

THE FAIR TRADING ACT

SPECIAL OFFERS AND COMPETITIONS

OFFERING GIFTS AND PRIZES

Many businesses offer gifts or prizes as a way of attracting new customers or rewarding their existing customer base. Care must be taken to ensure such promotions are not misleading. Businesses that, when promoting or selling goods or services, offer gifts or prizes they do not intend to provide, or do not intend to provide as offered, will breach the Fair Trading Act.

When contests and other promotions offering gifts or prizes are run, all the conditions that apply, including any relevant time limit must be clearly stated. Gifts and prizes must be described accurately, and must not mislead people into thinking that what they stand to gain or win, or their chance of winning, is better than it actually is.

EXAMPLE

An investment company ran a television advertising campaign promoting a 'Money and the Bach Summer Bonus Draw' which implied that people buying bonds in a specific time period would be placed in a draw to win the major prize, valued at \$1.5 million.

The company however intended to run a two tier prize draw. Eligible consumers would only be placed in an initial draw; the winner of which would go on to be placed in a second draw where they would draw from 100 envelopes – only one contained the major prize of \$1million and a further \$500,000 to go towards a bach, a one per cent chance of winning the advertised prize. The other 99 envelopes contained a cheque for \$10,000.

The company was convicted under the Fair Trading Act and fined.

In addition, a business must not disguise the cost of a 'free' gift or prize by including it in the selling price of the advertised goods.

REFERRAL SELLING

'Referral selling' is the practice whereby a business induces potential customers to purchase their goods or services by promising some form of reward if they provide the names of other people who then buy goods or services from that business.

It is prohibited by the Fair Trading Act because the customer could be misled into believing that the true price of goods or services will be discounted because of a rebate, commission or other benefit, when in fact they will only get the benefit if sales are made to the people whose names were supplied. If no sale is made, then the original customer receives no benefit.

Referral selling differs from the legitimate practice of offering a rebate or other benefit following the sale. It is not illegal for businesses to offer rewards for names of other potential customers if the offer is made separate to, and after, the first customer has paid for their goods or services.

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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.

The 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.