businesscompanion
trading standards law explained

Part 1. Promotion

In this section

Product performance claims
Consumer Protection from Unfair Trading Regulations 2008
Fraud Act 2006
Product marketing
Ancillary matters
- Trade bodies and consumer codes
- Data protection
- Advertising
- Reviews
- Limited companies

Product performance claims

Inevitably, a major selling point used by businesses in the renewable energy, green heating and insulation sector is the claim that purchasing and installing a particular product will save the consumer money by reducing their domestic energy costs. Provided that a product is fit for purpose and properly installed, it is likely that it will save money on energy costs.

The real difficulty here is exactly how much money will be saved and whether any projected savings will be realised. No two households are the same, and there are many variables - for example, construction and layout of property, prevailing weather conditions, number of occupants and their individual preferences, and the current domestic energy tariff being paid. To illustrate this point, projections about future energy savings when the current domestic tariffs are very high could be completely inaccurate if the tariffs were to drop in the future.

Businesses supplying and installing measures must take great care when making claims about them. There are two main pieces of criminal legislation that apply: the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and the Fraud Act 2006.

Offences under this legislation can be committed by sole traders, partnerships and limited companies. Importantly, offences can also be committed by senior managers and directors, so even if a limited company is dissolved, criminal cases can still be pursued by Trading Standards or the Police.

Consumer Protection from Unfair Trading Regulations 2008

These Regulations cover a range of activities, including aggressive practices and misleading omissions, which will be covered in part 2.

In terms of making false claims, regulation 5 of the CPRs prohibits businesses from giving false information to, or deceiving, consumers. A misleading action occurs when a practice misleads through the information it contains or its deceptive presentation (even if the information is factually correct) and causes, or is likely to cause, the average consumer to take a different transactional decision. For example, promoting an attractive energy saving claim that cannot be replicated in certain home types might be a misleading action.

A wide variety of information may be considered as misleading and regulation 5 includes detailed lists of what is included - for example, the main characteristics of the product and its benefits. Business Companion covers these Regulations in great detail in 'Protection from unfair trading', including an explanation of what the law means by the term 'transactional decision'.

Fraud Act 2006

If a business makes a false representation that was dishonest, and by making the false representation intended to gain for themselves or another (or cause loss to another), then they may commit an offence under the Fraud Act 2006 (the Fraud Act does not apply in Scotland; instead, it is the common law offence of fraud). In relation to fraudulent trading by people working for, or on behalf of, a limited company, the offence is under section 993 of the Companies Act 2006.

Product marketing

Businesses need customers and, in the renewable energy, green heating and insulation sector, this means using a wide variety of channels, including paid-for advertising, direct mail, email, telephone calling, leaflet distribution, cold calling on the doorstep, and social media. Some types of marketing cause concern to Trading Standards officers because of their intrusive nature and there are some controls in place that businesses need to be aware of.

Cold calling on the telephone is not against the law but there are controls that have evolved to protect consumers. The most well known is the Telephone Preference Service (TPS), which allows consumers to register. Basically, it is an official 'do not call' register for landlines and mobile numbers. It allows consumers to opt out of unsolicited live sales and marketing calls. If a number is registered with the TPS, businesses are legally required - by the Privacy and Electronic (EC Directive) Regulations 2003 - to refrain from calling it. In the UK, the Information Commissioner's Office enforces the law and has power to fine firms that break it.

The use of direct mail to promote products is probably less significant than it used to be but there is still a system called the Mailing Preference Service (MPS), which allows consumers to opt out of receiving direct mail. There are currently around three million consumers signed up to the MPS.

Cold calling on the doorstep is a major problem encountered by Trading Standards. It is very intrusive and catches householders unawares, putting some people into a 'hot state', which can lead to hasty and unwise decisions. The usual Trading Standards advice to consumers is to never deal with cold callers on the doorstep and to simply say "No thank you" and close the door.

