

CRIMINAL FALSE DESCRIPTIONS

Consumer protection legislation, (often called its older name, the Trade Descriptions Act) imposes criminal sanctions for certain false descriptions. There is a range of general legislation together with specific legislation in numerous sectors. The Office of Fair Trading polices a range of general and specific legislation and brings prosecutions for breaches in specific instances.

It is an offence to apply a false trade description to goods, to supply goods with such a description or to make a false statement in relation to any services, accommodation or facility.

A trade description refers to anything attached to the goods themselves or anything accompanying the goods. It also applies to any description that is likely to be taken as referring to the goods and to all statements made in the context of the sale where it is reasonably taken as referring to the goods. A particular trade description can be deemed to refer goods even in the absence of a written or oral statement if the trader fails to take steps to correct a misunderstanding induced by the surrounding circumstances.

Trade description can be any indication of any matter in relation to the goods. This can be a direct or indirect indication by whatever means. This could include matters of quantity, size, quality, identity of manufacturer, processing, composition, fitness for purpose, strength, performance, behaviour, physical characteristics, testing, approvals, place of manufacture processing, persons by whom manufacturer produces and history including previous ownership.

Misleading Prices and Comparison

The Trade Descriptions Act creates offences in relation to false comparisons and recommended prices. A comparison with a previous price must be accurate. The Consumer Protection Act 1987 makes an offence to give any misleading price indication

to a consumer. A person who supplies goods with a false promise (e.g. we promise to pay the difference) commits an offence if this is not complied with.

Discrepancies between a shelf price and a check out price may breach the legislation. There are a number of elements which indicate whether a price may be misleading. A price indication is presumed to be misleading if it conveys the impression that the price is less than what it in fact is. A sales statement saying that prices will increase after a sale, will breach the legislation, when there is no such intention.

The Consumer Protection Act 1987 extended protection to cover services and housing. Some of the areas specifically included were credit banking and insurance services, electricity, accommodation, facilities. Therefore the sale of new dwelling houses in the course of a business is specifically covered by the Act. False claims of discounts affecting new houses are subject to the legislation.

There is a code of practice on price comparisons. It gives practical guidance on the requirements. Contravention of the code is not automatically a criminal offence but breach of the code may show that the general prohibition has been offended.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.