



Corinne Blumsky

PLAYING FAIR

It's only in your best interests to be on top of your obligations under the Fair Trading Act. The effect of breaching the Act could have both a financial and an emotional impact on your company.

Fines of up to \$200,000 for a company and \$60,000 for an individual could be imposed. You will most likely need to get legal advice. Your business could suffer while you are distracted responding to the prosecution mounted by the Commerce Commission – it can take years for a matter to weave itself through the court system. And, let's not forget the adverse publicity you will face.

The Fair Trading Act 1986 protects consumers from misleading and deceptive practices by businesses. The Act applies, regardless of whether the breach was deliberate or not.

For retailers, an important section of the Fair Trading Act 1986 is section 13 which relates to false (or misleading) representations. This section reads:

No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services –

a) Falsely represent that goods are of a particular kind, standard, quality,

grade, quantity, composition, style or model, or have had a particular history or particular previous use; or

b) Falsely represent that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill; or

c) Falsely represent that a particular person has agreed to acquire goods or services; or

d) Falsely represent that goods are new, or that they are reconditioned or that they were manufactured, produced, processed, or reconditioned at a particular time; or

f) Falsely represent that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits; or

g) Falsely represent that a person has any sponsorship, approval, endorsement, or affiliation; or

h) Make a false or misleading representation with respect to the price of any goods or services; or

i) Make a false or misleading

representation concerning the need for any goods or services; or

j) Make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy; or

k) Make a false or misleading representation concerning the place of origin of goods.

There are other sections to know as well as the above. Business owners should have a compliance programme to determine what can and can't be said.

All retail businesses, large or small, must ensure that their staff understand their obligations under the Fair Trading Act. Businesses must also have an effective compliance programme to ensure that their business activities, including advertising, do not break the law.

Every retailer must know what you can and cannot say when selling goods or services to consumers. There are many resources available to help you. Make compliance part of your internal training programme. All new staff should be trained

properly, with regular refresher courses offered to existing staff.

You may want to develop your own compliance check-list as a tool to help your staff. Mistakes and oversights will happen from time to time. Having a compliance programme will help you from falling foul of the law.

See www.comcom.govt.nz or talk to your legal adviser for help. Ignorance of your duties is no defence if you are found in breach of the Act.

DEFENCE

Having an effective compliance programme could help a business in defending any prosecution under the Act. The court may also favourably view having a compliance programme – even though a breach has occurred despite diligent supervision by the business.

RECENT BREACHES

Recently, three New Zealand retailers have been found guilty of breaching section 13 of the Fair Trading Act. This should be a stark reminder to all that what you say and do can come back to bite you.

Farmers Trading Company Limited was fined \$10,000 for displaying a television as new when it was in fact second-hand.

The television was displayed as new a year after the television had been returned by a previous customer because it had stopped working. The television was repaired and then sold to another customer who believed it was new.

Some consumers are happy to pay less for goods that are shop-soiled or damaged and then repaired, but the key thing is that they know the reason for the lower price. Consumers are only able to make informed buying decisions if they are aware of all relevant information, including previous history, of any goods.

While accepting the actions of Farmers was not deliberate, Judge Walsh described the company's action as 'highly careless' and resulted in part from Farmers having no formal policy in place for the handling or resale of repaired goods. Farmers has since introduced a written policy about the sale of second-hand goods.

It is a breach of section 13 (a) and (d) to represent a product is new when it is not.

Redpaths Furniture Limited was recently fined \$28,000, plus court costs of \$3,640, on being found guilty of 28 charges of breaching the Fair Trading Act. Redpaths was found guilty of providing misleading information about the savings consumers would make by buying goods on sale.

During January to June 2008, Redpaths promoted sales on furniture through flyers and newspaper advertising. At least four furniture products had not been available at the advertised 'regular' price during that period.

It is not uncommon for retailers to promote sales of goods by showing the regular price of goods compared with the sale price. Redpaths misrepresented the 'regular' price of their furniture which made the

savings advertised appear larger than they really were.

Earlier this year, The Warehouse was fined \$209,000 for multiple breaches of the Fair Trading Act including misrepresentations made about the advertised price of goods.

In November 2005, The Warehouse launched a nationwide campaign advertising that a Madagascar DVD could be pre-ordered for \$10. The Warehouse intended the \$10 to be a deposit, with the final price being \$24.86. However, this was not made clear in the advertising. Many consumers believed that \$10 was the full price.

It is a breach of Section 13 (g) to make false or misleading representations about the price of any goods or services.

Representations made about the price of goods or services is an area where several retailers have been fined for falsely advertising the price of sale goods or services. Be careful when advertising the sale price of goods or services to ensure that what you say is true and that you do not create ambiguity or a misleading impression.

This is also true for all facts or claims made about a product or service. If you have any doubt about statements you propose to make in promotional and advertising material, do not make them. Err on the side of caution.

Everything you say in your advertising and promotional materials about the goods and services you offer should be true. Understanding your obligations under the Fair Trading Act will ensure that you comply. ■

By **Corinne Blumsky**, a partner at A. J. Park and a regular contributor to *NZRetail*. Contact her on: (04) 498 3445 or by e-mail at: Corinne.blumsky@ajpark.com.



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