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ข้อบังคับว่าด้วยการคุ้มครองธุรกิจจากการทำการตลาดโดยการหลอกลวง

ค.ศ. 2008

2008 No. 1276

TRADE DESCRIPTIONS

The Business Protection from Misleading Marketing

Regulations 2008

Made - - - - 8th May 2008

Coming into force - - 26th May 2008

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the control of advertising, makes the following Regulations in exercise of the powers conferred upon him by section 2(2) of that Act;

In accordance with paragraph 2(2) of Schedule 2 to that Act(c), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

DEFINITIONS AND PROHIBITIONS

Citation and Commencement

1. These Regulations may be cited as the Business Protection from Misleading Marketing Regulations 2008 and shall come into force on 26th May 2008.

Interpretation

2.— (1) In these Regulations—

“advertising” means any form of representation which is made in connection with a trade, business, craft or profession in order to promote the supply or transfer of a product and “advertiser” shall be construed accordingly;

Prohibition of advertising which misleads traders

3.— (1) Advertising which is misleading is prohibited.

(2) Advertising is misleading which—

(a) in any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches; and by reason of its deceptive nature, is likely to affect their economic behaviour; or

(b) for those reasons, injures or is likely to injure a competitor.

(3) In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning—

- (a) the characteristics of the product (as defined in paragraph (4));
- (b) the price or manner in which the price is calculated;
- (c) the conditions on which the product is supplied or provided; and
- (d) the nature, attributes and rights of the advertiser (as defined in paragraph (5)).

(4) In paragraph (3)(a) the “characteristics of the product” include—

- (a) availability of the product;
- (b) nature of the product;
- (c) execution of the product;
- (d) composition of the product;
- (e) method and date of manufacture of the product;
- (f) method and date of provision of the product;
- (g) fitness for purpose of the product;
- (h) uses of the product;
- (i) quantity of the product;
- (j) specification of the product;
- (k) geographical or commercial origin of the product;
- (l) results to be expected from use of the product; or
- (m) results and material features of tests or checks carried out on the product.

(5) In paragraph (3)(d) the “nature, attributes and rights” of the advertiser include the advertiser’s—

- (a) identity;
- (b) assets;
- (c) qualifications;
- (d) ownership of industrial, commercial or intellectual property rights; or
- (e) awards and distinctions.

PART 2
OFFENCES

Misleading advertising

6. A trader is guilty of an offence if he engages in advertising which is misleading under Regulation 3.

Penalty for offence under Regulation 6

7. A person guilty of an offence under Regulation 6 shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

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ข้อบังคับว่าด้วยการคุ้มครองผู้บริโภคจากการค้าที่ไม่เป็นธรรม ค.ศ. 2008

2008 No. 1277

CONSUMER PROTECTION

The Consumer Protection from Unfair Trading Regulations 2008

Made - - - - 8th May 2008

Coming into force - - 26th May 2008

The Secretary of State, being a Minister designated^(a) for the purposes of section 2(2) of the European Communities Act 1972^(b) in relation to measures relating to consumer protection and to the control of advertising, makes the following Regulations in exercise of the powers conferred upon him by section 2(2) of that Act;

In accordance with paragraph 2(2) of Schedule 2 to that Act^(c), a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

PART 1

GENERAL

Citation and commencement

1. These Regulations may be cited as the Consumer Protection from Unfair Trading Regulations 2008 and shall come into force on 26th May 2008.

Interpretation

2.— (1) In these Regulations—

“commercial practice” means any act, omission, course of conduct, representation or commercial communication (including advertising and marketing) by a trader, which is directly connected with the promotion, sale or supply of a product to or from consumers, whether occurring before, during or after a commercial transaction (if any) in relation to a product;

“consumer” means any individual who in relation to a commercial practice is acting or purposes which are outside his business;

“OFT” means the Office of Fair Trading;

“trader” means any person who in relation to a commercial practice is acting for purposes relating to his business, and anyone acting in the name of or on behalf of a trader;

“transactional decision” means any decision taken by a consumer, whether it is to act or to refrain from acting, concerning—

(a) whether, how and on what terms to purchase, make payment in whole or in part for, retain or dispose of a product; or

(b) whether, how and on what terms to exercise a contractual right in relation to a product.

