees about goods and services bought for personal use. While the Commerce Commission does not enforce the Consumer Guarantees Act, it has a role to play when businesses breach the Fair Trading Act by misleading consumers about their rights under the Consumer Guarantees Act.

A business cannot opt out of their obligations under the Consumer Guarantees Act. A 'No Refunds' sign, for example, with no explanation of what situations this may apply to, amounts to an illegal attempt to deprive customers of their rights. A customer might well be entitled to a refund if the goods have a fault which they could not have known about when purchasing, or if the business has misrepresented the goods.

EXAMPLE

A company sold computer software with a label attached stating no refund would be given if the package had been opened. The company was misleading people about their rights under the Consumer Guarantees Act and was convicted and fined.

Businesses do not, however, have to give a refund if a customer simply changes their mind or damages the goods themselves. 'No Refund' signs should include enough information to avoid misleading consumers, for example, 'We do not have to provide a refund if you have changed your mind about a particular purchase, so please choose carefully.'

GUARANTEES AND WARRANTIES

The terms of any additional guarantee or warranty provided by a business should be over and above those provided under the Consumer Guarantees Act. Guarantees and warranties should not attempt to limit a consumers' legal rights and should make that clear.

Attempting to sell an extended warranty by claiming that the customer would otherwise have no comeback or by exaggerating the cover provided by a warranty is likely to breach the Fair Trading Act.

Telling a customer to claim on an extended warranty, when they have the right to claim against the retailer under the Consumer Guarantees Act would also breach the Fair Trading Act, particularly where there is an excess payable under the warranty. Advising a customer to make a warranty claim with the manufacturer when they have the right to choose to claim either from the retailer or the manufacturer would also breach the Fair Trading Act.

While the Commerce Commission does not enforce the Consumer Guarantees Act, it has a role to play when businesses breach the Fair Trading Act by misleading consumers about their rights under the Consumer Guarantees Act.

Warranties must generally include any labour costs involved and compensation for loss or damage. Only the parts of a warranty which provide more than the legally necessary guarantees could exclude the labour involved. If a warranty is in fact a form of insurance it should be marketed as such.

EXAMPLE

A motor vehicle dealer advertised a three-year guarantee with every purchase of a second-hand car. The car buyers did not get a guarantee, but got a mechanical breakdown insurance policy with claim limits and exclusions, and had to pay a \$100 excess on every claim. The company was convicted and fined.

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This fact sheet is part of a series looking at the Fair Trading Act. Other fact sheets can be downloaded from
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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

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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.

Only the courts can make a 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.