

## **“Free” should mean FREE!**

During this period – the busiest shopping time of the year - traders try to attract as many customers as possible by promoting their wares through a variety of enticing schemes. Certain initiatives are fair; others however may be considered less fair or worse still, aggressive or abusive. Some rogue traders may for instance promise customers a free gift with a purchase only to clinch the sale and then refuse to stand up to their end of the bargain. The most common excuse is that stocks are out.

New EU rules established under the Unfair Commercial Practices Directive targeting misleading advertising and aggressive selling practices are intended to crack down on such abusive practices in a bid to safeguard consumers' economic interests. These strict rules, which have come into force across the EU recently, aim at preventing exploitation of consumers, particularly vulnerable ones. The Directive contains a black list of over 30 practices which are banned outright in all circumstances and must be prohibited by all the member states of the EU, irrespective of the type of customer targeted by the practice.

The lure of free stuff is a powerful marketing tool but may be utilized by savvy traders to the detriment of naive consumers. Although some free stuff offers are genuine, others may well not be. The Directive proscribes traders from falsely creating the impression of free offers by describing a products as 'free', 'gratis' or 'without charge' if the consumers is obliged to pay anything other than an initial call or delivery charge. Nor are traders allowed to falsely create the impression that there is a prize to be won with a purchase when the prize is inexistent.

Moreover, traders are not allowed to present consumers with 'special' rights when such rights are given to consumers in law. Advertising a product on the media claiming that the purchase of a product from XYZ Limited comes with a two-year guarantee if such guarantee follows from legislation is a prohibited form of advertising.

Likewise, false claims that a product is only available at a particular price for a limited time or available for a limited time only are also considered as a banned form of advertising. This is due to the fact that the effect of these practices is to deprive consumers of sufficient opportunity to make an informed choice about the purchase. Banned are therefore false adverts containing phrases like "Limited offers: special offer today only!" intended to elicit an immediate decision from the consumers to purchase the product.

Another abusive practice is 'bait advertising', whereby the advertiser offers to sell a product or service when in truth he does not intend or want to sell or else knows that he may not be able to offer it for supply. The underlying purpose of this practice is generally to switch consumers from buying the advertised merchandise in order for the trader to sell something else, usually at a higher price or on a basis more advantageous to the advertiser. Advertising a digital camera at a very low price compared to others on

the market without having enough stock to cover demand for such advertising constitutes bait advertising and is proscribed in the black list of the Directive. Therefore, no advertisement containing an offer to sell a product should be published when the offer is not a bona fide effort to sell the advertised product.

All media and Internet advertisements ordering children to "go buy this now" or "tell mum to get this for you" constitute direct exhortations to children and are banned. Children are considered as vulnerable recipients of advertising warranting stricter measures to safeguard their rights. Also considered as vulnerable and requiring extra protection are persons suffering from a medical condition. False claims about the curative capacity of an anti-hair loss or weight loss product, when the product does not perform what it claims it can, constitute illegal advertising.

The Directive includes other forms of practices that are deemed to be dishonest. Traders are not allowed to use hidden advertising in editorial content with the intention of promoting a product unless it is made clear that the trader has paid for the promotion. False claims regarding moving premises or cessation of business are disallowed. This would include an advert on a shop window falsely claiming "closing down – everything must go!" when the trader has no intention of closing down.

All member states should have by now implemented these rules into their domestic legislation. Those that do not will face enforcement proceedings by the Commission.

© *Josette Grech 2008*