



Fair Trading Commission

LET THE BUYER BE AWARE

NMLS Legal Aid Clinic Fair

Presenter: Michelle T. Phillips, Legal Officer
Date: March 4, 2024



Resources

- Fair Competition Act (FCA)
- S. 54 Competition Act (Canada)
- Advertising Framework in Jamaica- Current Framework & Challenges by David Miller, March 2018
- United Nations Economic & Social Commission for Western Asia website
- Fair Trading Commission v Crichton Automotive Limited

Overview

Fair Trading Commission

Fair Competition Act

Consumer Provisions in the FCA

Consumer Recourse

Enforcement & Remedies

Summary

Take Away

Question & Answer

Fair Trading Commission (FTC)

- section 4 of the Fair Competition Act (FCA)
- Administrative arm of the Government of Jamaica.
- Maintains competition
- Safeguards consumer interests



The Fair Trading Commission

- Functions of the FTC:
 - ✓ Investigations
 - ✓ Competition Advocacy
 - ✓ Market Studies
 - ✓ Public Education
 - ✓ Advisories

Fair Competition Act

- 1993
- Ensures benefits of the competitive process maintained and not hindered by anti-competitive conduct.
- Competition & Consumer Provisions

Consumer Provisions in the FCA

Be Aware of Your Rights

- Part VI s. 33- Tied Selling
- Part VII sections:
 - ✓ 37- Misleading Advertising
 - ✓ 39 -Double ticketing
 - ✓ 40 -Sale at Bargain Price
 - ✓ 41- Sale above Advertised Price



Consumer Provisions in the FCA



- Market



TIED SELLING

The seller/supplier of goods or services requires a customer to buy a second good/service as a condition of buying the desired good/ service.

Tied Selling- FCA

- S. 33 (1) FCA -practice where a supplier as a condition of supplying the goods or services requires the customer to acquire any other goods or service.

Tied Selling- FCA

- S. 33 (2) tied selling is prohibited by the FCA

Examples of Tied Selling

- FTC examples:
 1. baby chicks & chicken feed.



Misleading Advertising

Definitions

- Advertisement -**any form of communication to the public** or a section of the public for the purpose of promoting the supply of goods or services.
- Business any activity that is carried on for gain or reward.

Misleading Advertising

Definitions (contd.)

- Trade- any trade, business, industry, profession or occupation, relating to the supply or acquisition of goods or services.
- NB definition of advertising -therefore social media platforms included.



Misleading Advertising

- 37. (1) A person shall not, in pursuance of trade and for the purpose of promoting, directly or indirectly, the supply or use of goods or services or for the purpose of promoting, directly or indirectly, any business interest, by any means—
- (a) make a representation to the public that is false or misleading in a material respect;



Misleading Advertising-

Essential Elements of s.37(1)(a)

FTC v SBH Holdings Limited & Anor SCCA No.92/2002 (unreported)
per Harrison JA(Ag.):

1. That a person acts in pursuance of trade
2. That the person makes a representation to the public
3. That representation was false or misleading
4. The representation was made for the purpose of promoting directly or indirectly the supply or use of goods and services.

Misleading Advertising- Case

- *The Fair Trading Commission v Crichton Automotive Limited*
[2015] JMCC Comm 7 –
- incorrect model year vehicle
- Penalty- \$2mil;
- Appeal – [2017]JMCA Civ 6 & [2017]JMCA Civ 33
- CA reduced penalty to \$1.2mil

Misleading Advertising- Example

- Sunny Isles (2022) – “the only Jamaican Black Castor Oil Approved for Export by the Jamaican Government”.
 - Advertised on label, website, & advertisement at Sangsters airport.

Misleading Advertising

37(1)(b) & (c) - representations in the form of a statement warranty or guarantee regarding goods and services.

Misleading Advertising

37(1)(d) Not to make representation to the public in form of a guarantee or warranty, promise to replace article if statement is materially misleading.

Misleading Advertising

37(1) (e) Materially misleading representation re: price

Misleading Advertising

37(3) representations deemed to be made to the public by the person who caused the representation to be made.

Misleading Advertising

- 37(4) who deemed liable where person who made the representation is outside Jamaica.
- 37(5) person deemed to have made representation to public when supplying goods or services.

