

## **Court of Appeal clarifies misleading advertising**

Consumers are familiar with being made offers through advertisements; however the conditions attached to such offers have recently come under scrutiny.

On 27 August 2014 the Court of Appeal released the decision *Godfrey Hirst NZ Limited v Cavalier Bremworth* [2014] NZCA 418 clarifying when advertising is likely to be misleading or deceptive in breach of the Fair Trading Act 1986 ("the Act").

The case concerned headline representations made by Cavalier Bremworth in respect of their "Habitat Collection" range of synthetic carpets. Cavalier posted marketing material on its website about the range of carpet and made warranties as to the life span, fade and stain resistance abilities and durability of the carpet. Their competitor, Godfrey Hirst raised a complaint that the warranties breached the Act, as they were likely to mislead and deceive consumers because they were not correct. This complaint was upheld by the High Court.

When appealed to the Court of Appeal it largely agreed with the High Court and decided that the representations on the website were misleading, and were not corrected by qualifying information provided by a hyperlink to a set of complex terms and conditions.

The warranties were found to entice consumers through the belief that the Habitat Collection was comprised of high performing carpets supported by comprehensive warranties, when in fact this was not the case. The Court found that the terms and conditions were "too detailed and complex to permit a consumer looking at the website to easily determine what was covered by the warranties."

In making their decision the Court of Appeal applied the following test:

1. What is the overall impression of the advertisement, or the dominant message by considering the advertisement as a whole?
2. Have any qualifications to the representation been sufficiently "brought to the attention" of the consumer (by and large the average or ordinary person to whom the advertisement was targeted, excluding persons ill-equipped to understand the advertisement)
3. Does the advertisement viewed as a whole have a tendency to entice consumers through an erroneous belief?

An answer of "no" to questions 2 and an answer of "yes" to question 3 would likely result in a finding that an advertised warranty is misleading or deceptive, and requiring the writer to review their advertisement.

Some useful lessons can be learned from this case. When advertising warranties about goods or services, ensure that the dominant message of the warranty is not likely to mislead or deceive a consumer. It is not sufficient to draw a consumer's attention to complex terms and conditions, the terms and conditions of a warranty must be readily understandable by the consumer.

For more information, or if you have any questions, please contact Anna Davidson.