



**The Fair Competition Act:
A Guide to Consumer Protection**

Fair Trading Commission
52 Grenada Crescent
Kingston 5
Tel: (876) 960 1020 – 4; Fax: (876) 960 0763
Email: ftc@cwjamaica.com
Website: <http://www.jftc.com>

Table of Contents

1. Introduction.....	2
2. Protecting the consumer under the FCA.....	2
3. Misleading advertising.....	2
Representations about imported goods	3
Examples of misleading advertising.....	3
4. Publication of testimonials.....	4
5. Double ticketing.....	5
6. Sale at bargain price and “bait and switch” tactics.....	5
7. Sale above advertised price.....	5
8. Twelve steps towards compliance: guidelines for merchants.....	6
9. How to make a complaint	7

1. Introduction

1.1 The Fair Competition Act (FCA) was established in 1993 to ensure that the benefits of the competition process in Jamaica are unhindered by anti-competitive activity. The objectives of the Act are to:

- Encourage competition in the conduct of trade and business in Jamaica;
- Ensure that all legitimate business enterprises have an equal opportunity to participate in the Jamaican economy;
- Provide consumers with better products and services, a wide range of choices at the best possible prices.

1.2 To achieve these objectives, the Act contains two broad categories of prohibitions – those dealing with anti-competitive practices and those dealing with consumer protection. The Fair Trading Commission (FTC) is the administrative body responsible for implementing the FCA.

1.3 This booklet provides an explanation of consumer affairs protection. An explanation of matters relating to anti-competitive practices under the FCA may be found in *The Fair Competition Act: Guide to Anti-competitive Practices*. For general information about the FCA, please see *The Fair Competition Act: A General Guide*.

2. Protecting the consumer under the FCA

2.1 The following sections of the FCA speak to consumer protection:

- Section 37 (misleading advertising);
- Section 38 (representations and publication of testimonials);
- Section 39 (double ticketing);
- Section 40 (sale of goods at a bargain price);
- Section 41 (sale of goods above advertised price).

Each of the above is explained below.

3. Misleading advertising

3.1 Section 37 of the Act prohibits any “representation to the public that is false or misleading in a material respect” for the purposes of promoting, directly or indirectly, any business interest.

Misleading representations...

3.2 The representation may be about the nature, character or performance of a product, such as size, type of contents or weight. It also includes warranties, statements, or guarantees that are not based on adequate and proper tests.

3.3 Misleading representations:

- about the performance, efficacy or length of life of goods that is not based on adequate and proper tests;
- that services of a particular kind, standard, quality or quantity will be supplied;
- that a service will be supplied by a particular person or a person of a particular qualification or skill;
- warranties or guarantees on any product or service;
- concerning the price at which any good or service will be supplied.

are examples of prohibited practices.

- 3.4 All methods of making representations, including printed or broadcast advertisements, written or oral representations, audio-visual promotions and illustrations, are covered by the prohibition.

... made to the public...

- 3.5 The Act refers to representations made "to the public." A representation to just one person can constitute a representation to the public. It should also be noted that it is not necessary to prove that any person was in fact misled; all that is required is that the representation is likely to mislead.

... that is misleading in a material respect

- 3.6 "Material" does not refer to the value of the product to the purchaser but, rather, the degree to which the purchaser is affected by the representation in deciding whether to purchase the product. A representation is considered to be material if it leads a person to a course of conduct that, on the basis of the representation, he or she believes to be advantageous.

Representations about imported goods

- 3.7 Foreign goods sold in Jamaica are often imported pre-packaged and are accompanied by statements, warranties and guarantees made by the foreign manufacturers. In such cases, the Act stipulates that the representation will be deemed to have been made by the Jamaican importer. Responsibility therefore falls on him.

Examples of misleading advertising

- 3.8 The following are some examples of misleading advertising that is prohibited.

False statements

- 3.9 A clear example of misleading advertising is an advertisement that describes a pair of Taiwanese-made shoes as "English Handmade". Through the use of an expression associated with a long history of quality shoes, the merchant had made a misrepresentation as to the type of shoe that was being sold.

Failure to deliver

- 3.10 Another example of misleading advertising occurs when a merchant makes a promise to a consumer to deliver an item in a certain number of days and does not fulfil this promise.

