

THE FAIR TRADING ACT

ADD-ONS AND HIDDEN FEES

Businesses must clearly identify the full cost to purchase a product or service upfront, so that consumers can make an informed decision about whether to purchase.

This means clearly specifying all additional costs or charges that a consumer will incur as a result of a purchase, including legal fees, administration charges, on-road costs, postage and packaging, delivery, and essential parts.

EXAMPLE

A business advertised mobile phones for sale. The price was only available if the purchaser was a new connection to a particular cellular network. There were additional charges for joining and disconnecting from that network that were not identified. The business was convicted and fined.

In the Commerce Commission's view, consumers are entitled to consider that any price quoted for a good or service is the price that they will be asked to pay in order to purchase it.

The Commission considers it best practice for the full price that a consumer has to pay to be clearly specified. It is the initial impression created by an offer that is likely to be important. Any fine print disclosure of additional costs to be paid, or disclosing the true costs of the purchase when a customer is about to make the purchase is unlikely to prevent a breach of the Act.

EXAMPLE

A car dealer's nationwide television promotion failed to clearly disclose that the prices of vehicles advertised did not include compulsory on-road costs. In a settlement with the Commission, the company acknowledged that the advertisements were likely to breach the Act and agreed to refund on-road costs to all customers who had bought cars in the promotion.

An airline promoted national flights in newspaper advertising and on its website. The advertising failed to disclose an additional Civil Aviation Authority (CAA) levy as part of the cost. On its website, the CAA levy was only displayed on a separate and subsequent terms and conditions page. The company was convicted and fined.

'INTEREST FREE', 'FREE CREDIT' AND LAY-BY OFFERS

The offer of 'easy payment terms' to customers may well be the deciding factor in their purchase of goods or services. Businesses that provide financial services to customers must ensure that all the terms and conditions are made clear to avoid breaching the Fair Trading Act. Such services include providing credit or loan finance or operating lay-by accounts or hire purchase schemes.

All promotional material about financial services must be checked for accuracy to ensure that it does not give a false or misleading impression. Customers' rights and obligations when buying on lay-by are set out in the Lay-by Sales Act and must be accurately represented. For more information on the Lay-by Sales Act, refer to the Ministry of Consumer Affairs' website www.consumeraffairs.govt.nz

In the Commerce Commission's view, consumers are entitled to consider that any price quoted for a good or service is the price that they will be asked to pay in order to purchase it.

The Commission considers that, in the minds of consumers, the terms 'interest free' and 'free credit' have the same meaning and that the 'interest free' or 'credit free' price should be the same as the cash price.

If, for any reason, the 'interest free' price is higher than the cash price, then the difference between the two prices is, in effect, a credit cost and the offer should not be promoted as being interest free. Attempts to disclose in fine print that there are additional charges associated with an 'interest free' or 'credit free' offer are unlikely to be sufficient to prevent such a promotion from being misleading to consumers.

Any eligibility requirements associated with the offer should be made clear at the same time the offer is promoted. For example, it should be made clear in any promotional material if 'no deposit' offers are available only to existing customers, or if 'interest-free terms' are available only for purchases over a certain amount.

Although it may be impossible to give more than limited information in an advertisement, the effect must be to not mislead or deceive potential customers. Advertising should be kept up-to-date, and include any new rates or conditions. Brochures and other 'long-life' advertising should be dated, or should in some other way ensure customers are not misled as to the period of the offer.

Businesses offering 'interest free' or 'free credit' deals will also have obligations under the Credit Contracts and Consumer Finance Act and must comply with the provisions of that Act. For more information on the Credit Contracts and Consumer Finance Act, visit the Commission's website www.comcom.govt.nz, under Consumer Credit.

EXAMPLE

An appliance retailer promoted an 'interest-free terms for two years' offer on video players. A customer who wanted to take up the offer found that he would have to pay \$304 more than the cash price to get the interest free deal. The so-called 'free' offer was 28 percent more expensive than the \$1,095 cash price. The company was convicted and fined.

An appliance retailer advertised a 'we will pay your interest' promotion. Customers who offered to pay cash were charged a lower price than those who accepted the offer. The company was convicted and fined.

'FREE' GOODS OR SERVICES

If something is advertised as free, it must be truly 'free'. This means there must be no extra cost to the customer above the normal price of the goods, whether up-front or built into the price.

For example, 'free delivery' must be just that. It is deceptive to add on the cost of delivery to the price and then claim that delivery is free. If another customer who picked up the goods would pay a lower price, then delivery is not free. Any conditions on an offer to deliver should be made clear, such as if delivery is free only within the central city or only for goods over a certain value.

The same applies to the use of words and phrases such as 'extra', 'give-away' or 'two for the price of one'.

Promotions where customers are offered a free gift for buying a certain item will breach the Fair Trading Act if the cost of the item being sold is inflated to cover part or all of the cost of the 'gift'. Likewise, if a free item is replaced by a discount for those who don't want the item, this may also breach the Act, as it can indicate that the cost of the free item is actually built into the price.

If there are any limitations on the offer, such as 'only with orders over \$100', then these should be clearly stated. Items should not be advertised as free if they require the purchase of installation services or additional features.

Advertised promotional bonuses such as free items should be provided automatically, not on the basis of customers having to specifically request them.

EXAMPLE

A security firm offered free alarms in a newspaper promotion, without disclosing that in order to obtain the free alarms a customer had to take a monitoring service for a three year term at a daily cost of \$1+GST. The firm was convicted and fined.

A cycle shop advertised a 'buy one get one free' promotion. The shop increased the selling price of the bicycles involved for the length of the promotion. If a customer did not want the 'free' bicycle, they paid a lower price. The court said that if the price of the good purchased had been raised to cover the cost of the free good, then the good was not free.

GOODS AND SERVICES TAX (GST)

When consumers see advertised prices for goods or services, they are entitled to assume that those prices are the total price and include GST. The Commission considers it best practice for retailers to include GST in the price of all goods and services sold to consumers.

Attempts to advise in fine print that GST is additional are unlikely to prevent consumers from being misled.

It is also misleading to compare a GST-inclusive price with a GST-exclusive price, as this is likely to give a false impression of savings.

EXAMPLE

To let customers know of a price increase, a company distributed a circular. The fact that the price quoted excluded GST was not mentioned in the circular. The company was convicted and fined.

A company used graphics and voice-overs in television advertisements to promote prices for various cellphone accessories. It was only stated in small print in the last frame of the advertisement that prices excluded GST. The company 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
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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

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.

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 \$200,000 and individuals up to \$60,000.