

Unfair Trade Practices

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Being competitive and treating consumers fairly is good business sense. However, in the heat of competition sometimes false claims may be made about goods and services. False claims can hurt consumers and businesses alike. Consumers may be misled into purchasing a product because of false claims made by a business and then later discover that the product does not live up to the representations made. On the other hand, ethical businesses may be hurt as false statements can give a dishonest business an advantage in the marketplace over its competitors.

The Consumer Protection Act CAP 326D shields consumers against misleading, deceptive and unfair trade practices by placing an obligation on businesses not to engage in conduct that is, or is likely to mislead or deceive consumers. It should be noted that it is not necessary for a consumer to be misled for there to be a breach of the law. Part III Section 12 of the Act states that "A person shall not in trade or commerce as a supplier engage in conduct that is, or is likely to be misleading or deceptive." Therefore, if the conduct of a business is likely to mislead, then the Consumer Protection Act is contravened. The pertinent question that we may want answered is, "Who is misled?". Generally speaking, conduct will be perceived as misleading if it has the capacity to mislead members of its targetted audience, in other words, the section of the public to which the business is directing its focus.

It would be unfair to hold a business liable for an advertisement that was plain and intelligible, provided the relevant information and which did not mislead a reasonable person, but misled a person of

poor judgement. The Consumer Protection Act outlines a variety of misleading representations in respect of goods and services. Below several examples to illustrate misleading representations are listed. It is unlawful for a business to falsely represent that:

- A computer is new when in actual fact, the computer has been used and has personal information belonging to someone else stored on the hard drive.
- A car is a 2006 model when the vehicle is a 2003 model.
- A box of cereal is listed at \$8.99 and at the cash desk, the scanned price is shown as \$11.99.
- An item is made in Barbados and a tag attached to the item shows that it was made elsewhere.
- A specific artiste will be performing at a show and the artiste does not perform.
- A consumer will receive a free gift or prize with the supply of goods and services when the supplier does not intend to provide the item offered.
- A consumer must purchase an extended warranty to be entitled to redress should the item prove to be defective after purchase. The law gives consumers statutory guarantees. It should be noted that these guarantees go beyond the warranty. The statutory guarantees are absolute and cannot be excluded by suppliers and manufacturers. The law provides express remedies to consumers for breach of the guarantees through the refund of monies paid, repair and replacement. Damages are also payable for consequential loss for personal injury distress and inconvenience. It is important to note that the statutory guarantees granted by the law, afford consumers fundamental rights to those granted by warranties of individual businesses.

Businesses must ensure that they continue to keep abreast of the requirements of the law, as a contravention of the Consumer Protection Act may lead to stringent fines being imposed on conviction, in a court of law. Where an individual (sole trader) is found guilty, the individual is liable to a fine of \$10, 000 or to imprisonment of two years or both. If it is a person (e.g. a corporation) and not an individual, the fine is \$100, 000.00. Where a corporation is found guilty any director who has knowingly authorised or acquiesced in the act that caused the offence is liable to a \$25,000.00 fine or two years imprisonment or both.

Businesses are therefore advised that it makes good business sense to implement compliance programmes to ensure that their employees at all levels are carrying out necessary checks to reduce the likelihood of breaches of the Consumer Protection Act. Remember that the Commission's staff is available to assist you on the requirement of the law.