

Bait Advertising – Have you been trying to hook the big fish?

What is bait advertising?

Bait advertising may be alleged to occur when a business advertises goods or services at a certain price but does not have a reasonable supply of the goods or services for customers to buy for a reasonable period of time.

If a business engages in bait advertising it runs the risk of the Australian Competition and Consumer Commission ('the ACCC') commencing proceedings against it pursuant to section 56 of the *Trade Practices Act, 1974* ('the Act'). In recent years a number of businesses have provided enforceable undertakings to the ACCC in response to investigations regarding allegations of bait advertising.

In March 2006 the ACCC published a booklet which provides guidelines to businesses regarding bait advertising. The booklet outlines the steps businesses should take to avoid allegations of bait advertising and provides some practical examples about what constitutes bait advertising.

The law

Section 56 of the Act sets out the law in relation to bait advertising.

Specifically, the Act places a positive obligation on businesses who advertise goods or services at a specific sale price to ensure that the goods or services are available at that price for a period of time that is reasonable and in quantities that are reasonable.

What constitutes a reasonable period of time and a reasonable quantity depends on the nature of the product being sold, the marketing technique used and the length of the sale.

The penalty for businesses contravening the Act is a maximum fine of up to \$50,000. If you are an individual the penalty is either a fine of up to \$10,000 or a period of imprisonment not exceeding 6 months.

Relevant cases

In the early 1980's, the ACCC's focus in respect of this law was largely targeted towards second hand car dealers. In recent years, the ACCC has raised concern about advertising promotions run by retailers such as Repco, Harvey Norman and Mobileworld Communications. Investigations are usually triggered by customer complaints.

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The allegations against Repco related to a catalogue advertised sale in September 2005. Five products in the catalogue were discounted by as much as 92% of the pre-sale price and upon investigation it was found that more than one-third of Repco stores Australia wide did not have any of the five products available during any part of the sale period. Of the stores that did have stock, most of them had sold out after the first day of the sale.

As a result of the investigation, Repco entered into a court enforceable undertaking with the ACCC. The undertaking required Repco to publicly apologise to consumers, maintain a trade practices compliance program for 3 years and report regularly to the ACCC, publish an article in the Australian Automotive Aftermarket Association Magazine and provide alternative stock or a \$100 gift voucher to consumers who had made written complaints to Repco or the ACCC.

In short, the promotion caused Repco a great deal of public embarrassment and most likely a considerable amount of time and money responding to the ACCC's allegations.

What can you do to prevent allegations of bait advertising?

- 1 Ensure that if you do advertise goods at a specific price that you have a sufficient number of items in stock and are able to sell them for a reasonable length of time.
- 2 Spend time considering what factors, if any, may result in an unexpected demand for the product advertised.
- 3 Be up front! Clearly disclose any limits on the number of goods that may be purchased or any conditions which relate to the sale of the goods.
- 4 Ensure that you have recorded and are therefore able to show that prior to a sale that all steps were taken to ensure sufficient stock levels for a reasonable period of time.
- 5 Offer a raincheck to customers who are unable to purchase specific goods at an advertised price.

Using the words 'while stocks last' or 'limited offer' without qualifying the words with an indication of the likely availability of the goods will not be sufficient to prevent an allegation of bait advertising.

Summary

Bait advertising is an issue that the ACCC take seriously.

The best way to ensure that your business is not investigated by the ACCC is to advertise honestly and always ensure that you consider factors which may affect your ability to sell goods at the advertised price.

A copy of the ACCC guidelines can be obtained by clicking on the following link: <http://www.accc.gov.au/content/index.phtml/itemId/759632>.

"The best way to ensure that your business is not investigated by the ACCC is to advertise honestly..."