THE FAIR TRADING ACT

USE OF AGENTS AND TELEMARKETERS

A business is responsible for anything its staff or agents say when they are selling a product or service – whether it is on the shop floor, over the phone or door-to-door – and needs to have systems in place to ensure they are not making any misrepresentations that could mislead or deceive a customer.

This is especially important in complex areas, such as mobile phones, electricity pricing or any product service with multiple plans, terms or conditions. Businesses need to make sure their staff or agents know enough about a product or service they are selling to represent it accurately to a customer, and not to make up something they do not know.

When the Fair Trading Act is breached by a staff member or agent working on its behalf, the company they work for can be held liable. The managers or directors, or anyone else, cannot simply say 'they acted without permission', even if that statement is true.

EXAMPLE

An electricity company used telemarketers and door-to-door sales agents to attempt to switch customers from another supplier. The agents used misleading representations relating to pricing and false representations about a competitor's ability to continue to supply electricity. A number of customers were also switched without their agreement. The company was convicted and fined.

CROSS BORDER TELEMARKETING

Telemarketing is a common form of direct contact advertising used by a wide range of businesses for their advertising and sales. It is often outsourced to specialist telemarketing firms – some of which are based offshore.

Whether or not a telemarketing firm is based in New Zealand or overseas, any telemarketing calls made into New Zealand fall under the Fair Trading Act, and the Commission can take action against overseas conduct affecting New Zealand consumers.

EXAMPLE

An Australian-based telemarketing company made false and misleading statements regarding the benefits of membership of an accommodation discount scheme. The court ruled that telephone calls into New Zealand constituted conduct in New Zealand, and granted an injunction. The company was subsequently convicted and fined.

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HARASSMENT AND COERCION

Businesses and their staff or agents must not attempt to sell goods, services or any interest in land through the use of harassment, coercion or physical violence.

There is often a fine line between hard-sell techniques and harassment and coercion. Businesses must take care not to use, or let their sales staff use, techniques which could possibly make customers feel harassed or forced in any way to make a purchase.

The Fair Trading Act also prohibits the use of physical violence, harassment or coercion to extract payment for goods or services supplied.

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

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.