Double Ticketing

Pricing Practices: Double Ticketing

Putting 2 prices on an item and charging the customer the higher price.

Stores must charge the lowest ticketed price.



Ministry of Industry
Investment & Commerce

Jamaica's Business Ministry



Double Ticketing - FCA

- Section 39 FCA- A person shall not supply an article at a price that exceeds the lowest of two or more prices ...
 - a- on the article, its wrapper or container

Double Ticketing - FCA

- S.39
 - b- on anything attached to, inserted in or accompanying the article, its wrapper or container or anything on which the article is mounted for display or sale; or
 - c- on a display or advertisement at the place at which the article is purchased.

Double Ticketing Examples

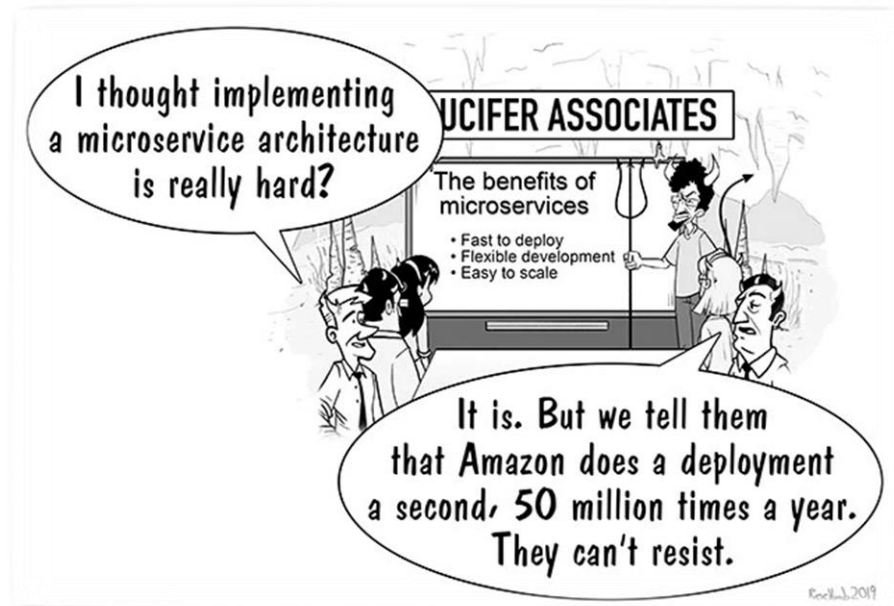
- Supermarket chains
- Text Book Stores
- Café/restaurant



Sale at Bargain Price

Bait and Switch

In retail sales, when customers are lured by advertisements for a product at a low price, then find that the product is not available but a more expensive substitute is.



Ministry of Industry
Investment & Commerce

Jamaica's Business Ministry



Sale at Bargain Price - FCA

- Section 40(1) A bargain price means
 - a) a price represented in an advertisement to be a bargain price by reference to an ordinary price
 - b) A bargain price by reference to price goods ordinarily sold.

Sale at Bargain Price - FCA

- 40(2) A person shall not advertise at a bargain price, goods or services which he does not supply in reasonable quantities.



Ministry of Industry
Investment & Commerce

Jamaica's Business Ministry



Sale at Bargain Price - Example

1. ATL Pre-Valentine's Day Sale 2010



Ministry of Industry
Investment & Commerce

Jamaica's Business Ministry



Sale Above Advertised Price- FCA

- S.41(1) A person who advertises goods shall not, supply goods at a price that is higher than that advertised.

Sale Above Advertised Price- FCA

- S.41(2) does not apply in respect of
 - Publication where prominently stated that prices subject to error
 - Correction published immediately.

