

Misleading & Deceptive Conduct

This factsheet explains what misleading and deceptive conduct by a business is and what you can do if you suffer loss as a result.

What is misleading or deceptive conduct?

When you buy goods or services, you have the right to accurate and honest information.

Businesses are not allowed to mislead you or give a false impression.

A business engages in misleading or deceptive conduct if what they say or do causes, or could cause, someone to be mistaken.

This can happen where the overall impression created by an advertisement or statement is false, confusing, or inaccurate.

“Conduct” can include:

- Written statements (like ads, websites, contracts)
- Spoken statements (like sales pitches or negotiations)
- Silence, where important information should have been disclosed

How to tell if conduct is misleading

To work out if conduct is misleading or deceptive, consider:

- What exactly was said or done?
- Who was it aimed at?
- What overall impression would it give that audience?

- Could that impression lead that audience into error?

How the law tests it

The law looks at the conduct from the point of view of an ordinary or reasonable person in the target audience. If the conduct was directed at a specific person or group, their perspective may also be considered.

Conduct is considered misleading if there is a real (not just remote) chance it could cause someone to be mistaken.

It is not necessary to show that anyone was misled.

It also does not matter whether the business intended to mislead. What matters is the effect on the audience.

Common examples

Misleading or deceptive conduct can happen in many situations, including:

- Comparative advertising. Incorrectly comparing products to competitors.
- Pricing e.g. advertising a 'was/now' price when the product was never sold at the higher price or advertising a price that excludes unavoidable extra costs (like checkout fees).
- Disclaimers and fine print. Hiding important conditions in small print.

- Passing off. Making a product look like another brand to trick customers.
- Future claims. Promising future results or performance without reasonable grounds.
- Silence. Failing to disclose important or relevant information when there is a duty to do so.
- Product labelling. Providing wrong information or inaccurate claims on packaging.
- 'Greenwashing'. making false or exaggerated environmental claims.
- Online reviews and endorsements. influencers failing to disclose paid partnerships and fake reviews.
- Contact the business and explain the issue. Clearly describe what happened and why you think it was misleading or deceptive. Be specific about the product, service or statement in question and give any relevant dates or details.
- Keep records. Save any documents, receipts, emails, screenshots, advertisements, contracts or other evidence that supports your claim.
- Clearly state what outcome you want. Tell the business what you want them to do to fix the problem. This might be a refund, compensation, replacement or a correction to information.

What is 'puffery'?

In business, some exaggeration is to be expected.

For example, a bakery might claim it sells 'the best pies on Earth'.

This is known as "Puffery". It is generally not considered to be misleading or deceptive, because reasonable people would not take it literally.

What you can do if you are affected

If you suffer loss because of misleading conduct, a court or tribunal may order the business to:

- Pay compensation
- Refund money
- Stop the misleading conduct
- Publish corrective information

Before making a formal complaint, it is usually best to:

If you can't resolve the issue with the business, you can make a complaint to NSW Fair Trading.

NSW Fair Trading handles complaints about businesses, goods and services. They can provide information on your rights; help you contact the business and try to resolve the dispute.

If the issue is still not resolved, you may be able to take your matter to the NSW Civil and Administrative Tribunal (NCAT) or to a court.

You can also contact the Australian Competition and Consumer Commission (ACCC).

The ACCC does not deal with individual disputes but can act against the business for doing the wrong thing.

This fact sheet is for information only and is not legal advice.