

Publishers Advertising Playbook

Just the ticket



*Tips and tricks
to keep Travel
advertisers out
of trouble.*

Penalties

Whether an advertisement appears in print or on a digital platform it must comply with the relevant legislation.

The Australian Consumer Law is the major consumer protection law in Australia. In relation to the ACL, the Australian Competition & Consumer Commission has stated that media companies ‘must take particular care in relation to the products and services they advertise for their clients. They should know their clients’ business and be aware of the requirements under the ACL to minimise the risk of breaching the law’.

The ACCC’s enforcement powers are extensive—for some contraventions it can seek remedies such as criminal or civil pecuniary penalties the greater of \$10 million, three times the value of the benefit received, or where the benefit cannot be calculated, 10 per cent of the annual turnover in the preceding 12 months. Penalties against individuals under the ACL can be \$500,000 per breach.

There are also infringement notice penalties of up to \$108,000 for publicly listed companies, \$10,800 for corporations and up to \$2,160 for individuals, disqualification orders, injunctions to prevent ongoing conduct and corrective advertising orders.

The ACCC, the state and territory consumer protection agencies and any other individual or group can take legal action against businesses for contraventions of the ACL.

Australian Securities & Investments Commission regulates the financial services industry and people engaged in credit activities under a number of Commonwealth laws. ASIC can seek a remedy that punishes a person or entity in response to a wide variety of types of misconduct, from minor regulatory offences (eg. failure to file a form) through to serious offences involving dishonesty or that have a large impact (e.g. through loss of investor funds or damage to the integrity of our markets).

Examples of punitive actions are:

- » prison terms and court orders, such as community service orders; and
- » financial penalties or fines under criminal law or pecuniary penalties under civil law.

Travel

All advertising should tell the truth about a product or service and allow consumers to make well-informed decisions.

This is an easy-to-follow guide for anyone preparing or publishing material which advertises travel. It will help you ensure that the advertising material is fair and accurate.

When preparing advertising it is important to keep the target audience in mind. Courts have concluded that advertisers should know that readers will include the shrewd and the gullible, the educated and uneducated, with varying degrees of experience in commercial transactions.

This guide provides information on the Australian Consumer Law for travel and accommodation businesses.

It is relevant if the advertiser...

- » *provides holiday accommodation*
- » *provides travel; for example, airlines or coach services*
- » *provides services related to travel, such as tours and recreational activities*
- » *markets, sells or takes bookings for any of the above.*

When it comes to travel, for most consumers, price is usually a major consideration when planning their trips.

The Australian Consumer Law obliges advertisers to correctly represent the products or services for sale, including its price and any inclusions or exclusions.

With the travel industry 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.

A travel agent or travel provider is expected by consumers to have, and to use a suitable level of skill or technical knowledge when providing their services, ensuring all necessary care to avoid loss or damage and which are fit for the travel required.

It is important to think about whether an advertisement is making an incorrect impression in the mind of a consumer when making representations on certain aspects of their services, for example, room type, quality rating or views. To minimise risk think about...

- » the price;
- » the quality of the travel being advertised—including, for example, accommodation;
- » ratings or features and the quality or superiority of one airline over another;
- » future matters when they are no reasonable foundations to do so;
- » the consumer's need for additional costs, including travel insurance or transfers;
- » ensure any descriptions and photos of accommodation do not mislead consumers about its price, quality, location or amenities;
- » if a 'star' rating is used ensure that if it is self-rated this is disclosed; and
- » the existence of any restrictions, exclusions or conditions to the offer.

Component pricing

You must not promote or state a price that is only part of the cost, unless also prominently advertising the single (total) price.

The single price means the minimum total cost that is able to be calculated at the time of making the representation.

The single price is calculated by adding up each of the price components that you are able to quantify when you make the price representation; for example, any tax, duty, fee or charge imposed on you.

Costs that are required to be include are...

- » charges of any description payable by a consumer to book and purchase the travel; and
- » any tax, duty, fee 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’; or
- » amounts your business pays to a third party that are not passed on to the consumer.