Failure to disclose information on refund policy

- 3.11 Failure to disclose information which is material to the consumer's purchasing decision will also amount to misleading advertising. A merchant's refund policy, for example, is deemed to be material information and therefore a merchant who fails to disclose his refund policy *before* a consumer makes his purchase is in breach of the Act.
- 3.12 The FTC recommends therefore, that all merchants display their refund policy *prominently* in their business places. It is not enough that the said policy might be endorsed on the receipt that customer receives, because by the time the customer receives the receipt, the purchase would have already been completed.

Non-fulfillment of warranty obligations

- 3.13 A warranty is an undertaking given to a purchaser by a seller that a product is reliable and free from defects. The seller further undertakes that he will, without charge, repair or replace defective parts or replace the entire product if the product turns out to be defective within a given period. Certain specified conditions may have to be met before the warranty is enforceable.
- 3.14 Section 37 of the Act requires that merchants fulfil their warranty obligations. If a good does not come with a Written or *Expressed* Warranty, it is still covered by an Implied Warranty, unless the product is marked "as is" or the seller otherwise indicates in writing that no warranty is given.
- 3.15 One type of implied warranty is the "warranty as to merchantability". This means that the seller promises that the product is of a quality that will allow it to perform satisfactorily. For example, it is implied that when a merchant sells a car, it will run satisfactorily. Another type of implied warranty is the "warranty as to fitness for a particular purpose". This applies when a consumer buys a product on the seller's advice that it is suitable for a particular use. For example, a person who suggests that a particular type of paint be bought for a driveway warrants that the paint is suitable for outdoor use. Implied warranties have no specific period of coverage. Instead, coverage is based on an estimation of a reasonable time for which the product should last, provided there is no misuse.

4. Publication of testimonials

- 4.1 According to Section 38, if a representation is made to the public that a test as to the performance, efficacy or length of life of a good has been made by any person:
- the advertiser must be able to establish that the testimonial is indeed true; and
 - the person who made the testimonial must have approved its publication.

5. Double ticketing

- 5.1 This occurs when the seller charges the consumer the higher of two or more prices displayed in respect of a product. According to Section 39 of the Act, the products should be sold at the lowest prices displayed. If, however, it is obvious that the lower price is an error, then the FTC might not require the merchant to charge the lower price.

6. Sale at bargain price and “bait and switch” tactics

- 6.1 According to Section 40, a person shall not advertise at a bargain price goods that he does not supply in reasonable quantities. This behaviour is referred to as “bait and switch” tactics, and occurs when a merchant lures the customer into the store by offering a product at an attractive price (the bait). On arrival, the customer is told that the product is sold out and is encouraged to buy another product at a higher price (the switch). Section 40 protects the consumer from such a tactic.
- 6.2 A bargain price refers to any price that is advertised as being lower than an ordinary or normal price. In determining whether or not the merchant holds the goods in reasonable quantities, the FTC shall have regard to the nature of the market in which the business operates; the nature and size of the enterprise; and the nature of the advertisement.
- 6.3 The prohibition does not apply if the person advertising proves that:—
- he took reasonable steps to obtain a reasonable quantity in adequate time;
 - he obtained reasonable quantities but was in short supply due to unexpectedly high demand; or
 - he undertook to supply the same or similar article at the advertised price within a reasonable period of time.
- 6.4 Products that are advertised must be immediately available for purchase. If, for any unforeseen reason, a merchant cannot supply the products advertised, he should offer the customer similar products at the same price and publish an advisory or retraction of the advertisement in the media.

7. Sale above advertised price

- 7.1 According to Section 41 of the FCA, persons who advertise goods for sale or rent shall not, during the period to which the advertisement relates, supply goods at a price that is higher than that advertised.
- 7.2 Sale above advertised price is the practice by which a product is advertised at a certain price and sold at a higher price. Section 41 of the Act prohibits such practice. This protects consumers against merchants who advertise a product at a particular price with the hope that consumers, already in the store, will pay the higher price rather than go elsewhere.

- 7.3 Sale above advertised price might be permitted under the following conditions:
- where the advertisement states that the prices advertised are subject to error and if the merchant is able to establish that the wrong price was indeed advertised in error; or
 - where the advertisement carrying the wrong price is immediately followed by another advertisement correcting the initial price.
- 7.4 Note that a person who is found to be in breach under this Section may also be caught under Section 37 of the FCA.

