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Price advertising and the travel industry





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Australian Competition and Consumer Commission
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Important notice

This publication is designed to give you basic information. It does not cover the whole of the Trade Practices Act and is not a substitute for professional advice.

Because it avoids legal language where possible, there may be some generalisations about the application of the Act. Some of the provisions referred to have exceptions or important qualifications. In most cases the particular circumstances of the conduct need to be taken into account when determining the application of the Act.

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Introduction

The travel industry, like many others, relies on advertising to promote its products and services. Price is usually a major consideration when consumers are buying travel or planning their holidays. This means that close attention is paid to any price representations made in advertisements, whether they appear on the television, in a brochure or newspaper or on a website.

Accurate price representations are not just good advertising practice. The *Trade Practices Act 1974* (the TPA) requires that your advertising correctly represents the product for sale, including its price and any inclusions or exclusions. It applies equally to all types of travel—from a five-star luxury holiday to a budget backpacker travel package. This enables consumers to make informed purchasing decisions when making travel arrangements and purchasing a holiday, including the choice of upgrades, airfares, duration of the trip, any tours, transfers or other inclusions, fees, charges, terms and conditions—and the total price.

This publication provides practical guidance on ways you can ensure your travel advertisements, and particularly any price representations you make in them, comply with the TPA. Some recent changes to the TPA require you to provide greater clarity in price representations you make to consumers. The publication will tell you about the TPA and provide tips, checklists and examples to assist you to understand how the law applies to your business and industry practice more generally.

Advertising practices

When you are making price representations in advertisements for travel, certain advertising practices should be used with caution, while others are prohibited. It is important that you understand the difference between these types of practices, and the boundaries of the law. It is also important to remember that compliance with the TPA must be met overall. The fact that you may have complied with one provision does not necessarily mean you have met all your obligations under the law.

Price advertising and the travel industry will tell you about:

- advertising practices to use with caution—
 - component pricing
 - disclaimers
 - discount pricing (or two-price advertising)
- prohibited advertising practices—
 - misleading and deceptive conduct
 - false or misleading representations
 - bait advertising
- advertising mediums—
 - electronic audiovisual
 - print
 - electronic audio–radio.

1. Advertising practices you should exercise caution in using

Component pricing

Component pricing is where a business represents the cost of a good or service to consumers in, or as the sum of, multiple component parts. Where no total figure or sum is given, such practices may mean consumers are not aware of the total price they will be required to pay to obtain that good or service. Potentially, they will be left with the impression that it is being offered at a lower price than it actually is.

The rules for component pricing are contained in s. 53C of the TPA, which has recently been amended. Changes coming into effect from 25 May 2009 mean that, if you choose to use component pricing in your advertising, you must also provide consumers with a prominent single (total) price for goods or services—as it is able to be quantified at the time you make a price representation. This price must also be stated in a prominent way and be at least as prominent as the most prominent component.

What is the single price and how do I calculate it?

The single price means the minimum total cost that is able to be quantified (or calculated) at the time of making the representation for a consumer to purchase (and later use) the travel. An amount is quantifiable if it can be readily converted into a dollar amount. If it is subject to variation (such as fluctuations in currency or potential changes to government or other statutory charges) you are to calculate it based on information available *at that time* and clearly advise consumers that it may be subject to change. Each of the components should then be totalled. Under the TPA, there are certain components you are required to include, and others that are excluded or that you may chose to exclude.

Components you are required to include are:

- charges of any description payable by a consumer to book and purchase the travel
- a tax, duty, fee, levy or charge payable by the consumer for the supply (and use) of the travel.

Components you do not need to include are:

- optional extras—additional charges a consumer may choose to pay
- sending charges—charges for sending or delivering goods need to be specified, or you may choose to include them in the total price
- any components which are not 'quantifiable'
- amounts your business pays to a third party that are not passed on to the consumer.

