

# Consumer Law: Trade Practices Act

## Introduction

Consumers are governed and protected by commercial laws against exploitation by corporate. These laws ensure that the goods produced by various firms meet the specified standard. These laws sometimes go beyond the regulation of products produced, but also control consumer transactions, and commerce. Commercial laws govern the sale and distribution of goods. It also ensures there is the proper procedure for payment transactions. Domestically, commercial law is confined to the consumer and the activities in the marketplace. Thus, these laws are designed to protect the consumer by guarantying fair competition and free trading within the market.

The key role of a prudent marketer is to design and launch a new product for consumers. The marketer uses various tactics to win the customer's faith in the company's product. This translates into an increase in the sale of the firm's products. If the manufactures were to be left unchecked, there could be an influx of sub-standard products in the market. This would result in the customer being exploited at the expense of companies trying to make huge profits. To curb such incidence, there exist laws referred consumer laws for protecting customers against such malpractices. Commercial law aims at enhancing consumer law to regulate the products supplied to the customer. The consumer law ensures that products supplied to the customer for consumption meet the required standard and are not deceptive.

The report on commercial law introduces the consumer law that seeks to protect the consumer against the consumption of sub-standard goods. The report also outlines section 52 of the Trade Practises Act, which provides for the measures companies should consider before introducing new products to the market. These are the legal factors companies seeking to introduce new products should consider. They include misleading and deceptive products, innocent misrepresentation, and negligent misrepresentation. The report also dives into the details of the effect of section 52 of the Trade Practises Act on the companies engaging in outlawed practices. The report concludes by giving the recommendation.

## Consumer law

Consumer law is a set of laws that seeks to protect the consumers against the consumption of substandard products and services supplied by unscrupulous manufacturers. The law requires that the products delivered to the consumers meet the required consumption standard. The consumer law also restricts the producers from withholding information regarding their products. It requires them to avail any relevant information pertaining to their products so that to enlighten the consumers to help them make an informed decision about the product they are about to purchase.

With the business expanding tremendously and the need for consumer protection heightening, the government has put measures in place to ensure consumer protection. There is also a need to regulate business in order to give the desired results that are beneficial to consumers. The generation of new products is generally associated with extensive research so that the product meets the tastes of the target consumers. The marketers use every marketing tactic to ensure the customers are informed

adequately on the availability of new products in the market. Due to the high cost incurred during the preparation of the new product, the marketers are sometimes tempted to engage in unscrupulous dealing to make sure the new product receives an ovation in the market.

### **Trade Practises Act**

However, companies that want to introduce a new product in the market, should fully understand the consequences of violating consumer law as stipulated by the Commonwealth Trade Practices Act. A look at The Common Trade Act 1974 will give us a better understanding of the terms of trade contained and help us appreciate their importance. The Commonwealth Trade Practices Act 1974 is an Act of parliament that regulates how companies engage in the delivery of products and services to consumers The Act has two main objectives.

Protecting the customers from the company's malpractices and providing remedies to the consumers when they have been affected by defective goods. The malpractice may include false representation, imitated, and unreasonable practices. Protecting the market from large corporations who dominate and monopolize operations of the market.

The scope of the Act is generally large and encompassing, but this discussion will entail the legal issues that the company should consider before embarking on introducing any new product to the market.

### **Misleading and deceptive conduct**

Although the Act does not impose liability on the company, it sets standards of conduct that every company has to meet. The contradiction of the Act can result in the company being held liable and forced to pay for the damages or be sued, whichever the court of law deems fit. However, the Act has limitations that are designed to reduce moral hazards. Before an individual can sue the company for engaging in misleading and deceitful conduct, the consumer must make sure the price of the goods in question does not exceed \$40,000. If the goods exceed the figure given above, then the only exception can only arise if the goods purchased are for personal or domestic use. Apart from the above limitation, the clause is also limited to the:

- The section must apply to the party involved. Section 52 does not apply to the corporate only as cited under the law:

'It applies to any misleading or deceptive conduct in the instances such as overseas trade or commerce, involving the use of post, television or telephone or radio broadcast, a transaction between or within territories, or is covered by an international treaty.

- The conduct must be in "trade or commerce" section 52 of the Act is only concerned with the way the company conduct dealing with other people (only those activities that contain the commercial element in it). The conduct must be "misleading or deceptive" this is normally determined by the court whether the action itself was deceptive or it was to create public

misleading. Section 52 is only concerned with any conduct that is deceptive and misleading in the business environment.

