Chapter Outline

12.1 Unfair Trade Practices
12.2 The Federal Trade Commission

Introduction

Learning Outcomes

• Analyze laws pertaining to unfair trade practices and the agency that scrutinizes them.

12.1 Unfair Trade Practices

The term “unfair trade practice” describes the use of deceptive, fraudulent, or unethical methods to gain business advantage or to cause injury to a consumer. Unfair trade practices are considered unlawful under the Consumer Protection Act. The purpose of the law is to ensure that consumers have the opportunity to make informed, rational decisions about the goods and services they purchase.

Unfair trade practices include false representation of a good or service, targeting vulnerable populations, false advertising, tied selling, false free prize or gift offers, false or deceptive pricing, and non-compliance with manufacturing standards. Alternative names for unfair trade practices are “deceptive trade practices” or “unfair business practices.”

Section 5(a) (https://www.federalreserve.gov/boarddocs/supmanual/cch/ftca.pdf) of the Federal Trade Commission Act prohibits “unfair or deceptive acts or practices in or affecting commerce.” Per the rule, unfair practices are those that cause, or are likely to cause, injury to consumers, those that consumers cannot avoid, and those in which the benefits of the product or service do not outweigh the deception. Deceptive practices are defined as those in which the seller misrepresents or misleads the consumer, and the misleading practice...
The Federal Trade Commission (FTC) is a federal agency that enforces consumer protection laws. Consumers may seek recourse for unfair trade practices by suing for compensatory or punitive damages. Plaintiffs do not have to prove intent. Showing that the practice itself was unfair or deceptive is sufficient.

Unfair Trade Practices and Examples

Product Guarantees and False Endorsements

Companies must be prepared to honor product guarantees. For example, if a product is advertised with a 50 percent money-back guarantee, then that must be provided to customers who meet the requirement(s) attached to the guarantee. Similarly, companies may not create false endorsements and testimonials about their products.

Unfair Advertising

False advertising includes the misrepresentation of a product, service, or price. It may be more expansively defined to include unfair sales strategies, such as advertising one item and then selling another item in its place, e.g., one that is higher priced, lower quality and/or less in demand. This method is most commonly...
referred to as “bait and switch.” Additional examples of unfair advertising include incorrect pricing, fake endorsements, deceptive guarantees, making false statements, and providing descriptions that exaggerate the performance of the product or service.

**EXAMPLE 12.1**

For months, Ivan had searched for just the right window curtain to match the décor of his new high rise condo. Finally, while browsing through Amazon, he saw two gray velvet curtains that featured a damask pattern, with taupe and gold accents and specks of ice blue glitter accents. He could not have designed a more perfect color palette for the window treatments if he tried. Moreover, the velvet blackout touch was just what he needed. Excited, he hit the “Buy Now” button and waited a couple of days for his order to arrive. When it did, what a huge disappointment! He could see, if he stared long and hard enough, how someone with a vivid imagination might consider the curtain to be an abstract interpretation of what was advertised. However, most people would see that the product was not at all close to what was advertised. The velvet was closer to linen, the damask pattern was closer to swirls, and the taupe and gold accents with specks of ice blue were closer to silver and purple, with specks of mauve. After running a Google reverse image search of the original product photo, he saw it featured in an interior design magazine. When Ivan looked up the product endorsements and reviews, he saw that all of the reviewers had only posted reviews for that particular seller’s products, and that they had posted nothing but glowing reviews for each of the products. It was clear to Ivan that the seller was guilty of false advertising, as well as faking endorsements. Ivan has enough information to submit a consumer complaint to the Federal Trade Commission.

**EXAMPLE 12.2**

Devin is involved in the telemarketing of spy gadgets, such as bugs and bug detectors. He has had a lot of trouble finding a market for these products. One day, he speaks with an older citizen who asks him about the benefits of the bug detector. Devin starts to knowingly make unsubstantiated claims that there have been news reports that home bugging is on the rise. His false claims works like a charm. Spooked, the elderly customer buys the most expensive bug detector product. Seeing his success, Devin purchases a report of households in his geographic selling area that are headed by people over the age of 70. Over the next few months, his sales increase at an explosive rate. When he is recognized by management for his leading sales numbers, they also inquire about the secret to his success as they seek to replicate it in training materials for other sales professionals. When Devin proudly explains his tactics, he is terminated by the company. The company calls the customers impacted by his false claims, explains that there was a misrepresentation by one their sales associates regarding the scope of known bugging activity, allows them to keep their bug detectors, and refunds them the money they spent purchasing the products. The sales associate engaged in unfair trade practices, but the company took appropriate steps to correct it.

