



# Advertising and selling guide

## Misleading or deceptive conduct

It is illegal for a business to engage in conduct that misleads or deceives or is likely to mislead or deceive consumers or other businesses. This law applies even if you did not intend to mislead or deceive anyone or no one has suffered any loss or damage as a result of your conduct.

Related information: [False or misleading claims](#)

Legislation: [Australian Consumer Law section 18](#)

### Impressions

It is important to look at how the behaviour of the business affects the audience's impression of a good or service. When deciding if conduct is misleading or deceptive, or likely to mislead or deceive, the most important question to ask is whether the overall impression created by your conduct is false or inaccurate.

While a business is not required to disclose information in all circumstances, there will be situations where a business must provide information to avoid engaging in misleading or deceptive conduct. You should disclose additional information to your customer or another business where it is likely that your other conduct has created a misleading impression, or where it is reasonable to expect that this information will be disclosed.

**Example:** A customer is deciding whether to buy a new photo printing device and seeks advice from the electronic section of a department store. The customer mentions the brand of computer they have and buys the photo printing device on the advice of the retailer. However, the device is not compatible with the customer's computer.

The retail assistant knew it was not compatible yet did not advise the customer about this. His conduct might be considered misleading by silence or omission as he did not disclose information that would have significantly changed the customer's mind about buying the product.

**Real case study:** An internet company offered ‘unlimited’ download plans for users who signed up to their services. However, the plans were subject to major limitations including speed reductions when a certain amount of data was downloaded. The court found that the use of the term ‘unlimited’ in relation to plans that were subject to major limitations that were not disclosed was misleading and deceptive.

Case law: [Full Federal Court - \[2012\] FCAFC 20](#)

Media release: [Full Federal Court orders internet company to pay \\$3.6 million penalty](#)

## ‘Free’

Businesses should be particularly careful of the use of the word ‘free’. The idea of getting goods or services without charge can create keen interest in consumers. Consumers will usually think of ‘free’ as absolutely free - a justifiable expectation.

Simply put, businesses may get into trouble with free offers if they do not reveal the complete truth, including any conditions that the consumer must comply with.

**Example:** A business uses the phrase ‘10 per cent free’ – meaning the price to the consumer is the same but they receive an additional ‘free’ volume of the product. If the price of the product has been increased this could be misleading, because the additional volume is not actually free.

**Example:** A business makes a ‘buy one, get one free’ offer, but raises the price of the first item to largely cover the cost of the second (free) item. This is likely to be misleading or deceptive.

## The circumstances

Whether conduct is misleading or deceptive will depend on the factors surrounding the conduct. This means that all relevant circumstances will be taken into consideration, such as the entire advertisement, product label or statements made by a sales representative. Fine print, contradictory statements and images that obscure or alter written statements are all taken into account.

## Know your audience

Whether any marketing and promotional activities are misleading or deceptive may depend on the audience that receives the message. Businesses must remember that the consumers an advertising campaign targets may be very different to the audience that

actually receives the message. You should identify your potential audience as this will help you determine the impact of your message. For example, television or radio advertisements are likely to have a wider reach than claims made by your sales staff.

## Puffery

Puffery is a term used to describe wildly exaggerated, fanciful or vague claims about a good or service that no one could possibly treat seriously or find misleading. These statements are not considered misleading or deceptive under the ACL.

**Example:** A restaurant claims it has the ‘best steaks on earth’ and the ‘tastiest food in town’. The restaurant’s claims can be considered puffery as they are unlikely to mislead customers.



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