

Trade and consumer protection law-unfair trade practices

Law



Australian Law prohibits misleading and deceptive conduct, unconscionable conduct; specific unfair practices etc. as per the Trade Practices Act 1974 (Cth) and State Fair Trading Acts. However, it does not treat such offenses as criminal in nature but protects the victims to the extent of giving civil remedies. Issues: Let us analyze the given issues pertaining to the deceptive conduct and specific unfair practices of a service provider. First issue: Rory, who lives in Adelaide, approached Haka Travel Agency who lured her with their various brochures and made her buy a tour package to New Zealand for an amount of \$10000. She was offered 12 nights and 13 days' stay and tour in New Zealand, with the provision of five-star luxurious hotel accommodations. She was also promised class travel by "Gold Class" bus and ferry, along with excellent local guides who could enlighten her about the sites. Additionally, she was compelled to purchase an extra package of 'Lord of the Rings Experience' for \$550. She also paid \$2000 for single room accommodation. But her tour was a disappointing one due to the following reasons:

(a) The information of rescheduling of the Air New Zealand flight was suppressed by Haka Travel Agency, and was not revealed to her, which made her lose 1 night and 1 day of her tour package against the 12 nights and 13 days' tour. This means she was subjected to a pecuniary loss equal to the cost of 1 night and 1 day.

(b) She was not given single room accommodation for 5 nights even though she has paid for it. And this breach of contract by the travel agents brought mental agony to her.

(c) The mode of transportation was below standard, and there were hidden charges for getting Gold Class facilities.

(d) The tour guides were not locals and were incapable which almost killed the excitement of the tour.

(e) There

was also a hidden charge for the " Lord of the Rings' experience. She was forced to pay an extra \$150 to the tour guide to see it. And the show was a swindling and lacked the promised entertainment Principles and Statutory provisions which applies to the above case: Section 52 of the Trade Practices Act, 1974 states " a corporation shall not, in trade or commerce, engage in conduct that is misleading or deceptive or likely to mislead or deceive". S 52 establishes a " norm of conduct"

- sellers and service providers are required to tell the truth or refrain from giving an untruthful impression
- conduct does not actually have to mislead or deceive anyone, it is enough that it could mislead or deceive

Conduct which breaches Section 52 includes;

- withholding relevant information
- making false predictions
- exaggerated sales talk
- creating a false impression
- giving false warranties and guarantees
- silence
- and statements of opinion

The above problem of Rory is similar to the case of: McWilliams Wines Pty Ltd v McDonald's System of Australia Pty Ltd (1980) ATPR 40-

188Conclusion: Any advertisement published either in print media or even through other propaganda which involves a customer and product/service provider /corporation /company /government, is a contract

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between the advertiser and the person/group/company when the latter takes the service of the provider. If the service is not provided as per the advertisement, even the public can sue or take legal proceedings against the advertiser for public interest. If the service is not provided as per the advertisement it amounts to breach of contract and as such there arises a legal issue of breach of contract. In the issue stated and based on the problem the customer can sue against the travel agency. But as per Australian law, the breach of contract is not a criminal case. Here the travel agency has suppressed several facts like their in competency in providing services as they promised in their advertisement. And so she is subjected to pecuniary loss due to their shortages and untimely and unevenly provision of services. Issues of the case: This was the message given to Rory by the Spa: At Soothing Strokes Health Spa all our health and beauty products are 100% Australian made from 100% natural and organic plant extracts. Book our deluxe massage treatment by 5th March and receive a free massage oil package worth \$50. When in Australia Justin Timberlake loves our products and services – join him in loving them too!!” Rory is a big fan of Justin Timberlake and booked her treatment for the 4th of March, but was again disappointed. Whilst the massage was lovely, when Rory asked the staff how often Justin Timberlake had visited the Spa and what products he used, they looked at her blankly, and said they did not know what she was talking about. Also, Rory did not receive her free massage oil package. The staff was very apologetic but said that demand had been so high they had run out in the first two days of the promotion. Rory did purchase three bottles of essential oil from the Spa shop together with a bath robe which was on a

rack marked " 100% pure organic cotton, normally \$120- special sale price \$90. 00". When she took her purchases home, she discovered that fine print on the bottom of the essential oil bottles states that the oil is from China, and she has discovered a second price tag and label on the bath robe. The label indicates that the robes are a nylon/cotton mix and the price tag puts the original price at \$75. 00. Rory is furious. A statement has now also been publicly released by Justin Timberlake that he has never tried nor endorsed the products or services of Soothing Strokes Health Spa. Advise Rory of any action she may take, against whom she may take it and the possible remedies. The Spa centre claimed special offers but such special offers did not eventuate and were not true thus leading to a breach of Section 52 of the Trade Practices Act. Conclusion: Any advertisement propagated through any media and if it involves a customer and service provider then it results in a contract between the advertiser and the person when the latter takes the service of the provider. If the service is not provided as per the advertisement, even the public can sue or take legal proceedings against the advertiser for the public interest. If the service is not provided as per the advertisement it amounts to a breach of contract and as such, there arises a legal issue of breach of contract. In the issue stated and based on the problem the customer can sue against the Spa. But as per Australian law, the breach of contract is not a criminal case. Here the Spa misleads the consumer by making a false representation by saying that "When in Australia Justin Timberlake loves our products and services - join him in loving them too!" And so she is subjected to pecuniary loss due to their shortages and untimely and unevenly provision of services. Comparative advertising:

Comparative advertising is a special form of advertising or a sales promotion device that compares the products or services of one company with those of other competitors. Comparative advertising is planned to highlight the advantages of the goods or services extended by the advertiser as equated to those of a competitor. The comparison is made with a view to increase the sales of the advertiser. This can be achieved either by hinting that the advertiser's product is of the same or a better quality to that of the compared product or by derogating the quality of the compared product. *Reckitt & Colman of India v. Kiwi TTK Ltd.*, 1996 PTC (16) 393. Actually an honest comparative advertisement is characterized by three distinctive features:

- It should be factual and informative;
- It should explicitly or impliedly make clear what comparison is being made;
- It should not mislead the consumers about other product or services with which comparisons might be made.

Comparative advertising when permitted:

- When good, services or even pricing plans are compared with the same products currently offered by competitors. Should not compare the price of a peak call with an off-peak call.
- The advertisement must clearly state any limitations or restrictions on the offer when compared to the competitor.

- The competitors' rates which are used must be up-to-date and correct each time the ad is run. Old rates may be misleading and so to aid the customers, the date the comparison was made must be stated.
- All the assumptions included in the comparison, such as the call length, zone and time it was made must be included.
- It should be clearly stated that comparisons are examples only and that they may not apply to all callers' patterns of use.
- All figures should be checked and re-checked.

Breach of Act due to comparative advertisement: Circumstances in which misleading or deceptive conduct is alleged:

- Comparative advertising where the comparisons made are unfair or untrue:

Case: Eveready Australia Pty Ltd v Gillette Australia Pty Ltd [1999] FCA 1824;

- Similar business names:

Case: Targetts Pty Ltd v Target Australia Pty Ltd (1993) ATPR 41-231;

- Character advertising:

Case: Pacific Dunlop Ltd v Hogan (1989) 23 FCR 553; Reference: Bannerman, R. M. (Ronald Moore), 1921, Trade practices act 1974 : a short summary of the provisions of the trade practices act 1974, Turner, A. C. T.