8. Twelve steps towards compliance: guidelines for merchants

- 8.1 To ensure that your business practices are in accordance with the Act, please take steps to ensure the following:
- All advertisements should be clear and unambiguous.* If a representation is literally true but creates a false impression, it would be deemed to be misleading. A representation is misleading if, for example, it is literally true insofar as the oral or written statements are concerned but creates a contrary impression by its visual component.
 - Products that are advertised should be immediately available for purchase.* You will have a legitimate defense, however, if your inability to supply is for an unforeseen reason, such as transportation delays. To be safe you should not advertise goods before you have them in stock or on hand. If, for any reason, you cannot supply the goods advertised, then you should offer the customer similar goods at the same price and publish an advisory or retraction of the advertisement in the media.
 - If your business has several outlets, clearly specify in your advertisements those outlets that are participating in the sale.* If your store has several outlets, a consumer may reasonably assume that the items on sale can be purchased at any of the locations, unless otherwise specified. It is therefore important that you specify the participating stores.
 - Products that are advertised as being on sale should not have been previously available at the same price.* The use of the term “Special”, “Sale”, “Bargain” or any like term implies that the items are being sold at a discounted price, i.e. for less than the regular or original price. Take steps to ensure that these terms are not misused.
 - Regular sales must have a closing date and this date should be clearly stated.* At the end of a regular sale, the item that was on sale will continue to be available at the store. Consumers may change their buying habits based on an opportunity to buy goods at a reduced price for a limited time. They should therefore be properly informed about the duration of the sale.

- (vi) ***For non-regular sales, the type of sale should be clearly stated.*** At the end of a non-regular sale, the item that was on sale will not continue to be available at the store. Such sales are, for example, “end of line sales” or “closing down sales”.
- (vii) ***Price comparisons must be based on actual market prices.*** Comparisons with other traders’ prices must be for like items in the same time period. At all times, you must be able to validate the claims that are made. Where a special price is compared to a previous price, the product should have been sold at the original price for a reasonable time during a period sufficiently recent so as to have relevance. You should avoid relying on out-dated pricing history.
- (viii) ***Provide relevant information at all times so that the consumer can make an informed choice.*** In particular, ensure that your refund and warranty policies are prominently displayed in your business location. Remember that even if the good does not come with a written warranty, it is still covered by an implied warranty if you do not indicate otherwise.
- (ix) ***Make sure that you fulfil your promises and obligations,*** in particular, with regard to deliveries, refunds and warranties.
- (x) ***Where a product exhibits more than one price, provide the good to the customer at the lower price.*** Remember that the customer has the right to the lower price, even if the price was placed on the item by mistake.
- (xi) ***Do not sell goods above their advertised price.*** If the advertisement is erroneous, then make public a correction as soon as possible.
- (xii) ***Where a testimonial is made to the public, ensure that you can establish that the testimonial is indeed true and that the person who made the testimonial approved its publication.***

9. How to make a complaint

9.1 A written complaint must be submitted to initiate an investigation. This can be done by:

- Writing a letter. This can be submitted via mail or fax. However, if the complaint is faxed in, the original should follow.
- Filling out a complaint form. Complaint forms can be obtained in hard copy at the office of the Fair Trading Commission. They can also be accessed and completed electronically on our website.

9.2 Complaints should include the following information:

- Name of the person making the complaint (the Informant), name of the person or company that the complaint refers to (the Respondent) and the relevant

contact information. It is necessary for contact information to be given, so that the Staff of the FTC may conduct its necessary correspondence;

- Explanation of the reasons for and details of the complaint. This should include any relevant correspondence, such as correspondence and telephone conversations with the Respondent. Where necessary, receipts, sales contracts and other relevant documents should also be submitted.

9.3 Complaints should be sent to:

***Executive Director
Fair Trading Commission
52 Grenada Crescent
Kingston 5
Tel: 960 1020 – 4; Fax: 960 0763
Email: ftc@cwjamaica.com
Website: <http://www.jftc.com>***

- 9.4 Please note that not all consumer complaints fall within the jurisdiction of the FCA. Only matters detailed above fall under the FCA. If your matter does not fall under the FCA, please refer your complaint to the Consumer Affairs Commission.
- 9.5 Please contact the FTC if you have any queries or require further information on any matter relating to our work and the Fair Competition Act.