
DRAFT STATUTORY INSTRUMENTS

2008 No.

The Consumer Protection from
Unfair Trading Regulations 2008

PART 2

PROHIBITIONS

Prohibition of unfair commercial practices

- 3.**—(1) Unfair commercial practices are prohibited.
- (2) Paragraphs (3) and (4) set out the circumstances when a commercial practice is unfair.
- (3) A commercial practice is unfair if—
- (a) it contravenes the requirements of professional diligence; and
 - (b) it materially distorts or is likely to materially distort the economic behaviour of the average consumer with regard to the product.
- (4) A commercial practice is unfair if—
- (a) it is a misleading action under the provisions of regulation 5;
 - (b) it is a misleading omission under the provisions of regulation 6;
 - (c) it is aggressive under the provisions of regulation 7; or
 - (d) it is listed in Schedule 1.

Prohibition of the promotion of unfair commercial practices

4. The promotion of any unfair commercial practice by a code owner in a code of conduct is prohibited.

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).

Misleading omissions

6.—(1) A commercial practice is a misleading omission if, in its factual context, taking account of the matters in paragraph (2)—

- (a) the commercial practice omits material information,
- (b) the commercial practice hides material information,
- (c) the commercial practice provides material information in a manner which is unclear, unintelligible, ambiguous or untimely, or
- (d) the commercial practice fails to identify its commercial intent, unless this is already apparent from the context,

and as a result it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(2) The matters referred to in paragraph (1) are—

- (a) all the features and circumstances of the commercial practice;
- (b) the limitations of the medium used to communicate the commercial practice (including limitations of space or time); and
- (c) where the medium used to communicate the commercial practice imposes limitations of space or time, any measures taken by the trader to make the information available to consumers by other means.

(3) In paragraph (1) “material information” means—

- (a) the information which the average consumer needs, according to the context, to take an informed transactional decision; and
- (b) any information requirement which applies in relation to a commercial communication as a result of a Community obligation.

(4) Where a commercial practice is an invitation to purchase, the following information will be material if not already apparent from the context in addition to any other information which is material information under paragraph (3)—

(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.

- (a) the main characteristics of the product, to the extent appropriate to the medium by which the invitation to purchase is communicated and the product;
- (b) the identity of the trader, such as his trading name, and the identity of any other trader on whose behalf the trader is acting;
- (c) the geographical address of the trader and the geographical address of any other trader on whose behalf the trader is acting;
- (d) either—
 - (i) the price, including any taxes; or
 - (ii) where the nature of the product is such that the price cannot reasonably be calculated in advance, the manner in which the price is calculated;
- (e) where appropriate, either—
 - (i) all additional freight, delivery or postal charges; or
 - (ii) where such charges cannot reasonably be calculated in advance, the fact that such charges may be payable;
- (f) the following matters where they depart from the requirements of professional diligence—
 - (i) arrangements for payment,
 - (ii) arrangements for delivery,
 - (iii) arrangements for performance,
 - (iv) complaint handling policy;
- (g) for products and transactions involving a right of withdrawal or cancellation, the existence of such a right.

Aggressive commercial practices

7.—(1) A commercial practice is aggressive if, in its factual context, taking account of all of its features and circumstances—

- (a) it significantly impairs or is likely significantly to impair the average consumer’s freedom of choice or conduct in relation to the product concerned through the use of harassment, coercion or undue influence; and
- (b) it thereby causes or is likely to cause him to take a transactional decision he would not have taken otherwise.

(2) In determining whether a commercial practice uses harassment, coercion or undue influence account shall be taken of—

- (a) its timing, location, nature or persistence;
- (b) the use of threatening or abusive language or behaviour;
- (c) the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer’s judgment, of which the trader is aware, to influence the consumer’s decision with regard to the product;
- (d) any onerous or disproportionate non-contractual barrier imposed by the trader where a consumer wishes to exercise rights under the contract, including rights to terminate a contract or to switch to another product or another trader; and
- (e) any threat to take any action which cannot legally be taken.

(3) In this regulation—

- (a) “coercion” includes the use of physical force; and

- (b) “undue influence” means exploiting a position of power in relation to the consumer so as to apply pressure, even without using or threatening to use physical force, in a way which significantly limits the consumer’s ability to make an informed decision.