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.

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.

PART 3

OFFENCES

9. A trader is guilty of an offence if he engages in a commercial practice which is a misleading action under Regulation 5 otherwise than by reason of the commercial practice satisfying the condition in Regulation 5(3)(b).

Penalty for offences

13. A person guilty of an offence under Regulation 8, 9, 10, 11 or 12 shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or both.

Offence due to the default of another person

16.— (1) This Regulation applies where a person “X”—

(a) commits an offence under Regulation 9, 10, 11 or 12, or

(b) would have committed an offence under those Regulations but for a defence under Regulation 17 or 18, and the commission of the offence, or of what would have been an offence but for X being able to rely on a defence under Regulation 17 or 18, is due to the act or default of some other person “Y”.

(2) Where this Regulation applies Y is guilty of the offence, subject to Regulations 17 and 18, whether or not Y is a trader and whether or not Y’s act or default is a commercial practice.

(3) Y may be charged with and convicted of the offence by virtue of paragraph (2) whether or not proceedings are taken against X.

Due diligence defence

17.— (1) In any proceedings against a person for an offence under Regulation 9, 10, 11 or 12 it is a defence for that person to prove—

(a) that the commission of the offence was due to—

(i) a mistake;

(ii) reliance on information supplied to him by another person;

(iii) the act or default of another person;

(iv) an accident; or

(v) another cause beyond his control; and

(b) that he took all reasonable precautions and exercised all due diligence

(2) A person shall not be entitled to rely on the defence provided by paragraph (1) by reason of the matters referred to in paragraph (ii) or (iii) of paragraph (1)(a) without leave of the court unless—

(a) he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was in his possession; and

(b) the notice is served on the prosecutor at least seven clear days before the date of the hearing.

Innocent publication of advertisement defence

18.— (1) In any proceedings against a person for an offence under Regulation 9, 10, 11 or 12 committed by the publication of an advertisement it shall be a defence for a person to prove that—

(a) he is a person whose business it is to publish or to arrange for the publication of advertisements;

(b) he received the advertisement for publication in the ordinary course of business; and

(c) he did not know and had no reason to suspect that its publication would amount to an offence under the Regulation to which the proceedings relate.

(2) In paragraph (1) “advertisement” includes a catalogue, a circular and a price list.

PART 4

ENFORCEMENT

Duty to enforce

19.— (1) It shall be the duty of every enforcement authority to enforce these Regulations.

(2) Where the enforcement authority is a local weights and measures authority the duty referred to in paragraph (1) shall apply to the enforcement of these Regulations within the authority’s area.

(3) Where the enforcement authority is the Department of Enterprise, Trade and Investment in Northern Ireland the duty referred to in paragraph (1) shall apply to the enforcement of these Regulations within Northern Ireland.

(4) In determining how to comply with its duty of enforcement every enforcement authority shall have regard to the desirability of encouraging control of unfair commercial practices by such established means as it considers appropriate having regard to all the circumstances of the particular case.

(5) Nothing in this Regulation shall authorise any enforcement authority to bring proceedings in Scotland for an offence.

PART 5
SUPPLEMENTARY

Validity of agreements

29. An agreement shall not be void or unenforceable by reason only of a breach of these Regulations.

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ข้อบังคับว่าด้วยการคุ้มครองผู้บริโภคฉบับแก้ไขเพิ่มเติม ค.ศ. 2014

2014 No. 870**CONSUMER PROTECTION**

The Consumer Protection (Amendment) Regulations 2014

Made - - - - 31st March 2014

Laid before Parliament 1st April 2014

Coming into force in accordance with Regulation 1

The Secretary of State, as a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b), in relation to matters relating to consumer protection and to the control of advertising, makes the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and interpretation

1.— (1) These Regulations may be cited as the Consumer Protection (Amendment) Regulations 2014.

