AI and the Fair Trading Act
Factsheet for businesses

November 2026

COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

Businesses are responsible for complying with fair trading law even when using artificial intelligence.

The same rules apply regardless of whether conduct is undertaken by a person, algorithm, AI system or agent.

Digital technologies and artificial intelligence (AI) are changing how New Zealand businesses engage with consumers, transact, and compete with each other. The Commerce Commission's role is to make sure that, as technology changes, fair conduct is promoted and consumers are protected from misleading, deceptive and other harmful practices.

This fact sheet explains how the Fair Trading Act 1986 may apply to businesses using AI and identifies some key compliance risks, and outlines suggestions to help businesses comply with the Act.

Fair trading law and AI

AI is increasingly being used by businesses to create advertisements, communicate with customers, personalise offers, recommend products, and automate business processes. However, businesses remain responsible for ensuring content generated, communicated, or facilitated by AI is truthful, accurate, and not misleading. Using AI does not transfer responsibility away from a business.



Risks

Misleading and deceptive conduct:
The Fair Trading Act prohibits misleading or deceptive conduct in trade. This applies even if conduct is facilitated or generated by AI.
For example, using AI-generated images or text, or using AI chatbots to provide consumers information.

Unsubstantiated representations:
The Fair Trading Act prohibits businesses from making unsubstantiated representations. Businesses must have reasonable grounds for representations they make, at the time they make them, and should not rely solely on AI-generated content as evidence that a claim is true.

Fake endorsements:
AI-generated content (such as videos and images) can mislead consumers into believing celebrities have endorsed or are advertising a product when they are not. The Fair Trading Act prohibits false or misleading representations that a person has endorsed or sponsored a product.

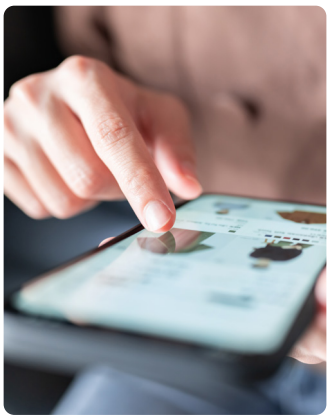
Fake reviews, testimonials and ratings:
Using AI-generated fake reviews and ratings is at high risk of misleading consumers in breach of the Fair Trading Act

Ghost shops: Online businesses using AI-generated content to falsely portray themselves as a legitimate, physical store (known as 'ghost shops') may mislead consumers in breach of the Fair Trading Act.

Personalised pricing and offers: AI enables businesses to engage in marketing that is very personalised though the use of customer data. AI-driven marketing, including personalised pricing, must be clear, accurate and not misleading. Businesses should consider when AI use should be disclosed to consumers to avoid being misleading.

Manipulative marketing: AI can enable businesses to engage in increasingly manipulative or deceptive marketing practices that steer consumers towards decisions that may not be in their best interests. This can occur through the design of websites and apps that exploit behavioural biases (known as dark patterns) or through highly personalised, data-driven techniques that tailor content and prompts to influence consumer behaviour (known as hyper-nudging). Businesses should be mindful not to cross the line from being merely persuasive, to misleading and deceptive (and even unconscionable) in breach of the Fair Trading Act.

AI washing: Businesses that are marketing products as having AI technology or being 'AI enabled' should ensure that such products are correctly marketed so as to not mislead or oversell AI capability.



Consumers are entitled to the same protections, whether they're dealing with a person or an algorithm.

Businesses should:

- Understand how AI systems operate and are used within their organisation.
- Review AI-generated content for accuracy and truthfulness before publication.
- Regularly test customer-facing AI tools, such as chatbots, for accuracy.
- Ensure consumer-facing AI systems are transparent, fair, and support informed decision-making by consumers.
- Maintain records supporting claims and representations made to consumers, even when such claims are made by AI.
- Implement appropriate governance, monitoring, and risk-management processes for AI systems.
- Train staff on Fair Trading Act obligations.

Penalties

If the courts find an individual or business has breached the Fair Trading Act, the penalties may be heavy.

The maximum penalty is $200,000 for an individual

$200,000

and $600,000 for a business.

$600,000

Every separate breach of the Act (even if done by the same individual or business) may incur a penalty.

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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