

UNFAIR COMMERCIAL PRACTICES REGULATIONS

The Unfair Commercial Practice Regulations harmonise fair trading laws in the European Union member states so as to facilitate the functioning of the single market.

The UCPD prohibits unfair business practices in all sectors. Misleading actions, omissions and aggressive commercial practices are deemed unfair practices. Practices include courses of conducts, representations and communications by a trader in promoting, selling or supplying a product to a consumer. A trader is a person acting in the course of a trade, business or profession. A consumer is a natural person not acting in the course of a business. Products include goods and services and cover everything from simple products to complex services.

A commercial practice is deemed to be unfair if it contravenes the requirements of professional diligence and materially distorts economic behaviour of the average consumer. Professional Diligence is the standard of skill and care which a trader may reasonably have been expected to exercise towards consumers commensurate with honest market practice and /or the general principles of goods faith in its field of activity. The standard will vary in circumstances depending on the context. The standard is not defined, guidance in codes of practice including OFT codes may help establish whether traders have met the required standard of professional diligence.

The “average consumer” is the bench mark. The “average consumer” is deemed to be reasonably well informed in the circumstances. Where a product is aimed at consumers who are vulnerable because of their age, the relevant consumer will be the average member of that group.

Misleading Practices

Commercial practices also deemed unfair if they are misleading or aggressive or are included in the list of the specific practices deemed to be unfair. Commercial practices are deemed to be misleading, if they give false information which deceive the average consumer in relation to the existing characteristics of the product, the extent of trade commitment price, facts including how it was fixed, need for service or repairs, the nature of the trader including the status and qualification and consumer rights.

Practices are deemed misleading if in the circumstances they are likely to make the average consumer make a decision that he would not have otherwise have taken. It is also deemed misleading if a product is marketed in a way that causes confusion with that of competitors or fails to comply with relevant codes of conduct which the trader undertakes or represents himself to comply with.

An omission can be misleading in a certain circumstances. Commercial practice can be deemed misleading if the circumstances omits, hide or disguise material which will cause the average consumer to take a different decision. The information required will depend on the circumstances but would include the main the characteristics, identity of the trader, price, terms of payment, delivery and complaints or rights of cancellation.

An “aggressive” commercial practice is one by which harassment, coercion or undue influence, significantly impairs the average consumer’s freedom of choice or conduct. The question of whether a commercial practice is aggressive, must be considered in its context. This will include time and location, use of threatening or abusive language or behaviour, exploitation of specific misfortune or circumstances.

The OFT guidance give suggestive illustrations including pressurising bereaved families to buy expensive coffins, taking a consumer to a holiday club presentation with no means of getting home unless they sign a contract and door step traders who insist on taking consumer to the bank to collect money.

Deemed Unfair Practices

The regulations list 31 commercial practices which are deemed to be unfair in all circumstances. They include the following:

- Displaying a quality mark without authorisation;
- Falsely claiming to be a signatory to a code of conduct;
- Falsely claiming a product is able to cure diseases;
- Falsely stating that a product will be available for a limited time to get immediate decision;
- Making a materially inaccurate claim about the risk to the personal security of the consumer if the family decides not to purchase the product;
- Ignoring a request to leave or stay away from the consumer's home;
- Establishing, operating and promoting a pyramid promotional scheme;
- Describing a product as free or without charge if the customer has to pay anything other than minimal actual expenses;
- Falsely representing once self as a consumer.

The Office of Fair Trading (OFT) may take civil enforcement action in respect of breach of the regulations. Private persons can take action under certain conditions. A trader commits an offence if he engages any of the above mentioned unfair commercial practices. A defence is available if it can be proved that the offence was committed due to a mistake, reliance on information supplied by a third party or circumstances beyond the trader's control. There is £5,000.00 fine on a summary conviction with a higher limit on indictment.

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.

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