Networks of No Cold Calling Zones have evolved over the last 20 years or so and businesses that want to cold call on the doorstep should first contact the local Trading Standards service in the area in which they wish to operate. Door stickers like the one pictured below must be respected by businesses; failure to do so is potentially an offence under the banned practices section of the CPRs.



Some businesses use the services of lead generation companies in order to find potential customers. Businesses that use lead generation companies must take extreme care and fully understand how details of those potential customers are obtained. Businesses cannot simply wash their hands and say that the activities of a lead generation company are nothing to do with them. If a business is paying for leads, then it is everything to do with them.

Customers will sometimes use a business following a recommendation from a friend or family member, which is an incentive for any business to do a good job every time.

Ancillary matters

There are some ancillary matters that are worth highlighting at this point.

Trade bodies and consumer codes

There are a range of trade bodies and consumer codes in the renewables sector. Perhaps the best-known scheme is TrustMark, which is the Government-endorsed quality scheme that exists to create enhanced confidence and choice for consumers engaging businesses to work in or around the home. There is also MCS (Microgeneration Certification Scheme Service Company Limited), which certifies low-carbon energy technologies and contractors. A business normally needs to be signed up to MCS in order to offer work under Government-funded home improvement schemes. There are then two consumer codes: the Home Insulation and Energy Systems Quality Assured Contractors Scheme (HIES) and the Renewable Energy Consumer Code (RECC). In relation to insulation products, the National Insulation Association represents

organisations involved in this sector. A business cannot falsely claim to belong to a scheme, code or industry body; it is a criminal offence to do so.

Data protection

The UK General Data Protection Regulation (UK GDPR) regulates how customer information is stored. The prime concern is that information must be kept secure and legally processed, and failure to do so is a criminal offence. The rules are enforced by the Information Commissioner's Office and its website provides lots of useful information for organisations on UK GDPR.

Advertising

Businesses need to be aware of the Advertising Standards Authority (ASA). It is the UK's independent advertising regulator and makes sure that adverts across UK media stick to the advertising rules, known as the advertising codes. Of particular interest for the renewable energy, green heating and insulation sector is the requirement that advertisers hold evidence to prove any claims that they make before they are published or aired.

Reviews

Many consumers try and check review websites before purchasing goods and services. Some unscrupulous businesses recognise the power of positive reviews and mislead by using fake reviews. Businesses must not manipulate and use fake reviews; doing so would be a criminal offence under the CPRs and the Fraud Act 2006. See 'Online reviews and endorsements' for more information.

Limited companies

It is important that businesses have an established legal identity. In most cases, businesses will be set up as a limited liability company under the provisions of the Companies Act 2006. It is a simple process to set up a limited company on payment of a small fee, and details will be published on the publicly available register of companies maintained by Companies House.

A company will need to have at least one director and a registered office address to which all communications and notices may be addressed. This is an important requirement of section 86 of the Companies Act 2006. Businesses do not need to use a director's personal address as the registered office but can instead use an office address, a mail-forwarding business or the address of an accountant or solicitor (with their permission).

Many businesses use mail-forwarding addresses. The businesses offering these mail-forwarding services may give their customers the option of choosing to only receive particular types of 'official' mail, such as letters from HMRC or Companies House. This is a practice that has evolved over the last few years but those using the service must not take advantage of it. Choosing to not receive all mail sent to a business address is likely to breach the professional diligence requirements of the CPRs and may be a criminal offence.

Guidance on setting up a limited company is provided by Companies House.

It is important for businesses to ensure that customers are made aware of their legal identity and registered office address so that letters can be received. This means that documents such as invoices and receipts must include the registered office address. It is also important for business websites to include this information, which is a requirement of regulation 25 of the Company, Limited Liability Partnership and Business (Names and Trading Disclosures) Regulations 2015.

Further guidance on the requirements can be found in 'Company and business names'.

< Introduction

> Part 2. Engagement

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