There are some exceptions to the component pricing rule. One is where you make a representation exclusively to a business. For example, a ski resort provides a travel agency (via email to the CEO) with a wholesale price list for accommodation, ski hire, transfers, lessons and lift passes for the coming ski season. The travel agent then adds a commission to this base cost, with the total being advertised to consumers. The email to the CEO falls within this exception, while the price advertised to consumers needs to comply with s. 53C.

Another, slightly different, exception applies when services are supplied under contract (for a term) that also provides for periodic payments. For representations made exclusively to a business, there is no obligation to include a single price. However, if you are supplying services under a term contract (with periodic payments), you must still include a single price in a prominent way, although that does not need to be as **prominent** as any other component.

What does 'prominent way' mean?

A prominent single price is one that:

- stands out so that it is easily seen by a consumer
- is clear, eye-catching and very noticeable.

You should consider factors such as the size, placement, colour and font of the price, as well as the background of the advertisement—relative to the medium you are using.

Component pricing

- The single price must include all components that you are able to quantify when you make the price representation.
- If you are not able to quantify a component, you need to be able to substantiate why.
- Where some components may vary, or are not able to be quantified at the time, you need to state the total *as it is able to be calculated*—but remember, the fact that a price may be subject to change does not mean that it is not able to be quantified.
- Consumers must be clearly advised of any components that are excluded or may vary.
- The single price will typically be for the base of a holiday package or travel (without any optional extras).
- Advertisements that do not contain any price representations do not need to comply with s. 53C, but they do need to comply with the TPA.

A 10-day holiday package to Hawaii is advertised as:

10-Day Get Hot in Hawaii package - \$799

(airfare) + \$1300 (accommodation including buffet breakfasts daily) +
\$1000 (taxes & charges)
for a total price of \$3099*

*price quoted per person based on twin share;
airfare quoted departs from Sydney, other cities may cost more

EXAMPLE

The advertisement uses component pricing and does provide a single price. However, because of the size, font, style, background and placement of the total (\$3099)—it is not able to be as easily identified as the most prominent component (\$799) and is unlikely to comply with s. 53C. The disclaimer stating that the price applies per person twin share and the airfare quoted is for departure from Sydney is also likely to raise concerns under the TPA.

It does not matter that the component amounts of the 'Get hot in Hawaii' package vary in terms of colour, font size etc. It is the most prominent component which is to be used as the point for comparison. The disclaimers also need to be readily and clearly identifiable by a consumer.

Disclaimers

Disclaimers in advertisements are often marked with an asterisk (*) followed by any conditions or limitations that apply. You should ensure that disclaimers are only used to explain a price representation in further depth. They should not be used as an attempt to correct a misleading impression that may be created by the advertisement as a whole. General disclaimers such as ‘terms and conditions apply’ should be used with caution and *not* to conceal important information. If you use terms like this, any important qualifiers should be spelt out in the main message.

You must also ensure that the disclaimer is effective. This means that it must be:

- able to be readily identified by a consumer
- placed close to the main price representation
- clear in meaning.

You need to consider the medium in which each price representation (and disclaimer) is made—looking at the size, location and detail of the fine print in relation to the headline travel advertisement. Remember, a consumer should not need to extensively search the advertisement or pages of a brochure for additional disclaimer information. It is your responsibility to ensure that consumers are clearly directed to and made aware of any fundamental terms and conditions that relate to the travel advertised.

Discount pricing (or two-price advertising)

Discount pricing involves a comparison of two prices—commonly taking the form of ‘was/now’ pricing, and is also often referred to as two-price advertising. If you use this type of pricing practice, you need to ensure that any comparison drawn is genuine and accurately reflects the previous (most recent) price with the discounted amount.

The following checklist will help you to use discount pricing legitimately.

Discount pricing checklist

- A ‘was’ or most recent price needs to be the price at which the travel advertised was readily accessible by consumers. It must be offered in a sufficient and reasonable number and for a reasonable time before being discounted—you need to be able to substantiate the offer.
- Any previous price should be genuine and not inflated, so the discount is real.
- A discounted price or special offer should only be available for a limited time.
- A discount that is offered for a lengthy period of time effectively becomes the new price, so continuing to use two-price advertising will not reflect a genuine discount to consumers.