Taking Advantage of Customers

The FTC also pays particular attention to business ventures that target vulnerable populations. For example, some telemarketing efforts employ intense pressuring tactics to target seniors and people who don’t speak English.
Misrepresenting a Product

At times, the FTC may be quite technical in its definition of certain terms. For this reason, companies should be very clear about their usage of various phrases and words. For example, the word “new” may only be used to refer to a product that is less than six months old. Other terms may be the subject of debate or litigation, such as whether a lotion will actually “rejuvenate” skin or whether a tablet will actually “cure” baldness. Indeed, a sweater should not be called “wool” unless that is its complete composition. There are many examples, so it is important for businesses to have an understanding of the FTC’s rules on this topic.

Giving Misleading Price Information

The FTC sanctions misleading price information as an unfair trade practice. Examples of misleading price information include false sales in which a “limited time offer” might actually be available forever, or running a “Going Out of Business” sale without any plans to go out of business while advertising that items are discounted, although the prices have not changed.

**Example 12.3**

A brick and mortar store has an online promotion for a “buy one, get one” offer for the season’s hottest new phone, stating that the offer is only available on Black Friday. The store opens at 5:00 a.m., and customers start lining up with their sleeping bags in tow the evening prior to the morning opening time. After customers almost stampede one another, they learn that they will have to also purchase a phone plan that is inflated by 100% of its regular price to qualify for the deal. Nowhere in the literature or promotions was the phone plan, or its over-inflated price, mentioned as a requirement to get the buy one get one free phone deal.

Failing to Disclose Pertinent Information

Merchants must disclose facts that would reasonably influence the consumer’s decision to make a purchase. Withholding pertinent information from customers may be viewed by the FTC as equal in severity to the process of using overtly incorrect or deceptive information. For example, sellers should always disclose the full price of their products or services before accepting payment for them.

12.2 The Federal Trade Commission

The FTC was created in 1914 to address the problem of monopolies and trusts. Following the Civil War, a wave of consolidation and growth among companies triggered increased public debate. Through handshake agreements, issuance of stock, and pooling arrangements, companies could fix prices and outputs, thus effectively stopping competition and raising consumer prices. A substantial number of mergers gave control over key industries to small groups of businesses. Where companies did not merge, other arrangements were made to have a similar effect. Conglomerates controlled most of the relevant industries that produced household necessities. Goods used in production were also the product of highly concentrated trusts, such as the United States Steel Corporation and the International Paper Company. Concerns about industrialization and a changing economy, with shifting norms for personal lives, triggered antitrust sentiment.
The perceived unfairness and fears caused by the consolidation of businesses created strong anti-business sentiment and increasing cries for price controls to be considered as a remedy for heavily concentrated industries. These organizations posed economic and social problems that became a large social concern. In response, the Federal Trade Commission (FTC) was created with broad powers to investigate and propose formal recommendations to companies about their competitive practices. The FTC did not formally have a consumer protection mission until the passage of the Wheeler-Lea Act in 1938. This act gave the FTC the power to combat false advertising for any foods, drugs, medical devices, or cosmetics.

In addition to the Wheeler-Lea Act, subsequent amendments to the FTC Act, as well as judicial respect toward the agency, broadened the power and jurisdiction of the FTC.

Today, in addition to its original antitrust roots, the FTC enforces consumer protection laws.

**Bureaus of the FTC**

Several bureaus now stand in support of the FTC’s efforts.

**Bureau of Consumer Protection**

The Bureau of Consumer Protection protects consumers against unfair trade practices. Bureau attorneys enforce consumer protection laws issued by the FTC. In addition to enforcement actions, the Bureau’s functions include investigations and consumer and business training. Unfair trade practices in advertising and marketing are a main focus, as well as privacy, financial products and practices, and identity protection. The Bureau also manages the United States National Do Not Call Registry and investigates telemarketing fraud.
Bureau of Competition

The Bureau of Competition’s purpose is to eliminate and prevent “anticompetitive” business practices related to the enforcement of antitrust laws. The FTC and the Department of Justice share responsibility for enforcement of antitrust laws.

Bureau of Economics

The Bureau of Economics supports the Bureau of Competition and Bureau of Consumer Protection by providing subject matter expertise regarding the economic impacts of FTC legislative activity.

FTC Activities

The FTC investigates issues raised through a number of sources, including consumer, business, and media reports. If the FTC concludes that there was unlawful conduct, it may seek several forms of recourse. These include the pursuit of voluntary compliance through a consent order, the submission and filing of administrative complaints, or the initiation of a federal action and litigation.

The FTC has the power to create rules regarding widespread industry practices. Rules created in this fashion to address systemic issues are called trade rules.

Assessment Questions

1. Define unfair trade practices.

2. All of the following are considered unfair trade practices except:
   a. Targeting vulnerable populations.
   b. Charging extremely high prices.
   c. False advertising.
   d. False representation of a good or service.

3. What is a bait and switch?


5. The following are examples of a company giving misleading price information except:
   a. Advertising “Limited Time Offer” when the offer is available forever.
   b. Advertising “Going Out of Business” when the company plans to stay in business.
   c. Advertising the product as “New” when the product is more than 6 months old.
   d. Advertising “Buy One, Get One” without informing consumers that they must buy another product or service to get the deal.

Endnotes

