

Understanding Consumer Law and Treating Consumers Fairly

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As all businesses are aware, treating customers fairly is of the utmost importance. It allows the business to obtain and retain customers. Also, understanding the laws that have an impact on your business is crucial to the operation of a thriving business.

Most businesses know that the Consumer Protection Act, CAP. 326D (the Act) which is administered by the Fair Trading Commission, is one of the main pieces of legislation governing how a business should deal fairly with its customers, to prevent complaints and breaches of the law.

The FTC recognises that working directly with businesses through its educational programme, can be an effective alternative to enforcement action, as it makes businesses more familiar with the requirements of the Act. This in turn, helps to safeguard the interest of consumers.

The Commission is dedicated to assisting businesses to understand the Act. Therefore, the Commission regularly conducts an educational programme whereby visits are made to businesses to provide guidance on the Act, and to raise their awareness on a variety of different issues. These issues cover how businesses can protect themselves from infringing the Act by meeting their legal obligations and how they should treat consumers fairly in the market place.

The Commission covers a number of topics in its educational programme. These include:

Advertising

Every business advertises at some point, in newspapers, magazines, brochures through leaflets, on the Internet or by face to face interaction and oral representations, to inform consumers of their products. However, when you advertise, the claims you make about your product must be true and you must not omit pertinent information which will allow the consumer to make an informed decision. For example, if you are advertising a service and you know that it only applies to new

customers and not existing customers, you must clearly state this fact. The Commission's role under the Act is to intervene against advertising that harms consumers by misleading them about a product.

Issuing Contracts

Most dealings with consumers are done on a contractual basis. Contract terms can be either written or verbal. The Commission considers certain Standard Form Contract (SFC) terms utilised by businesses to be potentially unfair. SFCs are contracts which were not individually negotiated by the parties to the contract. A term in a SFC is said to be unfair if it creates a significant imbalance in the rights between the consumer and the business and the imbalance is detrimental to the consumer. Under the Act, businesses have a legal duty, to refrain from using unfair terms in contracts with consumers. Below is a reminder of the type of terms that businesses should not use in their SFCs.

These include terms:

- With disclaimers which seek to limit liability for death or injury, delays, faulty or misdescribed goods, and unsatisfactory services
- That purport to deny the consumer full redress, impose unfair penalties and businesses varying the terms after the contract has been agreed without notifying the consumer of the change.

The Commission has the power to require businesses to amend their SFCs or delete unfair terms. However, should a business insist that the term in the contract was individually negotiated; the onus is on the business to prove that this was the case.

Internet Selling

Internet selling in Barbados is relatively a new concept. Businesses using the internet to sell their products should provide potential consumers with the following information before an agreement is made:

- Name and address, the goods being sold or the services being provided, the price (including all taxes), delivery fee, delivery arrangements and the customer's right to cancel

- Cancellation arrangement, return policy and estimated delivery times

Extended Warranties

If you are selling extended warranties on goods, you must comply with the Act. You must make it clear to consumers that the purchase of an extended warranty is optional and not mandatory. The Consumer Guarantees Act, CAP.326E which is administered by the Office of Public Counsel, provides consumers with guarantees on products.

If you are uncertain as to how the law pertains to your business, the FTC is willing to offer advice on the Consumer Protection Act.