THE FAIR TRADING ACT

CLAIMING YOU'RE SOMETHING YOU'RE NOT

Any claims made to bolster the image of a business or its products or services must be accurate. This includes claims a business makes about the success, skills, test results or backing it has, or which its employees, products or services have. Such claims are typically designed to convince potential customers of the merits of going to that business over another and can give an unfair competitive advantage.

CLAIMS ABOUT QUALIFICATIONS AND SKILLS

Any claims a business makes about qualifications or skills its employees have must be truthful and accurate. Membership or approval of trade organisations should not be claimed unless that membership has been approved and is current. Claims should not be based on pending applications or part membership.

EXAMPLE

A building firm was suspended from the Registered Master Builders Federation as a result of a complaint made about the quality of work on a property. Despite the suspension, the firm continued to represent that it was a member of the Registered Master Builders Federation and that customers would receive Master Build Guarantees for work it had undertaken.

In other instances the firm accepted payments for Master Build Guarantees but did not forward the applications and payments to Master Build Services until physical construction had begun on site.

As a result, when the firm subsequently went into liquidation, some customers were not covered by a Master Build Guarantee. The directors of the company were convicted, fined and ordered to pay reparation.

CLAIMS ABOUT SUCCESS

Businesses must not make misleading claims about their own success. If a claim is made about the success of a certain product, service, or a business itself, this claim must be true. It must also be current. Any claims made about past success, such as an award won two years ago, must clearly state the date restrictions of that award. A restaurant claiming to be 'best budget restaurant of the year', for example, when it was awarded the title five years ago, would breach the Fair Trading Act unless the date restriction was clearly stated.

EXAMPLE

A real estate agent distributed leaflets which created the impression that she had been responsible for the sale of a property. In fact, she was not the selling agent and the sale could not be attributed to her in any way. Both the agent and her real estate company were convicted and fined.

SPONSORSHIPS AND ENDORSEMENTS

To promote a product or service, a business may decide to seek an endorsement from a prominent person or organisation. Claims that a person or organisation endorses a product must be true, and that person or organisation must agree that the business can make the claim.

The Commission does not endorse or approve any organisation, person, scheme or marketing strategy. Claiming Commerce Commission approval will breach the Fair Trading Act.

The Fair Trading Act prohibits false or misleading claims that a product or service has the support or endorsement of any person or organisation. Businesses must not claim the endorsement of a fictitious or disbanded organisation.

If a claim is made that someone uses a certain product, this claim must be true. It must also be current. Any claims made by the person endorsing the product or service must also be true.

EXAMPLE

A business supplied free exercise books to schools, recovering the cost from advertising that appeared on the books. An employee falsely claimed to be the chair of the local school committee when approaching potential advertisers. The business also falsely claimed that the scheme had been endorsed by two government departments. The business was convicted and fined.

Businesses must not make misleading statements about the nature of any endorsement given to products or services by organisations. Such endorsements include medical or product safety certification.

The Commission does not endorse or approve any organisation, person, scheme or marketing strategy. Claiming Commerce Commission approval will breach the Fair Trading Act.

EXAMPLE

An internet service provider claimed to customers that its pricing and conditions attached to its services and billing systems had been approved by the Commerce Commission – telling one customer that the Commission had tested its billing systems, another that they could not access their internet account from a competitor's connection because of a decision by the 'Telecommunications Commission' and another that its pricing was in line with Commission guidelines. The company was convicted and fined.

A business claimed to members of the public that the Commerce Commission had approved its 'interest free' promotion. This was not the case. The business was convicted and fined.

TESTS AND SURVEYS

The results of tests or surveys which are favourable to a product or service may be quoted in advertising. If this is done, the results must not be distorted to make them appear more favourable. Businesses should be able to provide evidence to support the accuracy and relevance of the results, should they be questioned.

Alluding to a non-existent test or survey will also breach the Fair Trading Act.

It is important that any statements made do not mislead consumers as to the nature, extent or standard of any test or survey.

IMAGE ADVERTISING

Image advertising is when a business attempts to create a favourable image of itself or its products or services in the minds of consumers.

For example, a business may seek to convey an image of being environmentally friendly by using scenery in advertising, or designs featuring dolphins or plants.

Alternatively, it may use a well-known personality, with appropriate associations, to promote a product and strengthen its image.

If a representation has been made, it may be in breach of the Fair Trading Act if it is found to create an impression which cannot be substantiated.

Advertising should not be used to create an image for a product or service which cannot be backed up by the facts. However, the Act does not prohibit 'puffery' – exaggerations which are so obvious that they are unlikely to mislead anyone.

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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
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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.

Only the courts can make a 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.