

## THE FAIR TRADING ACT ONLINE SELLING

The internet is an invaluable channel for businesses, letting them communicate with potential customers quickly and cheaply.

However, the internet is not a 'free for all' where anything goes. The Fair Trading Act applies across all media, and that includes representations made online, including web, email and text messaging.

Businesses should take care to ensure all representations made online are accurate and do not mislead potential customers.

### GLOBAL REACH

All companies that carry on business in New Zealand are subject to the Fair Trading Act, irrespective of whether or not that company is incorporated in New Zealand. Likewise the Act applies to any conduct or representation made on a website that relates to the supply of goods or services within New Zealand, regardless of whether the website is based overseas.

Because websites can be accessed by consumers anywhere in the world, it is important that local businesses that trade internationally through their websites are aware that laws in other jurisdictions may also apply to them. Whether a business will also be subject to legislation in other countries will depend on the laws in those countries.

The Commerce Commission has well-established relationships with its international counterparts to tackle consumer problems connected with cross-border transactions in both goods and services.

### EXAMPLE

An American-based international multi-level selling scheme recruited people over the internet to promote the purchase of website programmes, with the lure of great profits. The Commerce Commission took action against a New Zealand promoter of the scheme, who was fined and convicted, and liaised closely with the Federal Trade Commission in the United States and other members of the International Consumer Protection and Enforcement Network. The scheme was subsequently shut down and a US\$ 20 million redress fund was established to refund claimants in more than 200 countries.

### AVAILABILITY AND SPECIAL OFFERS

Whether or not a business is selling goods or services online, or simply using a website as a marketing tool to complement its retail presence, it must have systems in place to ensure information on its website is up to date and accurate.

Many consumers will research the price of goods or services online before they commit to making a purchase in store – and often this is the main reason they go into that store. Consumers are entitled to expect that the price advertised online is the price that they will pay for those goods. Businesses must ensure that they have effective systems in place so that representations made about price and availability are consistent across all channels, including websites, print advertising and on the shop floor.

### EXAMPLE

A restaurant promoted its menu on its website, with various representations made about the price and availability of certain meals. Many of the meals were not actually available for order at the restaurant and in some circumstances, the website price was up to 36 per cent cheaper than the in-house menu. The company was convicted and fined.

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## TERMS AND CONDITIONS

The courts have indicated that they will not take into account the confines of any advertising medium in deciding whether a particular advertisement is misleading. Businesses need to ensure that the main message conveyed in any advertisement – including representations made on a website – is accurate rather than relying on the fine print to correct a misleading impression. On a website that means not burying important information central to the offer on separate or subsequent pages.

### EXAMPLE

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.

## DELIVERY OF GOODS

As with businesses involved in direct-marketing, telemarketing or mail-order where goods are not supplied at the time of purchase, businesses who sell via the internet must ensure that delivery conditions – including the cost and estimated timeframe – are clear and able to be adhered to.

## ONLINE AUCTIONS

The popularity of online auction sites has seen many New Zealanders enter the world of online trading.

The Fair Trading Act applies to online auctions run by a professional trader, and includes the requirement for motor vehicle traders advertising online to provide a Consumer Information Notice on used motor vehicles offered for sale as required by the Consumer Information Standards (Used Motor Vehicles) Regulations 2008. For more information see the Commission's Consumer Information Standards fact sheets at [www.comcom.govt.nz](http://www.comcom.govt.nz) under Fair Trading.

In general, the Fair Trading Act does not apply to private, 'one-off' sellers. However, all traders – professional or private – must comply with the Product Safety Standards Regulations in relation to the sale of second-hand baby walkers and cots. For more information see the Commission's Product Safety Standards fact sheets at [www.comcom.govt.nz](http://www.comcom.govt.nz) under Fair Trading.

To check for updates to this fact sheet visit:  
[www.comcom.govt.nz/fair-trading](http://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](http://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](mailto: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.