### **Legal factors to consider before introducing a new product**

Section 52 on misleading and deceptive is important in business as it bars business people from making false information regarding their products. This ensures the consumers buy those commodities they want based on their own judgment and not through overemphasis by some companies. This also helps inject sanity into the conduct of business and generally develop a prudent marketing culture.

Another issue that organizations should consider is fraudulent misrepresentation. This occurs when the marketers engage in illegal activities that are aimed at engaging the customers into contracts. In order for the misrepresentation to be categorized as fraudulent, two elements must exist. There must be the physical element of a crime which means the guilty act or the deed of the crime and the mental component of a crime which means the guilty knowledge and willfulness. The other issue is a negligent misrepresentation. This occurs when the marketers are making a false statement concerning the new products innocently. The company should ensure they disclose to their utmost, true and error-free information in regard to the consumer[1]. This is important because, where the company deals with sensitive products which can harm human life, wrong or lack of information may result in loss of life. Marketers should check on the accuracy of the information.

Another issue to observe is the Innocent misrepresentation. This occurs when the marketer who is intending to introduce a new product in the market, gives false information, but not with an intention to mislead the consumer. This is because the consumer believes that the information supplied to them by the marketers is true. However, falsification of information to gain an edge over the consumer is prohibited and punishable under Australian law (Trade and practices Act) and is discouraged so as to protect the welfare of the customers.

Another issue the marketer should put on board before introducing the new product is the effect of posting the misleading advertisement. Any advert made by the company or their representatives which deceives the customers making them change their mind in favor of the product should be discouraged. The misleading advertisement may contain a false statement of the fact, conceal some important facts or make a pledge to do something which the company is not intending to do. It may also create a false impression, even if everything stated is true. Since the competitors are the main threat to any business as they specialize in the same business, the mode of the advertisement used should be cautiously selected as it may result in legal consequences. Comparative advertisement that identifies a firm's rival is permissible but must adhere to certain criteria:

- Compare goods or services on a like-for-like basis is not allowed,
- Does not generate confusion between the conflicting companies. This involves the use of trademarks and patents. There should be a general distinction between the competitors and the manufacturing company which is undertaking to introduce a new product,
- The company should not present the goods as a replica of goods or services bearing a protected trademark.

- Should not exploit the reputation of a name of competitor.

One of the objectives of the companies is to survive in the market even in the hardest economic times. To achieve this, companies engaging in the consumer-related product must make sure that they demonstrate the highest level of integrity. In this regard, the company considering introducing a new product in the market should ensure the quality of the product is high. Products of low quality will have a shorter period in the market although may be received well because of the lower associated with it. Quality products are better compared to cheaper products as they offer the consumers long-term solutions

Although some quality issues may go unnoticed and have no legal consequences, they have a longer devastating effect. Companies that produce low-quality products may experience hard times if their products fail to hit the market. This may lead the companies to close down.

### **Effect of section 52 on Australian corporation**

Section 52 has greatly impacted the lives of Australians and how the corporate do their business. The enacting of law has seen the number of cases brought to court reduce significantly, corporate has been able to conduct their business peacefully and there have been better consumer satisfaction. The general perception of section 52 on trading has helped the companies reach a height of sophistication with companies adopting ethical behavior.

Section 52 on consumer protection also offers remedies to the customers who fall victim to misleading conduct. Although there is no stipulated penalty for tampering with section 52, the ACCC (Australian competition and consumer commission) can seek penalties which are in the range of up to one million for corporate and quarter million for individuals. Victims of misleading and deceptive conduct are entitled to be compensated for the damages occasioned from the act of deceit. This damage is payable in monetary terms if the individual proves that there was actual loss resulting from the act. Section 84 (1B) states that:

'If a victim contributed to the loss or damage that they have suffered, then the court can reduce the amount of damage that they are awarded, in a similar fashion to the reduction of damages in a negligence claim if the plaintiff is guilty of contributory negligence.

### **Conclusion**

Consumers are paramount in any business and thus their interest should be highly regarded. The Austrian government has enacted laws that ensure that the interests of consumers are protected. The clause misleading or deceptive conduct in section 52 of the constitution seeks to protect the consumers who may engage in any business malpractices. It requires the marketers or the manufacturing companies to give true information regarding their products to the consumers. The section also highlights all forms of falsification and deceptive advertisement that the manufacturers are prohibited from engaging. The law also outlines the remedies for the victims of deceptive trading.

The Australian law on Trade practices Act draws the guidelines on the legal issues that the companies should observe before considering introducing a new product.

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