12.2: Unfair Trade Practices

The term “unfair trade practice” describes the use of deceptive, fraudulent, or unethical methods to gain business advantage or to cause injury to a consumer. Unfair trade practices are considered unlawful under the Consumer Protection Act. The purpose of the law is to ensure that consumers have the opportunity to make informed, rational decisions about the goods and services they purchase.

Unfair trade practices include false representation of a good or service, targeting vulnerable populations, false advertising, tied selling, false free prize or gift offers, false or deceptive pricing, and non-compliance with manufacturing standards. Alternative names for unfair trade practices are “deceptive trade practices” or “unfair business practices.”

Section 5(a) of the Federal Trade Commission Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” Per the rule, unfair practices are those that cause, or are likely to cause, injury to consumers, those that consumers cannot avoid, and those in which the benefits of the product or service do not outweigh the deception. Deceptive practices are defined as those in which the seller misrepresents or misleads the consumer, and the misleading practice is substantial.

The Federal Trade Commission (FTC) is a federal agency that enforces consumer protection laws. Consumers may seek recourse for unfair trade practices by suing for compensatory or punitive damages. Plaintiffs do not have to prove intent. Showing that the practice itself was unfair or deceptive is sufficient.

Figure 12.2.1: The Federal Trade Commission (FTC) enforces consumer protection laws. (Credit: U.S. Government/ wikimedia/ License: Public Domain)

Unfair Trade Practices and Examples

Product Guarantees and False Endorsements

Companies must be prepared to honor product guarantees. For example, if a product is advertised with a 50 percent money-back guarantee, then that must be provided to customers who meet the requirement(s) attached to the guarantee. Similarly, companies may not create false endorsements and testimonials about their products.

Unfair Advertising

False advertising includes the misrepresentation of a product, service, or price. It may be more expansively defined to include unfair sales strategies, such as advertising one item and then selling another item in its place, e.g., one that is higher priced, lower quality and/or less in demand. This method is most commonly referred to as "bait and switch." Additional examples of unfair advertising include incorrect pricing, fake endorsements, deceptive guarantees, making false statements, and providing descriptions that exaggerate the performance of the product or service.

Example 12.2.1

For months, Ivan had searched for just the right window curtain to match the décor of his new high rise condo. Finally, while browsing through Amazon, he saw two gray velvet curtains that featured a damask pattern, with taupe and gold accents and specks of ice blue glitter accents. He could not have designed a more perfect color palette for the window treatments if he tried. Moreover, the velvet blackout touch was just what he needed. Excited, he hit the "Buy Now" button and waited a couple of days for his order to arrive. When it did, what a huge disappointment! He could see, if he stared long and hard enough, how someone with a vivid imagination might consider the curtain to be an abstract interpretation of what was advertised. However, most people would see that the product was not at all close to what was advertised. The velvet was closer to linen, the damask pattern was closer to swirls, and the taupe and gold accents with specks of ice blue were closer to silver and purple, with specks of mauve. After running a Google reverse image search of the original product photo, he saw it featured in an interior design magazine. When Ivan looked up the product endorsements and reviews, he saw that all of the reviewers had only posted reviews for that particular seller's products, and that they had posted nothing but glowing reviews for each of the products. It was clear to Ivan that the seller was guilty of false advertising, as well as faking endorsements. Ivan has enough information to submit a consumer complaint to the Federal Trade Commission.

Taking Advantage of Customers

The FTC also pays particular attention to business ventures that target vulnerable populations. For example, some telemarketing efforts employ intense pressuring tactics to target seniors and people who don't speak English.

Example 12.2.2

Devin is involved in the telemarketing of spy gadgets, such as bugs and bug detectors. He has had a lot of trouble finding a market for these products. One day, he speaks with an older citizen who asks him about the benefits of the bug detector. Devin starts to knowingly make unsubstantiated claims that there have been news reports that home bugging is on the rise. His false claims works like a charm. Spooked, the elderly customer buys the most expensive bug detector product. Seeing his success, Devin purchases a report of households in his geographic selling area that are headed by people over the age of 70. Over the next few months, his sales increase at an explosive rate. When he is recognized by management for his leading sales numbers, they also inquire about the secret to his success as they seek to replicate it in training materials for other sales professionals. When Devin proudly explains his tactics, he is terminated by the company. The company calls the customers impacted by his false claims, explains that there was a misrepresentation by one their sales associates regarding the scope of known bugging activity, allows them to keep their bug detectors, and refunds them the money they spent purchasing the products. The sales associate engaged in unfair trade practices, but the company took appropriate steps to correct it.

Misrepresenting a Product

At times, the FTC may be quite technical in its definition of certain terms. For this reason, companies should be very clear about their usage of various phrases and words. For example, the word "new" may only be used to refer to a product that is less than six months old. Other terms may be the subject of debate or litigation, such as whether a lotion will actually "rejuvenate" skin or whether a tablet will actually "cure" baldness. Indeed, a sweater should not be called "wool" unless that is its complete composition. There are many examples, so it is important for businesses to have an understanding of the FTC's rules on this topic.

Giving Misleading Price Information

The FTC sanctions misleading price information as an unfair trade practice. Examples of misleading price information include false sales in which a "limited time offer" might actually be available forever, or running a "Going Out of Business" sale without any plans to go out of business while advertising that items are discounted, although the prices have not changed.

Example 12.2.3

A brick and mortar store has an online promotion for a “buy one, get one” offer for the season’s hottest new phone, stating that the offer is only available on Black Friday. The store opens at 5:00 a.m., and customers start lining up with their sleeping bags in tow the evening prior to the morning opening time. After customers almost stampede one another, they learn that they will have to also purchase a phone plan that is inflated by 100% of its regular price to qualify for the deal. Nowhere in the literature or promotions was the phone plan, or its over-inflated price, mentioned as a requirement to get the buy one get one free phone deal.

Failing to Disclose Pertinent Information

Merchants must disclose facts that would reasonably influence the consumer’s decision to make a purchase. Withholding pertinent information from customers may be viewed by the FTC as equal in severity to the process of using overtly incorrect or deceptive information. For example, sellers should always disclose the full price of their products or services before accepting payment for them.

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