

Factsheet No. 20

Misleading or deceptive conduct



This factsheet looks at the law covering misleading or deceptive conduct.

- What is misleading or deceptive conduct?
- Key questions to ask
- How is misleading or deceptive conduct tested?
- What are some examples of misleading and deceptive conduct?
- What is puffery?
- What remedies are available?
- Further information

Under the Australian Consumer Law, it is illegal for a person to engage in conduct which is misleading or deceptive or likely to mislead or deceive.

What is misleading or deceptive conduct?

Conduct is misleading or deceptive if it leads, or is capable of leading a person into error. Where the overall impression created by the conduct is false or inaccurate, it may be misleading or deceptive.

However, generally conduct that misleads or deceives a gullible person is unlikely to be regarded as misleading or deceptive.

The word "conduct" covers a broad range of activities, including:

- statements made in writing (eg advertisements, contracts)
- statements made orally (eg negotiations, a sales pitch conversation)
- remaining silent in some circumstances

Key questions to ask

When considering whether something is misleading or deceptive the following four

questions should be asked:

- 1) What is the conduct and what are all the relevant facts?
- 2) Who is the conduct aimed at (the audience)?
- 3) What are the overall impressions the conduct will give the audience?
- 4) Is it likely those impressions will lead the audience into error?

How is misleading or deceptive conduct tested?

The effect of the conduct will be tested with respect to ordinary or reasonable members of the section of the community towards whom the conduct was directed. Conduct directed towards identified individuals can be evaluated by referring to those individuals.

What are some examples of misleading and deceptive conduct?

Misleading or deceptive conduct may arise in a range of circumstances. Some examples include:

- **Comparative advertising** – where a company incorrectly compares the features of its products against its competitor's products
- **Pricing advertising** – eg where an advertisement contains "was/now" pricing but the product was never sold at the "was" price
- **Disclaimers and small print** – where fine print disclaimers which materially change the overall message are not prominently displayed
- **Passing off** – where a company attempts to "mimic" another company's products to trick the customer into believing it is the same product

- **Representations about the future** – where a person makes a representation about a future matter without reasonable grounds for doing so at the time the representation is made
- **Silence** – where there is a failure to disclose important or relevant information
- **Product labelling** – where packaging or labelling provides incorrect information or claims about a product

What is puffery?

In commercial dealings, a certain amount of exaggeration or "puffery" is to be expected. For example, a bakery might claim it sells "the best pies on Earth".

Puffery is generally not considered to be misleading or deceptive.

What remedies are available?

A range of remedies are available to address misleading or deceptive conduct, including: injunctions, damages and compensatory orders.

Further information

For further information you may visit the websites of the [Office of Fair Trading](#) or the [Australian Competition and Consumer Commission](#).

If you need advice on to how proceed with a complaint contact your nearest community legal centre or the Legal Aid Commission.

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This factsheet is no substitute for legal advice. If you have a problem please seek legal advice from your local community legal centre