(2) Paragraph (1), this paragraph and Regulation 9 come into force on 13th June 2014 immediately before the coming into force of the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013(c) and apply in relation to contracts entered into on or after that date.

(3) The remaining provisions of these Regulations come into force on 1st October 2014 and apply in relation to contracts entered into, or payments made, on or after that date.

(4) In these Regulations “the 2008 Regulations” means the Consumer Protection from Unfair Trading Regulations 2008(d).

Amendments to Regulation 2 of the 2008 Regulations

2.— (1) Regulation 2 of the 2008 Regulations (interpretation) is amended as follows.

(2) In paragraph (1), in the definition of “business”—

(a) after “includes” insert “—(a)”, and

(b) after “profession” insert—

“; and

(b) the activities of any government department or local or public authority;”.

(3) In that paragraph, for the definition of “consumer” substitute—

““consumer” means an individual acting for purposes that are wholly or mainly outside that individual’s business;”.

(4) In that paragraph, after that definition insert—

““digital content” means data which are produced and supplied in digital form;”.

(5) In that paragraph, for the definition of “goods” substitute—

““goods” means any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for sale in a limited volume or set quantity;”.

(6) In that paragraph, for the definition of “product” substitute—

““product” means—

- (a) goods,
- (b) a service,
- (c) digital content,
- (d) immoveable property,
- (e) rights or obligations, or
- (f) a product of the kind mentioned in paragraphs (1A) and (1B),

but the application of this definition to Part 4A is subject to Regulations 27C and 27D;”.

(7) In that paragraph, for the definition of “trader” substitute—

““trader”—

(a) means a person acting for purposes relating to that person’s business, whether acting personally or through another person acting in the trader’s name or on the trader’s behalf, and

(b) except in Part 4A, includes a person acting in the name of or on behalf of a trader;”.

(8) In that paragraph, in the definition of “transactional decision”, after paragraph (b) insert “(but the application of this definition to Regulations 5 and 7 as they apply for the purposes of Part 4A is subject to Regulation 27B(2))”.

(9) After that paragraph insert—

“(1A) A trader (“T”) who demands payment from a consumer (“C”) in full or partial settlement of C’s liabilities or purported liabilities to T is to be treated for the purposes of these Regulations as offering to supply a product to C.

(1B) In such a case the product that T offers to supply comprises the full or partial settlement of those liabilities or purported liabilities.”.

New Part 4A of the 2008 Regulations

3. After Part 4 of the 2008 Regulations insert—

“PART4A

CONSUMERS’ RIGHTS TO REDRESS

27A.— (1) A consumer has a right to redress under this Part if—

- (a) the conditions in this Regulation are met, and
- (b) the conditions (if any) in the following provisions of this Part for the availability

of that right are met.

(2) The first condition is that—

(a) the consumer enters into a contract with a trader for the sale or supply of a product by the trader (a “business to consumer contract”),

(b) the consumer enters into a contract with a trader for the sale of goods to the trader (a “consumer to business contract”), or

(c) the consumer makes a payment to a trader for the supply of a product (a “consumer payment”).

(3) Paragraph (2)(b) does not apply if, under the contract, the trader supplies or agrees to supply a product to the consumer as well as paying or agreeing to pay the consumer.

(4) The second condition is that—

(a) the trader engages in a prohibited practice in relation to the product, or

(b) in a case where a consumer enters into a business to consumer contract for goods or digital content—

(i) a producer engages in a prohibited practice in relation to the goods or digital content, and

(ii) when the contract is entered into, the trader is aware of the commercial practice that constitutes the prohibited practice or could reasonably be expected to be aware of it.

(5) In paragraph (4)(b) “producer” means—

(a) a manufacturer of the goods or digital content,

- (b) an importer of the goods or digital content into the European Economic Area, or
- (c) a person who purports to be a producer by placing the person's name, trade mark or other distinctive sign on the goods or using it in connection with the digital content, and includes a producer acting personally or through another person acting in the producer's name or on the producer's behalf.

