

## Customers and the law

The New Zealand Commerce Commission is one of the most active regulators in the country. Importantly, small businesses are not immune to Commerce Commission scrutiny. All small businesses must be aware of a number of well-established principles when dealing with consumers, some of which are discussed below.

### Selling goods and services

Imaginative promotion of products and services is a normal part of attracting customers to your business and encouraging them to buy.

However, when you advertise or talk with your customers, take care that each selling point is factually correct. The only exception is puffery or self-evident exaggeration, eg 'whiter than white' or 'the best thing since sliced bread', where it is unlikely that any customer would take it seriously.

It is equally important to consider all facts together when examining the overall impression created in the minds of average consumers in the target audience. You must be careful that the impression of the goods and services is not misleading. In other words, it is insufficient for each point to be 'technically' or 'narrowly' correct.

Even silence can be misleading where it is clear that customers have the wrong idea about the product or service, and are relying on your advice. Predictions can also be misleading if there is no reasonable basis for making them.

Specific care must be taken when you are referring to:

- The characteristics of the product or service that are likely to be very important to your customers;
- Your competitors' products, services, or businesses; and
- The characteristics of the product or service that are subject to variation.

## Advertising price

Any price savings or discounts advertised must be genuine and give the customer enough information to explain how they are calculated.

For example, state whether your new prices are a reduction on:

- Your normal selling price, ie the price at which you usually supplied the goods before the advertisement;
- The manufacturer's recommended retail price, as long as this is the price at which the goods are normally sold; or
- Competitors' prices (but you must be sure you know what your competitors' minimum prices actually are).

Any price comparisons must be between substantially similar goods and services.

When advertising or using 'point of sale' promotional material that discusses price, you must:

- State clearly the full cash price if you are quoting a deposit, or weekly or monthly terms (also stating if this is inclusive or exclusive of GST);
- Make it clear if other charges, eg for delivery or installation, are included in the stated price; and
- Make sure consumers know what accessories, if any, are included or not included in the price.

## Price fixing

Any agreement between you and one of your competitors on the price you intend to charge is illegal.

Such agreements do not have to be in writing – even a 'nod and wink' understanding that can take place anywhere may constitute price fixing.

## Sharing your market

Agreeing to share the market among competitors is illegal. The Commission has found many businesses to be illegally sharing markets. The forms in which offences can take place include:

- Agreeing not to sell certain products where those products are sold by a competitor;
- Allocating customers to each competitor in a market with an understanding not to 'poach' customers;
- Agreeing not to compete outside a specified area; and
- Agreeing to share customers or products so a sales revenue parity can be maintained between competitors.

## Refunds

In most cases, your customers are entitled to a full refund when the:

- Goods or workmanship is faulty;
- Goods are unsuitable for the purpose the customer told you about before the sale;
- Goods do not match the sample the customer was shown; or
- Goods differ from the way you described them, or from the way they are described on the packaging.

Generally, you do not have to provide refunds where customers have:

- Changed their minds about the purchase;
- Discovered they can buy the goods or services more cheaply elsewhere; or
- Examined the goods before buying, and were aware of the fault (it is useful to note any such defects on the invoice or docket).

## Competing with market leader

A firm with a substantial degree of power in a particular market cannot use this for the purpose of damaging a 'small' competitor. This can be done by refusing to deal with a competitor, or by offering to deal on such unfavourable terms that the offer amounts to a refusal.

Small businesses that are adversely affected can lodge a complaint with the Commission.

However, a supplier does not have to supply everyone. The onus is on the business seeking supplies to show that the supplier's action was taken with the purpose of eliminating or substantially damaging the business, or deterring or preventing it from entering that market.

## **Small print**

Small print is commonly used in advertising, promotions, and other marketing material. It sometimes changes or contradicts the overall impression created by print, pictures, and other promotional elements. The courts have stated that 'small print cannot save a representation from being misleading'.

## **12 tips for avoiding misleading representations and product descriptions**

### **DO**

- Give current and correct information.
- Give all the relevant facts.
- Make sure the overall impression is correct.
- Avoid ambiguous statements.
- Back up claims with facts.
- Note important limitations or exceptions.
- Correct misunderstandings.

### **DON'T**

- Guess the facts.
- Leave out relevant information.
- Use unnecessary technical jargon which may confuse.
- Make promises you are unable to keep or predictions that are not founded on a reasonable basis.

## See Us First

If you consider that any of the issues contained in this fact sheet may affect you.

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