



# Misleading Advertising under the Fair Competition Act (FCA)

Presented by

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October 23, 2006, Knutsford Court Hotel

# FTC Consumer Complaints

No. 1 Complaint – Artiste NO SHOWS

No. 2 Complaint - Ticket Prices

No. 3 Complaint – Venue/date change

No. 4 Complaint – Start Time/Performance scheduling

No. 5 Complaint – type of show

**NO REFUNDS** given in most if not all situations



# Definition of 'Advertising' under the FCA

‘advertisement’ means any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services...”

Communication to one person is enough

Section 37 of the FCA prohibits **MISLEADING ADVERTISING/REPRESENTATION**

# What does the section say?



Section 37 prohibits generally any **REPRESENTATION** made in the course of trade, that is **FALSE** or **MISLEADING** or is **LIKELY TO BE MISLEADING** in a **MATERIAL RESPECT**.

# Criteria to establish the offence



## REPRESENTATION LIKELY TO MISLEAD THE CONSUMER

- Entire advertisement(s), course of dealing will be considered
- Need not actually mislead – likely to mislead sufficient
- Perspective of targeted group will be considered
- Strict Liability Offence, i.e. intention irrelevant

THE Representation may be:

EXPRESS

**LIVE IN JAMDOWN**



**The Beatles**  
**In Concert**  
**at the**

**Nanny Willums Entertainment Complex, Kingston**

**Sat. October 31, 2006**

REPRESENTATION MAY BE

IMPLIED



# LIVE IN JAMDOWN



Hot Artiste Lineup

**The Beatles**  
**In Concert**  
**at the**

**Nanny Willums Entertainment Complex, Kingston**

**Sat. October 31, 2006**



OR by Ommission

# LIVE IN JAMDOWN



Hot Artiste Lineup

The Beatles  
In Concert  
at the

\$2,500.00 All Inclusive

Nanny Willums Entertainment Complex, Kingston

Sat. October 31, 2006

**Soft Drinks Included only**



# The Representation must be **MATERIAL**



What does that mean?

Would the information provided/omitted likely  
have affected the consumer's ability to make  
an informed decision about his purchase?

# Classifieds

Buy cars online!!!!!!!

For Sale, 1984 Brown Datson. Lady driven.  
Less than 100,000 miles. Needs a set of tires  
and front windshield.





Is it safe to say that  
knowing that the car had been in a fire would have made a difference?

Material information usually includes, among other things:

- Price (what included)
- Performers
- Venue
- Date
- Start time

Fine print and words like “Conditions Apply” not sufficient where:

- Such conditions are inconsistent with or modify the main message
- Conceal material information





Once materiality has been established,  
injury will be presumed likely to exist  
as a result of the misrepresentation  
i.e.

**PROOF OF INJURY NOT  
REQUIRED!!!**

# Why should we care about Misleading Advertising?

Because Accurate and complete consumer information is the driving force behind competition:  
**MA UNDERMINES COMPETITION!!!!**

- MA harms consumers!!
- MA harms firms!!



# Results of 2004 Study by Dr. Michael Witter, Head of Dept. of Economics, UWI

## Stage Shows in Jamaica:



- Revenues = \$200 Million per year
- Attendance = 800 – 40,000 persons p/yr
- Admission = \$300 - \$3,5000 per show

# Typical weekend in July/August

- Revenues = J\$8 Million to J\$10 Million
- 8 – 10 major events compete for foreign and local patrons




Picture this...

If 25% of patrons attending a show went to see a specific headline artiste who did a “no show” - losses in benefits to fans = between J\$23,275 and J\$216,125

Economic benefits are maximised  
ONLY if are delivered in a  
**COMPETITIVE ENVIRONMENT**



That means Providing the public with **ALL MATERIAL  
INFORMATION TRUTHFULLY & ACCURATELY**

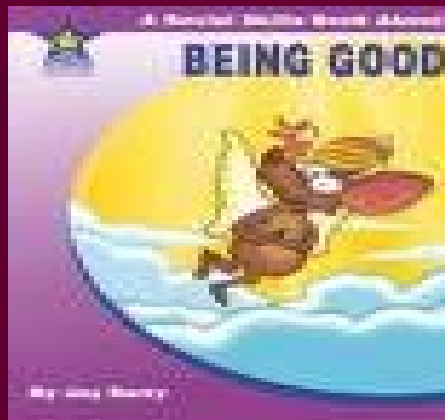
Damage to the competitive environment from misleading  
patrons is great            legitimate promoters are  
adversely affected when patrons are diverted to shows  
promoted unconscionably

# HOW to avoid MA?

- Artiste contracts to be in writing and signed BEFORE including artiste line-up in promotional material
- Artiste contracts should include, among other things:
  - time of their performance
  - their obligations in the event of postponement
  - consequences in the event of failure to perform in accordance with the terms of the contract
- Venue contracts – rental, facilities, duration



- Where there is a change of artiste line-up, venue, date, time of event - issue follow up announcements/advertisements informing the public of the change
- Have a refund policy and plan in place for all circumstances – must be thought of ahead of promotion campaign (advise at venue - avoid problem of refund entitlement)



# CONCLUSION

MA is an offence under the FCA!!!!

If a promoter fails to honour any representation made to the public he is liable for prosecution



The FTC will consider:

- (I) Reasonable steps taken to honour the representation
- (ii) Extent to which steps were taken to compensate affected patrons



# IF FOUND GUILTY THE PROMOTER IS LIABLE TO BE FINED!!!!



Up to J\$1,000,000.00 for individuals

Up to J\$5,000,000.00 for companies



# THE END!!!

## Questions??



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