

Truth in Advertising – Advertising and the Tourism Industry

Operators of tourism businesses need to be particularly careful about what they say and do when they are advertising their business because of the wide audience that their promotional messages may reach.

Advertising and the Trade Practices Act

The *Trade Practices Act 1974 (Cth)* is focused on consumer protection, fair trading and protecting competition and it governs practically all transactions entered into by consumers and businesses.

Part V of the TPA is often called the consumer protection part because it contains provisions designed to protect consumers against ‘sharp’ business practices. In general, the part prohibits conduct that is misleading or deceptive or likely to mislead or deceive. It also specifically outlaws particular types of false or misleading representations, such as false or misleading claims about the value, price or quality of a product or service.

Businesses engaged in advertising goods or services must therefore be careful not to send a message that creates, or could create, a wrong picture in the minds of those who receive the message. The bottom line is this: if you create an impression about goods or services that does not reflect reality, you may mislead or deceive.

What kind of advertising is covered?

The laws that prohibit misleading advertising apply to businesses advertising through all kinds of media and advertising methods, including television, radio, the internet, newspapers, magazines, telemarketing, door-to-door selling, billboards, brochures, pamphlets and fliers.

What are misleading advertising and selling practices?

Any kind of conduct or behaviour in business that could give a customer the wrong impression may potentially breach the TPA. It doesn’t matter whether the misrepresentation is deliberate or accidental. What does matter is the impression that is left in the mind of the customer.

The failure to mention any matter relevant to the sale can also give rise to misleading conduct. In some circumstances silence can be conduct that misleads, or is likely to mislead.

Potential pitfalls

Silence

Failure to disclose relevant information can be misleading. Courts will look at the circumstances of the case. If it was reasonable to expect that certain information would be disclosed, silence could be found to be misleading.

Disclaimers and fine print

Businesses should focus on the overall impression given to the customer, especially when using techniques such as asterisks and associated fine print. Disclaimers should be specific, clear and highly visible. Information in the fine print should not contradict the main message. Be careful when using words such as 'free' or 'unlimited'.

False representations about the standard, quality, value or grade of goods or services.

Travel and tourism businesses making statements and claims about the standard, quality and value of goods must ensure that these statements are true and accurate. "Standard" refers to a level of excellence or attainment while "quality" refers to an attribute, property or special feature.

Case Study

A Flag Hotel placed advertisements about the quality of amenities, promising travellers that its accommodation boasted several non-existent features. The Commission was concerned that this was a false representation as to quality and standard. The hotel agreed to change its advertisements and compensate the complainants.

Not showing the full cash price

When advertising the price of goods or services, the total cash price, including GST, must be revealed to the consumer. You must show the full price, including any commissions or charges. It is not enough just to show initial deposit and instalment payment amounts, which may result in confusion.

No intention to supply

Businesses should not accept payment if they know, or should know, that they cannot provide the kind of goods or services promised

Puffery

It is not misleading or deceptive to engage in 'puffery'. Puffery involves making exaggerated statements of opinion (not fact) to attract attention. Whether a statement is puffery will depend on the circumstances.

A claim is less likely to be puffery if its accuracy can be assessed. For example, stating that "Our cruise ship is the world's fastest" is probably not puffery because the statement's accuracy can be tested.

Useful Compliance Tips

- When in business or preparing an advertisements consider your target audience and the impression that your advertisement will give.
- Consider if you have reasonable grounds on which to make statements about future matters.
- Consider changing your approach if part of your target audience may believe something about your goods or have services that are not true.
- Legibly and clearly disclose all relevant terms and conditions. Have you clearly explained all limitations and qualifications?

- If you are booking travel for passengers ensure they have confirmed reservations. If they do not, tell them. Explain what is meant by an unconfirmed reservation and provide them an opportunity to change fares.
- Make every possible effort to advise your customers of changes to advertised services.
- Once promotional material has become outdated withdraw and amend it

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