
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Consumer Protection from
Unfair Trading Regulations 2008

PART 2

PROHIBITIONS

Misleading actions

5.—(1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

(2) A commercial practice satisfies the conditions of this paragraph—

- (a) if it contains false information and is therefore untruthful in relation to any of the matters in paragraph (4) or if it or its overall presentation in any way deceives or is likely to deceive the average consumer in relation to any of the matters in that paragraph, even if the information is factually correct; and
- (b) it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(3) A commercial practice satisfies the conditions of this paragraph if—

- (a) it concerns any marketing of a product (including comparative advertising) which creates confusion with any products, trade marks, trade names or other distinguishing marks of a competitor; or
- (b) it concerns any failure by a trader to comply with a commitment contained in a code of conduct which the trader has undertaken to comply with, if—

(i) the trader indicates in a commercial practice that he is bound by that code of conduct, and

(ii) the commitment is firm and capable of being verified and is not aspirational,

and it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

(4) The matters referred to in paragraph (2)(a) are—

- (a) the existence or nature of the product;
- (b) the main characteristics of the product (as defined in paragraph 5);
- (c) the extent of the trader's commitments;
- (d) the motives for the commercial practice;
- (e) the nature of the sales process;
- (f) any statement or symbol relating to direct or indirect sponsorship or approval of the trader or the product;
- (g) the price or the manner in which the price is calculated;

- (h) the existence of a specific price advantage;
 - (i) the need for a service, part, replacement or repair;
 - (j) the nature, attributes and rights of the trader (as defined in paragraph 6);
 - (k) the consumer’s rights or the risks he may face.
- (5) In paragraph (4)(b), the “main characteristics of the product” include—
- (a) availability of the product;
 - (b) benefits of the product;
 - (c) risks of the product;
 - (d) execution of the product;
 - (e) composition of the product;
 - (f) accessories of the product;
 - (g) after-sale customer assistance concerning the product;
 - (h) the handling of complaints about the product;
 - (i) the method and date of manufacture of the product;
 - (j) the method and date of provision of the product;
 - (k) delivery of the product;
 - (l) fitness for purpose of the product;
 - (m) usage of the product;
 - (n) quantity of the product;
 - (o) specification of the product;
 - (p) geographical or commercial origin of the product;
 - (q) results to be expected from use of the product; and
 - (r) results and material features of tests or checks carried out on the product.
- (6) In paragraph (4)(j), the “nature, attributes and rights” as far as concern the trader include the trader’s—
- (a) identity;
 - (b) assets;
 - (c) qualifications;
 - (d) status;
 - (e) approval;
 - (f) affiliations or connections;
 - (g) ownership of industrial, commercial or intellectual property rights; and
 - (h) awards and distinctions.
- (7) In paragraph (4)(k) “consumer’s rights” include rights the consumer may have under Part 5A of the Sale of Goods Act 1979(1) or Part 1B of the Supply of Goods and Services Act 1982(2).

(1) 1979 c.54; Part 5A was inserted by S.I. 2002/3045.
(2) 1982 c.29. Part 1B was inserted by S.I.2002/3045.