(6) The third condition is that the prohibited practice is a significant factor in the consumer's decision to enter into the contract or make the payment.

27B.— (1) In this Part “prohibited practice” means a commercial practice that—

- (a) is a misleading action under Regulation 5, or
- (b) is aggressive under Regulation 7.

(2) Regulations 5 and 7 apply for the purposes of this Part as if for the definition of “transactional decision” in Regulation 2(1) there were substituted—

““transactional decision” means any decision taken by a consumer to enter into a contract with a trader for the sale or supply of a product by the trader, or for the sale of goods to the trader, or to make a payment to a trader for the supply of a product.”

27E.— (1) A consumer has the right to unwind in respect of a business to consumer contract if the consumer indicates to the trader that the consumer rejects the product, and does so—

- (a) within the relevant period, and
- (b) at a time when the product is capable of being rejected.

(2) An indication under paragraph (1) may be something that the consumer says or does, but it must be clear.

(3) In paragraph (1)(a) “the relevant period” means the period of 90 days beginning with the later of—

- (a) the day on which the consumer enters into the contract, and
- (b) the relevant day.

(4) In this Part “the relevant day” means the day on which—

- (a) the goods are first delivered,
- (b) the performance of the service begins,
- (c) the digital content is first supplied,
- (d) the lease begins, or

(e) the right is first exercisable, (as the case may be).

(5) But in the case of a mixed contract, “the relevant day” means the latest of the days mentioned in paragraph (4) that is relevant to the contract.

(6) In this Part “mixed contract” means a contract relating to a product which consists of any two or more of goods, a service, digital content, immoveable property or rights.

(7) For the purposes of this Part, where the consumer’s access to digital content on a device requires its transmission to the device under arrangements initiated by the trader, the day on which the digital content is first provided is—

(a) the day on which it reaches the device, or

(b) if earlier, the day on which it reaches another trader chosen by the consumer to supply, under a contract with the consumer, a service by which digital content reaches the device.

(8) For the purposes of paragraph (1)(b), a product remains capable of being rejected only if—

(a) the goods have not been fully consumed,

(b) the service has not been fully performed,

(c) the digital content has not been fully consumed,

(d) the lease has not expired, or

(e) the right has not been fully exercised, (as the case may be).

(9) For the purposes of paragraph (8)—

(a) goods have been fully consumed only if nothing is left of them, and

(b) digital content has been fully consumed only if the digital content was available to the consumer for a fixed period and that period has expired.

(10) A consumer does not have the right to unwind in respect of a business to consumer contract if the consumer has exercised the right to a discount in respect of that contract and the same prohibited practice.

27F.— (1) Where a consumer has the right to unwind in respect of a business to consumer contract—

(a) the contract comes to an end so that the consumer and the trader are released from their obligations under it,

(b) the trader has a duty to give the consumer a refund (subject as follows), and

(c) if the contract was wholly or partly for the sale or supply of goods the consumer must make the goods available for collection by the trader.

(2) The consumer's entitlement to a refund works as follows.

(3) To the extent that the consumer paid money under the contract, the consumer is entitled to receive back the same amount of money (but see paragraphs (7) to (10)).

(4) To the extent that the consumer transferred anything else under the contract, the consumer is entitled to receive back the same amount of what the consumer transferred, unless paragraph (5) applies.

(5) To the extent that the consumer transferred under the contract something for which the same amount of the same thing cannot be substituted—

(a) the consumer is entitled to receive back in its original state whatever the consumer transferred, or

(b) if it cannot be given back in its original state, the consumer is entitled to be paid its market price as at the time when the product was rejected.

(6) There is no entitlement to a refund if none of paragraphs (3) to (5) applies.

(7) The consumer's entitlement to receive back the same amount of money as the consumer paid is qualified by paragraphs (8) to (10) if—

(a) the contract was for the sale or supply of a product on a regular or continuous basis, and

(b) the period beginning with the relevant day and ending with the day on which the consumer rejected the product exceeds one month.

(8) In that case the consumer is only entitled to receive back the amount (if any) found by deducting the market price, when the consumer rejected the product, of the product supplied up to that time from the amount the consumer paid for it.

