

Importance of the Consumer Protection Act

It is important that all businesses (including pharmacies) have a good understanding of the Consumer Protection Act 2007 (“the Act”) because it impacts on their relationship with consumers.



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The Act applies to a “consumer transaction” which is defined as being the promotion or supply of goods/services to a consumer. A commercial practice is “any conduct (whether an act or omission), course of conduct or representation by the trader in relation to a consumer transaction, including any such conduct or representation made or engaged in, before, during or after the consumer transaction”. A “representation” is very broad, ranging from any oral, written, visual, descriptive or other representation (including any commercial, marketing or advertising communications) to any term or form of a contract, notice or other document used or relied on by a trader to promote or supply goods/services.

Under the Act, it is an offence to engage in unfair, misleading, aggressive and prohibited commercial practices.

What is unfair commercial practice?

A commercial practice is unfair if it falls below the standards expected of a trader and is likely to distort the economic behaviour of an average consumer (that is, impairing the ability of the consumer to make an informed choice and causing them to make a transaction they would not otherwise have made).

When is commercial practice misleading?

A commercial practice is misleading, if it includes the provision of false information. Even if factually accurate, it can still be a misleading commercial practice, if it is likely to deceive the average consumer. A practice can also be misleading, if it is likely to cause the average consumer to confuse a

competitor’s goods/services or trade mark with that of the trader. It is also misleading, if the trader omits or conceals material information that a consumer would need to make an informed decision or provides material information in an unclear, unintelligible, ambiguous or untimely manner. When deciding whether a practice is misleading, the practice shall be considered in its factual context, taking account of all of its features and circumstances. In the case of pricing, if a commercial practice involves a representation or creates an impression that goods/services were previously offered at a different price or at a particular price, consideration would be given as to whether the goods/services were previously offered openly and in good faith at that price and at the same place for a reasonable period of time before the representation was made. Furthermore, if a commercial practice involves a representation or creates an impression that goods/services were offered at or below a price recommended by the manufacturer/supplier, consideration will be given as to whether the price was one recommended in good faith by the manufacturer/supplier.

What is aggressive commercial practice?

A commercial practice is aggressive if, by harassment, coercion or undue influence, it impairs the consumer’s freedom of choice/conduct and causes them to make a decision they would otherwise not have made.

What are prohibited commercial activities?

There are 25 activities listed in Section 55(1) of the Act (such as making a representation that the trader is about to cease trading or move premises if the trader is not; making a representation that goods/services have an approval, authorisation or endorsement that they do not have; displaying a trade mark without the consent of its owner; making a representation that a product can cure an illness, dysfunction or malformation if it cannot) which are deemed prohibited commercial practices.

If a business breaches the Act, what are the penalties?

A breach of the Act can result in civil or criminal proceedings being instituted and fines imposed. In addition, a company can be named and shamed, appearing on the National Consumer Agency's "Consumer Protection List" which can

be inspected on its website (see www.consumerconnect.ie).

The role of the National Consumer Agency ("NCA") is to defend consumer rights, which is achieved through advocacy, targeted research, consumer information, education, and awareness programmes as well as through the systematic enforcement of consumer legislation. The NCA's approach is to promote voluntary compliance and if this is not possible, to take appropriate measures to ensure that consumers are protected. These measures can include not only prosecuting the trader but also imposing on the spot fines, issuing compliance notices or seeking written undertakings that a trader will comply with the requirements of the Act.

Since breaching the Act can have financial and legal consequences, it is vital that pharmacies have a good understanding of the Act in order to avoid falling foul of its provisions. Pharmacies should therefore review their practices to ensure that they are not unfair, misleading, aggressive or prohibited.

Conclusion

As the above is only a brief overview, pharmacists should seek legal advice, if they are unclear as to their legal obligations.

This article has been written by Maureen Daly. Maureen is Partner and Head of Technology & Intellectual Property at Beauchamps Solicitors and advises on all aspects of technology and intellectual property matters as well as on consumer law and on legal issues relating to advertising and marketing. While all care has been taken in the preparation of this article, no responsibility is accepted for its content which is intended for general information purposes. If you have any queries or would like to discuss any of the issues raised, please do not hesitate to contact Maureen at Beauchamps Solicitors, Riverside Two, Sir John Rogerson's Quay, Dublin 2. Tel: 01-4180600 or email: m.daly@beauchamps.ie.