A prominent single price is one that...

- stands out so it can easily be seen by a consumer; and
- is clear and noticeable.

Bait advertising

Bait advertising is so called because it offers a ‘bait’ to draw customers to a business and they can get ‘caught’ as a result. The consumer is often sold a higher priced or differently optioned alternative.

Enticing prospective customers into stores when there are reasonable grounds for believing that the goods will not be in the store or are unlikely to be available for a reasonable time at the advertised price, is unlawful.

Reasonable supply must be available to satisfy the expected demand generated by any advertisement.

The definition of what is a ‘reasonable period’ or ‘reasonable quantities’ will vary from one situation to another, depending on the nature of the goods or services advertised. So, advertisers should do their research before making the offer.

An advertiser can specify exactly how many items are available for sale at the special price, providing it is made clear in the advertisement.

If an advertiser is unable to supply goods at the advertised price, they may offer a ‘rain-check’ or equivalent goods at the advertised price to maintain goodwill.

An advertiser has the option of nominating the period of time for which such an offer is available.

However, any restrictions must be stated clearly. For example, statements such as ‘Today only’ or ‘Weekend Special’ or ‘Only until Saturday’ are acceptable, but must be clear to the reader.

Fine print and Disclaimers

In monitoring advertising regulators pay particular attention to ‘fine print and disclaimers’.

The overall impression created by an advertisement is important.

Qualifications of claims in small print may not correct a misleading impression created by other more prominent words in the advertisement.

Courts have sent clear messages that they expect qualifying expressions in advertising or product descriptions to feature as prominently as other elements that create a general impression.

For example, a fine print exclusion would materially alter the overall impression of an advertisement if a bold banner claiming '50% off accommodation' was supplemented by small print stating 'Except weekends, school holidays and public holidays further restrictions apply'.

'Conditions apply' or fine print at the bottom of an advertisement must not contradict the basic message of the advertisement or conceal important information. If you use terms like this, any important qualifiers should be spelt out in the main message.

The ACCC have said...

'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.'

So remember...

- » the font type and point size of a disclaimer must be clear and legible. Consideration should be given to 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; and
- » any material terms and conditions to the offer should be prominently displayed.

Pricing

Price is a major factor in most purchasing decisions. Advertisements referring to price should clearly indicate the price at which people responding to an advertisement can buy the advertised goods.

It is illegal to advertise special prices and imply substantial savings when, in fact, the goods and services are normally sold at those 'special prices'. Such claims create a belief that savings are possible when they are not and are therefore deceptive and misleading.

Advertisements offering to sell goods at a reduced price, a discounted price, a special price or a lower than normal price, must be accurate.

Publishers should ensure that they have adequate systems in place to identify who placed a specific advertisement.



Where a price reduction for a holiday package is stated as ‘\$2000 off’ the amount of this reduction should be calculated from the normal selling price of the holiday.

It is misleading to claim there is a saving from a recommended retail price, when the normal selling price is much lower. ‘Sale’ or ‘discounted prices’ must be genuine.

Where it is claimed prices have been reduced the advertiser should be able to substantiate that the goods have been offered previously for a reasonable time at the higher price.

When advertising ‘\$3000 worth of free extras’ the cost of these ‘extras’ must not be included in the selling price.

With ‘Was and Now’ pricing the travel should be readily available to consumers and should be offered in reasonable numbers for a reasonable time period.

When a special offer has been made over a substantial period of time that price is no longer a genuine ‘special’ price it effectively becomes the new selling price.

Images

Photographs, drawings and other images must correspond with the advertised price and product.

The consumer should reasonably expect to be able to buy the product featured in the advertisement at the price mentioned.

For example, it would be a breach of consumer law to show a current tour if, in fact, the price shown is for a superseded or inferior tour.

Similarly, it would be misleading to use the words ‘From \$X’ and depict only the top of the range room, and not the room that is available for the advertised price.

Digital advertisements

As digital advertisements are available to a worldwide audience, advertisers should be aware that they may be subject to the consumer protection laws of the countries where their website may be viewed. Also, 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.





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