THE FAIR TRADING ACT

PRO-FORMA INVOICING, INERTIA SELLING AND OTHER UNFAIR SALES TECHNIQUES

PRO-FORMA INVOICING

A business cannot supply goods or services to someone, and bill them, without that person agreeing to the transaction. Billing without the 'buyer' having agreed to purchase the good or service is known as pro-forma invoicing or false billing.

Pro-forma invoicing is an attempt to trick or bully businesses into paying for goods or services they didn't order. In the vast majority of cases, pro-forma invoices are for advertising that was never requested.

To protect themselves from false invoices, businesses should ensure they have effective systems for ordering goods and services, checking that what was ordered was received, and authorising payments.

EXAMPLE

A company producing a magazine lifted advertisements from other publications. Its employees telephoned businesses and told them they had agreed to purchase advertising space when this was not the case. The company then ran the advertisements without the agreement of the businesses, and charged them for the advertising space. The company director and his four companies were convicted and fined.

INERTIA SELLING

Inertia selling is the practice of providing goods or services to people who have not requested them. Consumers are often incorrectly told that unless the goods or services are expressly rejected, payment is expected.

The silence of a consumer is not enough to indicate they have accepted the goods or services. Businesses can only demand payment where the customer has clearly agreed to accept the good or service. Where there has been no acceptance, any demand for payment is likely to break the law.

In inertia selling situations, consumers are protected by the Unsolicited Goods and Services Act and the Door to Door Sales Act. Any attempt to mislead a consumer as to their rights under those Acts is also a breach of the Fair Trading Act.

TAKING PAYMENT WITHOUT INTENDING TO SUPPLY AS ORDERED

Businesses must not request nor accept payment for goods or services if they don't intend to supply them, or if they intend to supply goods or services which are materially different from those for which payment is being demanded or accepted. A business must not accept or request payment if it knows, or has reasonable grounds to believe, that the goods or services cannot be supplied within a reasonable time, or the time specified. What is deemed 'reasonable' will depend on the specific circumstances.

EXAMPLE

A photographer accepted payment for delivery of a set of proofs within six weeks. He also accepted payment from another customer for a photographic sitting for which no date was set. Neither of the photographer's customers received what they ordered, and he was convicted after the court found that he had no reasonable grounds for believing that the proofs could be provided within the six weeks, or that the sitting would take place within a reasonable time.

To counter the threat of false invoices, businesses should ensure they have effective systems for ordering goods and services...

CLAIMS THAT GOODS OR SERVICES ARE NEEDED

Any claims made that goods or services are needed must be based on fact. A business shouldn't claim that goods or services are needed due to some legal, mechanical, technical, medical or other requirement if this is in fact not true. Misleading or deceiving customers about any such laws or requirements or the reasons for the 'need' would breach the Fair Trading Act.

EXAMPLE

An electrical appliance repairer told a customer that her video player was not worth repairing, even though it was less than two years old, and sold her a second-hand video player as a replacement. It was later found that the video player simply needed tuning and a new aerial cable. The repairer was convicted and fined.

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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.

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.