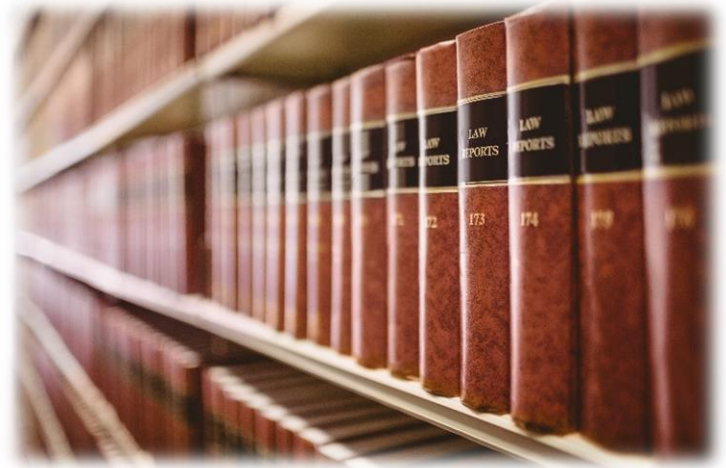
Sale Above Advertised Price - Example

1. Lucky Dollar



Consumer Recourse

- Know your rights/the law.



Consumer Recourse

File a Complaint

Use this form to file a complaint to the Fair Trading Commission (FTC) about an individual or business that may be doing the wrong thing under the Fair Competition Act (FCA).

- Complaint to FTC
 - Website: www.jftc.gov.jm

Who is making the report?

| | | |
|---------------------------------|----------------------|----------------------|
| Title | First name * | Last name * |
| <input type="text" value="Mr"/> | <input type="text"/> | <input type="text"/> |

Age

Providing the FTC with your age is voluntary. It is helpful for statistical analysis and the FTC investigation process.

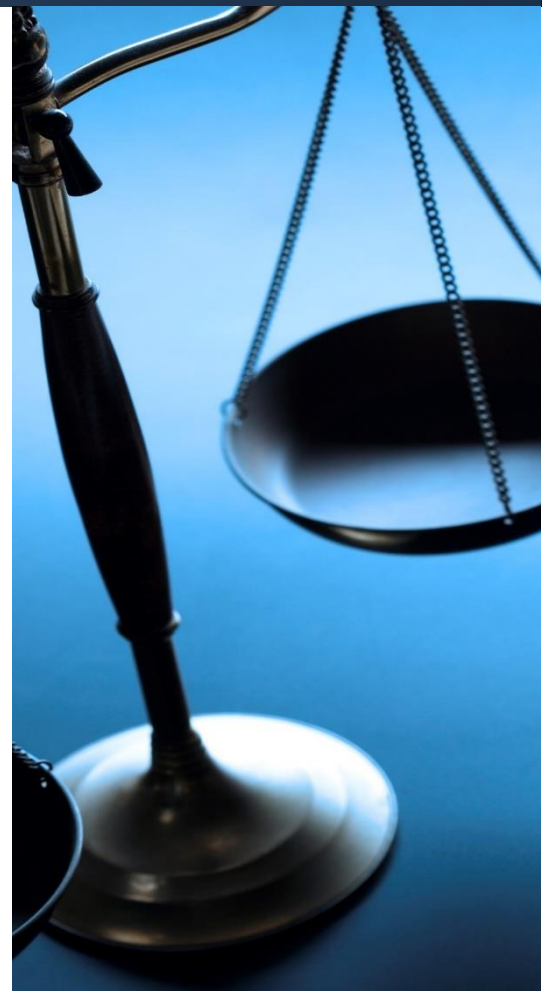
Consumer Recourse

- Court - S. 48 FCA
- Remedy = damages



Enforcement & Remedies

- S.46- Application to court by FTC



Enforcement & Remedies

- **S.47**
 - pecuniary penalty to the crown
 - Injunction

Summary



Tied Selling-
Making purchase of one good conditional on purchase of second good



Misleading Advertising -
enterprises responsibility to ensure representations are not false or misleading



Double Ticketing –
businesses must sell at lowest price on item, display, shelf, etc.

Summary



**Sale at Bargain Price- goods/
services must be sold at a
bargain/price lower than
ordinarily supplied**



**Sale Above Bargain Price- Goods
cannot be supplied for higher
than price contained in an
advertisement**

Take Away

- Be aware
- Know the law
- Know your rights

Question & Answer



Fair Trading Commission

Unit 42A New Kingston Business Centre
30 Dominica Drive
Kingston 5, Jamaica



(876) 960.0120-4



ftc@cwjamaica.com



jftc.gov.jm



@ftc_Jamaica



@FTCJamaica

