

# businesscompanion

## trading standards law explained

### Accurate descriptions

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#### **This guidance is for England, Scotland and Wales**

Traders are responsible for making sure the products they offer and sell to consumers are accurately described. It is important to ensure that consumers have the right information about the products they are being offered so that they can decide whether or not they want to purchase them.

The Consumer Protection from Unfair Trading Regulations 2008 (CPRs) prohibit traders from misleading consumers by falsely describing products. 'Product' is defined very broadly and includes:

- goods
- services
- digital content
- immovable property - for example, sales or leases of houses and flats
- rights and obligations - for example, being able to use a caravan for a period of time
- demands for payment, such as for parking on private land

The CPRs also prohibit traders from hiding information, giving insufficient information or giving information in an unclear manner about products. See 'Consumer protection from unfair trading' for more information.

#### **What does the law require?**

The CPRs cover commercial practices, which include any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader that is directly connected with the promotion, sale or supply of a product to consumers.

A trader must not mislead a consumer about a product in any way by giving false or deceptive information about a number of specific matters. They must also not omit information about a product that a consumer would need in order to make an informed decision.

It should be noted that to breach the majority of the Regulations the misleading information given (or information that has not been given) to a consumer must cause, or be likely to cause, the average consumer to make a different transactional decision. An example of this would be the consumer making a purchase that they would not otherwise have made. Transactional decisions also include decisions made after a consumer has bought a product - for example, the decision whether to return a faulty product or to accept an offer of redress.

The Regulations are not intended to cover insignificant inaccuracies, but ultimately only a court can decide whether the actions of a trader would affect the average consumer in an adverse way.

Some practices are prohibited in all circumstances, and these are covered in 'Consumer protection from unfair trading'.

If a trader makes a false representation that was dishonest, and by making the false representation intended to gain for themselves or another (or cause loss to another), then they may commit an offence under the Fraud Act 2006 (the Fraud Act does not apply in Scotland; instead, it is the common law offence of fraud).

## **What are the specific breaches of the Regulations relating to products?**

It is a breach of the Regulations (and potentially a criminal offence) to engage in an 'unfair commercial practice'. In relation to the description of a product, a practice is unfair if it is either of the following:

- a 'misleading action' (it contains false or misleading information, and is therefore untruthful in relation to a list of specified matters, or its overall presentation in any way deceives or is likely to deceive the average consumer)
- a 'misleading omission' (it omits or hides material information or provides material information in a manner that is not clear)

In addition, for a practice to be unfair the trader's misleading action or omission must cause, or be likely to cause, the average consumer to take a different transactional decision (as above, this could be to buy as opposed to not buy, having work done or not, or paying a different amount for goods). The law also introduces a general duty not to trade unfairly.

## **How can a misleading action or omission be given?**

Misleading actions and omissions can be given in any of the following ways:

- verbally
- in writing (for example, in an advert or brochure, or on an invoice or order form)
- by illustration (for example, in advertisements or on packaging)
- by implication

In addition, if goods are supplied in response to a request that includes a specific description (for example, a customer specifies they want a granite worktop) it is possible that it would be held that the supplier of the goods has applied the description themselves.

## **What descriptions are covered by the Regulations?**

The following matters are specifically covered when looking at a misleading action:

- the existence or nature of the product
- the main characteristics of the product, which include:
  - availability
  - benefits
  - risks
  - execution
  - composition
  - accessories
  - after-sales service
  - handling of complaints
  - method and date of manufacture
  - method and date of provision
  - delivery
  - fitness for purpose
  - usage
  - quantity
  - specification
  - geographical or commercial origin
  - results to be expected
  - results and material features of tests or checks carried out
- the extent of the trader's commitments
- the motives for the commercial practice
- the nature of the sales process
- any statement or symbol relating to direct or indirect sponsorship or approval of the trader or product
- the price or the manner in which the price is calculated
- the existence of a specific price advantage
- the need for a service, part, replacement or repair
- the nature, attributes and rights of the trader, which include their:
  - identity
  - assets
  - qualifications
  - status
  - approval
  - affiliations or connections
  - ownership of industrial, commercial or intellectual property rights
  - awards and distinctions
- the consumer's rights or the risks they might face

## **Who can commit an offence under the Regulations?**

A 'trader', which means any person who, in relation to a commercial practice, is acting for purposes relating to their business, and anyone acting in the name of or on behalf of a trader. This would include directors, managers and all levels of employees.

## **How can a trader avoid committing an offence?**

In the first instance, the trader should ensure that all descriptions are not misleading. This means that not only should they be accurate, but they should be presented in a way that would not mislead - for example, by being understood in the wrong context. To avoid committing misleading omissions, traders should ensure that they are open and honest with customers, including anything that might make the product or the offer less attractive.

The Regulations therefore provide a trader with the defence that the commission of an offence was due to a mistake, or to reliance on information supplied to them, or the act or default of another person, an accident or some other cause beyond the trader's control; and that they took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by themselves or any person under their control.

In simple terms, this means that a process should exist to avoid unfair commercial practices and that the process should be followed by all employees.

## **Redress**

Purchasers of misdescribed products are likely to seek redress through the civil courts. In particular, these Regulations provide specific rights to redress for consumers. Where there has been a misleading action (or an aggressive practice), the consumer may be entitled to claim compensation and/or a reduction in price or to cancel the contract completely.

The Department for Business, Energy and Industrial Strategy (BEIS, which was known as the Department for Business, Innovation and Skills at the time) has produced guidance on consumers' rights to redress under the Regulations: *Misleading and Aggressive Commercial Practices: New Private Rights for Consumers*.

## **Penalties**

Failure to comply with trading standards law can lead to enforcement action and to sanctions, which may include a fine and/or imprisonment. For more information please see 'Trading standards: powers, enforcement and penalties'.

## **Key legislation**

Enterprise Act 2002

Fraud Act 2006

Consumer Protection from Unfair Trading Regulations 2008

Consumer Protection (Amendment) Regulations 2014

Last reviewed / updated: July 2020

## **In this update**

No major changes

## **Please note**

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide's 'Key legislation' links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on amendments to legislation can be found on each link's 'More Resources' tab.

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