EXAMPLE

A travel agency increases the price for all package holidays to Asia as part of an ‘Escape to Asia’ campaign, then crosses this amount out as a ‘was’ price, while putting the previous price as the ‘now’ price. The holiday was never advertised at the increased price. One package stated:

Escape to Asia

– 7 nights incl. airfare, accomm, transfers, taxes and charges*

Was \$2990 – Now \$1990

*taxes and charges subject to change due to currency fluctuations

This gives consumers the impression that the holiday packages, part of the campaign, are genuinely discounted, when in fact the reduction was misleading and is likely to breach the TPA.

2. Prohibited advertising practices

Misleading and deceptive conduct

Misleading and deceptive conduct—whether it actually misleads or is likely to mislead—is prohibited by the TPA. When you are advertising travel, it is important that the overall impression created by your ad is an accurate one. This includes any representations, written or pictorial, about the price, inclusions and exclusions, restriction on dates of travel, departure airports and any other essential information. These rules apply to not only the advertisement itself but also any other representations you make to a consumer when they are considering purchasing travel. This may include, for example, negotiations that are made in person.

What is misleading or deceptive conduct?

Misleading or deceiving someone is leading them into error (or being likely to) and includes conduct such as:

- lying
- leading to a wrong conclusion
- creating a false impression
- leaving out (or hiding) important information
- making false or inaccurate claims.

Whether you intend to do this or not is irrelevant—the prohibition can be breached by both deliberate and inadvertent conduct. It is also very broad in scope and will be determined largely on a case-by-case basis.

The following checklist will assist you to limit your likelihood of misleading or deceiving consumers.

Checklist to reduce the risk of misleading consumers

- Sell goods and services (including travel and any other extras) on their merits.
- Be honest about what you say and do commercially.
- Look at the overall impression of your advertisement: Who is the audience and what is the advertisement likely to mean to them? Remember, at minimum, it is the viewpoint of a layperson with little or no knowledge or experience in travel that should be considered.

EXAMPLE

21-day deluxe Europe extravaganza – \$12 990

Includes airmfares, accommodation, transfers, taxes and charges

**Be quick – bookings made before June
receive 3 bonus day tours**

Contact your local travel agent today!!

The advertised price of \$12 990 is based on a per person rate, quad share in standard (not deluxe) accommodation. The three bonus tours also only apply for bookings made before June, and where another three or more tours are booked. No mention of these conditions is made in the advertisement. Consumers are advised of this when they contact their local travel agent to obtain further information and make a booking.

This type of advertising is likely to mislead consumers by describing the tour as 'deluxe' when the accommodation is standard. Additionally, both the price quoted being per person (which is actually quad share) and the 'bonus' of three tours for bookings made before June (which is in fact conditional on a minimum of three further tours being booked) are also likely to mislead consumers.

False or misleading representations

The TPA also contains more specific prohibitions on making *false* representations. A false representation is one that is incorrect or contrary to fact. As with the prohibition of misleading conduct, your intention is irrelevant. You may breach these provisions regardless of whether your actions were deliberate or whether you did not know the representation was false at the time of making it.

It is important for you to think about whether you could be (or are) creating a wrong impression in the mind of a consumer when you are making representations about:

- future matters (where you have no reasonable grounds for doing so)
- the characteristics of the travel you are selling—including, for example, accommodation ratings or features and the quality or superiority of one airline over another
- the price of the travel or package
- the buyer's need for additional components, including travel insurance or transfers
- the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.

The checklist on page 10 will assist you to minimise the risk of making misrepresentations about travel.