(9) But paragraph (8) does not apply if it is not appropriate to apply that deduction having regard to—

(a) the behaviour of the person who engaged in the prohibited practice, and

(b) the impact of the practice on the consumer.

(10) Where the product supplied up to the time when the consumer rejected it consists wholly or partly of goods, their market price is only to be taken into account under paragraph (8) to the extent that they have been consumed.

27I.— (1) A consumer has the right to a discount in respect of a business to consumer contract if—

(a) the consumer has made one or more payments for the product to the trader or one or more payments under the contract have not been made, and

(b) the consumer has not exercised the right to unwind in respect of the contract.

(2) If the consumer has made one or more payments, the consumer has the right to receive back from the trader the relevant percentage of the payment or payments.

(3) If one or more payments have not been made, the consumer has the right—

(a) to reduce by the relevant percentage as many of those payments as is appropriate having regard to the seriousness of the prohibited practice, or

(b) in a case within paragraph (6), to reduce all of those payments by the relevant percentage.

(4) Subject to paragraph (6), the relevant percentage is as follows—

(a) if the prohibited practice is more than minor, it is 25%,

(b) if the prohibited practice is significant, it is 50%,

(c) if the prohibited practice is serious, it is 75%, and

(d) if the prohibited practice is very serious, it is 100%.

(5) The seriousness of the prohibited practice is to be assessed by reference to—

(a) the behaviour of the person who engaged in the practice,

(b) the impact of the practice on the consumer, and

(c) the time that has elapsed since the prohibited practice took place.

(6) Paragraph (5) does not apply if—

(a) the amount payable for the product under the contract exceeds £5,000,

(b) the market price of the product, at the time that the consumer entered into the contract, is lower than the amount payable for it under the contract, and

(c) there is clear evidence of the difference between the market price of the product and the amount payable for it under the contract.

(7) In such a case, the relevant percentage is the percentage difference between the market price of the product and the amount payable for it under the contract.

(8) The application of this Regulation does not affect any of the other rights and liabilities under the contract.

27J.— (1) Subject as follows, a consumer has the right to damages if the consumer—

(a) has incurred financial loss which the consumer would not have incurred if the prohibited practice in question had not taken place, or

(b) has suffered alarm, distress or physical inconvenience or discomfort which the consumer would not have suffered if the prohibited practice in question had not taken place.

(2) The right to damages is the right to be paid damages by the trader for the loss or the alarm, distress or physical inconvenience or discomfort in question.

(3) The right to be paid damages for financial loss does not include the right to be paid damages in respect of the difference between the market price of a product and the amount payable for it under a contract.

(4) The right to be paid damages under this Regulation is a right to be paid only damages in respect of loss that was reasonably foreseeable at the time of the prohibited practice.

(5) A consumer does not have the right to damages if the trader proves that—

(a) the occurrence of the prohibited practice in question was due to—

(i) a mistake,

(ii) reliance on information supplied to the trader by another person,

(iii) the act or default of a person other than the trader,

(iv) an accident, or

(v) another cause beyond the trader's control, and

(b) the trader took all reasonable precautions and exercised all due diligence to avoid the occurrence of the prohibited practice.

27K.— (1) A consumer with a right to redress under this Part may bring a claim in civil proceedings to enforce that right.

(2) In Scotland, proceedings to enforce the right to unwind may be brought before the sheriff or in the Court of Session.

(3) Paragraph (4) applies if in proceedings under this Regulation the consumer establishes that the consumer has—

- (a) the right to unwind,
- (b) the right to a discount, or
- (c) the right to damages.

(4) The court must make an order that gives effect to—

- (a) that right, and
- (b) any associated obligations of the consumer under this Part.

(5) The Limitation Act 1980(a) applies to a claim under this Regulation in England and Wales as if it were an action founded on simple contract.

(6) The Limitation (Northern Ireland) Order 1989(b) applies to a claim under this Regulation in Northern Ireland as if it were an action founded on simple contract.