

# Fines for misleading product claims

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LEGAL MATTERS



If you have been misled by a product claim then consumers can bring a claim to recover costs and damages and they can also make a complaint to the Commerce Commission.

If serious the Commerce Commission can investigate and prosecute individuals and companies for any misleading claims about products and services.

In a recent case a company was fined \$1.88 million for misleading product claims. The District Court found that the company had made false and misleading representations about some of its products over a four year period.

The company claimed its products were of higher quality than they were and this was likely to mislead the public. It also failed to properly test the products, and made false claims that the products had been independently tested.

The court initially intended to impose a higher penalty, but this was reduced because the company had pleaded guilty, co-operated with the Commerce Commission, and taken remedial measures. The court described the company's behaviour as "grossly negligent". It said that, "senior management of the



Tell a lie and your nose will grow? Perhaps not. But in business, the consequences for not sticking rigidly to the truth can be far worse, including hundreds of thousands of dollars in fines.

company ought to have known of the large-scale non-compliance, it was the company's responsibility to have proper systems in place to ensure compliance with the standard".

The penalties for such conduct can be severe. Under the Fair Trading Act, businesses can be fined up to \$600,000 for each false and/or misleading representation. In this case there were multiple breaches of the Act. An individual could be

convicted and fined up to \$200,000. The Commerce Commission's advice to companies and traders providing goods and services is: "If you can't back it up, don't say it".

Omitting crucial detail is as misleading as stating a non-fact. Another recent decision of the Commerce Commission again sends warning bells to businesses about misleading their customers ... intentionally,

unintentionally or by omission.

A company pleaded guilty to misleading its customers into believing that only the most expensive option it offers is available in certain New Zealand regions. In fact, its other services are also available to customers in those regions, with the most expensive being an additional option offered in those particular regions.

Under the Fair Trading Act it is an offence to, "in trade, engage

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in conduct that is misleading or deceptive or is likely to mislead or deceive".

The Fair Trading Act applies to anyone in trade – from big organisations like hotels, airlines and department stores, to small, or even temporary businesses like a coffee cart. It also applies to advertising in all forms, such as online, print, TV, social media – and in all dealings with consumers.

In hindsight, the company in question commented that they should have made it clear that the expensive service option was only "recommended" in the areas in question. An expensive lesson learned too late.

Therefore, ensure that all your communications with customers are accurate and clear, including both verbally and in writing, or your business could find itself in hot water.

**# Column courtesy of RAINEY COLLINS LAWYERS, phone 0800 733 484, www.raineycollins.co.nz. If you have a legal inquiry you would like discussed in this column please email Alan on aknowsley-@raineycollins.co.nz**

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