Bait advertising

The TPA prohibits you from advertising travel at a specified (often discounted) price if you are aware or should reasonably have been aware that you would not be able to supply the travel at that price—in reasonable quantities and for a reasonable period. Bait advertising occurs when travel is advertised at an attractive 'bait' price but, when the consumer goes to make a booking and purchase the product, is it not available and the agent seeks to switch the consumer to a higher priced or differently optioned alternative. Consumers need to be given a reasonable chance of actually purchasing the travel on special offer. The promotion must be valid for a reasonable time after the representation is made to a reasonable number of consumers.

You can reduce your risk of engaging in bait advertising by applying the following checklist to your business practices.

Checklist to reduce your risk of bait advertising

- With any promotion, ensure that the travel advertised is available in reasonable quantities at the total price for a reasonable period.
- Do your research so that you are able to anticipate demand as much as possible—based on previous promotions or other market data.
- Where you have genuinely misjudged demand and are unable to supply the travel as per the advertisement immediately, you should offer the consumer a reasonable alternative.
 - A reasonable alternative may include a raincheck so that the travel is able to be purchased but will be for a later date that may extend beyond the promotion period (although within reasonable time). You need to ensure that the consumer is in the same position as he or she would have been had you been able to supply the travel adequately.

EXAMPLE

For WINE LOVERS—delight your senses with a coach tour of New Zealand’s world-renowned wine region!

Packages start at **\$1399** per couple for 4 nights including all travel and transfers, accommodation, breakfast daily, taxes and charges* and free wine tour!

*taxes and charges may be subject to currency fluctuations

The above package is advertised as part of a ‘Discover New Zealand Wines’ promotion. However, when consumers approach their local agency to enquire further, they are told that the package was only offered as a once off—for a single coach tour which had very quickly sold out.

The agents then try to sell the consumer seats on a similar, but more expensive, tour or suggest an alternative ‘put together your own private wine package’ promotion. This private package is for a minimum of 10 nights with a choice of locations, accommodation and transport options, and a private chauffeur. The starting price of the private package is also at a much greater cost than the advertised coach tour special.

The agent’s conduct is likely to amount to bait advertising and breach the TPA.

3. Advertising mediums

The travel industry uses a wide range of advertising mediums—television advertisements, print brochures, pamphlets, in-store signs and internet advertising. Regardless of which medium you use, the TPA applies. It is also important to be aware that some of these forms of media requires you to take extra care in your travel advertisements to minimise the likelihood of a breach of the TPA.

The following tips will help you to achieve this.

For electronic audio visual (including television, cinema and the internet)

- The point size of a visual disclaimer must be clearly readable in that context and remain on screen for sufficient time to be noticed and read.
- A disclaimer must also be made in close proximity to the main representation.
- It should not be assumed that a consumer will read through an entire internet advertisement if it involves scrolling through more than one screen. Repeating disclosure for a lengthy advertisement may assist here.
- Material terms and conditions should be prominently displayed.

Print advertisements (includes press, point of sale and billboards)

- The font type and point size of a disclaimer must be clear and able to be read in the context in which it appears. You should also consider the degree to which the font contrasts against the background of the advertisement
- A disclaimer must also be made in close proximity to the main representation.
- Material terms and conditions should be prominently displayed.

Electronic audio media (such as radio)

- The disclaimer should be clearly stated in close proximity to the main representation, so that it can be reasonably understood.
- Material terms and conditions should also be given clearly.

Additional obligations

As a website potentially provides access to a worldwide audience, you should be aware that your business may be subject to the consumer protection laws of the countries where your website may be viewed. Where you link to another website, you also need to be sure that consumers will not be confused about the source, affiliation or connection between the linked companies or their goods or services.

Contacting the ACCC

Infocentre: 1300 302 502

Small business helpline: 1300 302 021

Callers who are deaf or have a hearing or speech impaired can contact the ACCC through the National Relay Service: www.relayservice.com.au.

Voice-only (speak and listen) user—phone 1300 555 727 and ask for 1300 302 502.

Website: www.accc.gov.au

For other business information, go to www.business.gov.au.

