

## Briefing Note: Consumer Protection Basics for Business

### An Introduction to the Briefing Note

The Office of Fair Trading (OFT) has recently taken the first enforcement action of its kind against a blogging network which did not make it clear that companies were paying it to write promotional content about them. The content produced was published on a number of website blogs and social networking sites, such as Twitter. The OFT considered this breached consumer protection legislation and required the blogging network to sign undertakings that it would not repeat the unfair conduct. This briefing note should not be relied upon as legal advice and you should contact us for advice on your specific circumstances.

**Briefing Note**  
January 2011

**Summary:**

Why Business Owners should avoid disguising promotional content as customer endorsements.

**For advice on all business litigation matters please contact:**

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### What does consumer protection legislation prohibit?

Consumer protection legislation provides a general prohibition on unfair commercial practices. Your business must not:

- Mislead consumers through acts or omissions. For example:
  - a business falsely tells a consumer their boiler cannot be repaired and they will need a new one. This constitutes a **misleading action**.
  - a business sells a satellite television package to a consumer, without indicating that sports channels are only available at an additional subscription cost. This constitutes a misleading omission.
  - Subject consumers to aggressive commercial practices. For example, bringing a consumer to a holiday club presentation with no means of getting home unless they sign a contract.

Consumer protection legislation contains a list of 31 commercial practices that are always unfair, including:

- Displaying a quality mark without authorisation.
- Falsely claiming to be a signatory to a code of conduct.
- Falsely claiming a product is able to cure illnesses.

### Who can take action for a breach of the legislation?

The OFT and the Trading Standards Services can take enforcement action against your business if you breach consumer protection legislation. Consumers and competitors cannot currently take any action against your business for such a breach.

### What are the offences under the legislation?

Your business will commit an offence if it engages in a commercial practice that:

- Breaches the general prohibition on unfair commercial practices.
- Is a misleading action.
- Is a misleading omission.
- Is an aggressive commercial practice.
- Is one of the 31 listed unfair commercial practices.

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### What are the penalties for an offence under the legislation?

- **Summary conviction.** A fine not exceeding the statutory maximum (currently £5,000).
- **On indictment.** A fine or up to two years imprisonment or both.

### What are the key implications of the OFT's recent enforcement action?

If your business produces any promotional activity (whether online or offline), you must clearly identify when promotions and editorial comment were paid for so consumers are not misled.

### Using third-party blogs or advertorials to promote your goods and services

Your business should:

- Avoid writing blogs that appear to be written by a consumer. This type of blog is considered unfair under consumer protection legislation and enforcement action could be brought against your business.
- Be very careful when using advertorials to promote your goods and services. An advertorial is an advertising feature that looks like an article. Advertising codes of practice require advertorials to be clearly labelled as such and recognisably different from other editorial material. They also state that any testimonials included in the advertorial must be genuine.

If you would like to know more about this topic or our other legal services, please contact:

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