

The Fair Trading Act

# Bait advertising



The Fair Trading Act prohibits false or misleading representations about goods or services, including representations made about the availability of goods. Advertising goods and services that you cannot supply in order to lure people into a shop or website sale is known as ‘bait advertising’.

## Reasonable timeframe, reasonable quantities

Businesses must supply advertised goods or services at the specified price for a reasonable period of time (or the time shown in the advertising eg, ‘1 week only’). You must also be able to supply a reasonable quantity (or the quantity shown in the advertising eg, ‘only five left’).

There is no precise definition of what is meant by a ‘reasonable period of time’ or ‘reasonable quantities’. In practice, it will depend on the market in which the business is operating, the likely demand based on experience, the attractiveness of the offer and the nature and extent of the advertising.

Advertising goods and services that cannot be supplied in order to lure people into a shop or website is known as ‘bait advertising’ and is a breach of the Act.



## Qualifying statements

General qualifying statements such as ‘while stocks last’ could still leave a business open to charges of bait advertising if reasonable quantities of the advertised product are not available. Any limits on an offer should be stated, for example, ‘one per customer’, ‘offer ends 1st March’ and/or ‘limited stock available.’ Any qualifying statements need to be clear and highly visible so consumers are aware of the limitations on the offer.

### EXAMPLE

An electricity company offered a low fixed daily rate for electricity to customers living in a particular area. However, the rate was not viable or available to certain customers in that area. In our view the company ought to have known whether the offer was available to a specific customer, particularly because it had customers’ details – including their addresses. The company was given a warning for advertising services at a specified price when they did not have reasonable grounds for believing they could be supplied at that price.

## Online claims

If you have an online presence, it is important that your website is kept up to date so that stock or special offers that are no longer available are not promoted.

## Advertising deadlines

Because of advertising deadlines, some businesses place advertisements for goods before they actually have them on hand. Sometimes, advertisements for goods ordered from overseas are placed in anticipation of their arrival. Businesses should be careful to ensure they can fulfil the order consistently with how the offer was promoted.

### EXAMPLE

A furniture store experienced shipping delays on two containers of desks for a promotion. As a result there was insufficient stock available of the desk models promoted in television and newspaper advertisements. The advertising stated that the desks had just arrived. The company was aware of the delay 2 weeks prior to the advertising campaign, but failed to amend or stop its advertising. The company was convicted and fined.



## Rainchecks

There may be times when, through no fault of its own, a business is unable to supply goods or services as advertised. Businesses should have a 'raincheck' system in place to ensure that if this happens, they are able to offer to supply or procure the supply of the goods or services, or the equivalent goods or services, at the advertised price, as soon as possible. The goods or services should be provided within a reasonable time if the raincheck is accepted by the customer.

A proper raincheck system not only ensures that customers' needs are met, but is also a defence against prosecution when goods or services are not available as advertised.

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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