**MEMBER GUIDANCE ON ‘BAIT ADVERTISING’**

Bait advertising is where a seller indicates a product is available, often at cost or close to cost price, in order to attract the interest and intent to purchase from a potential customer; but when the order is placed or attempted to be placed the customer is told the product is not in fact available or it is not available within a reasonable time frame. The seller then switch sells to a different product/brand performing a similar function.

There have been instances where bait advertising has been successfully challenged by working with the local Trading Standards office but, due to heavy workloads, it may require persistence.

Manufacturers/suppliers have the right to legally demand their products are withdrawn from the internet or other points of promotion if examples of bait advertising can be substantiated (e.g. via live chat/mystery shop/telephone recordings).

CESA’s understanding (and advice from Trading Standards) is that taking this action DOES NOT contravene CMA rules/regulations. This should give confidence to enable foodservice equipment suppliers to work together to eradicate this mis-selling and misrepresentation of products and brands which can have the result of damaging consumer confidence.

Bait advertising is a contravention of TRADE DESCRIPTIONS - The Business Protection from Misleading Marketing Regulations 2008, Coming into force - - 26th May 2008.

<http://www.legislation.gov.uk/uksi/2008/1277/contents/made>

 The detail of the act clearly states (extract below):

Prohibition of advertising which misleads traders:-

 *3.—(1) Advertising which is misleading is prohibited.*

*(2) Advertising is misleading which—*

*(a) in any way, including its presentation, deceives or is likely to deceive the traders to whom it is addressed or whom it reaches; and by reason of its deceptive nature, is likely to affect their economic behaviour; or*

*(b) for those reasons, injures or is likely to injure a competitor.*

*(3) In determining whether advertising is misleading, account shall be taken of all its features, and in particular of any information it contains concerning—*

*(a) the characteristics of the product (as defined in paragraph (4));*

*(b) the price or manner in which the price is calculated;*

*(c) the conditions on which the product is supplied or provided; and*

*(d) the nature, attributes and rights of the advertiser (as defined in paragraph (5)).*

*(4) In paragraph (3)(a) the “characteristics of the product” include*

***(a)******availability of the product;…..etc***

**To reinforce this message the OFT have published a guidance document**

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284446/oft979.pdf>

This reinforces the legislation by stating the following on page 7:-

*5. Special offer – not in stock*

*Making an invitation to purchase products at a specified price, without disclosing the existence of any reasonable grounds the trader may have for believing that he/she will not be able to offer for supply or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered. This is known as bait advertising.*

*6. Limited time only Falsely stating that a product will only be available for a very limited time, or that it will only be available on particular terms for a very limited time, in order to elicit an immediate decision and deprive consumers of sufficient opportunity or time to make an informed choice.*

The Department for Business Energy and Industrial strategy is responsible for the legislation which is enforced by the local trading standards office (TSO).

Any complaint should be address to the TSO in the first instance.

**Failure to comply**

Anyone who breaks the regulations could be fined, prosecuted or imprisoned.

**Where can I go for more advice?**

For practical business advice and to find out more about these regulations, visit one of the following websites:

www.businesslink.gov.uk/unfairtrading for England

www.bgateway.com/unfairtrading for Scotland

www.hiebusiness.co.uk/unfairtrading (Scottish Highlands & Islands)

www.businesseye.org.uk for Wales

www.nibusinessinfo.co.uk/unfairtrading for Northern Ireland

Disclaimer:

CESA has prepared this document in good faith and it should not be considered as legal advice or guidance. If required, you should seek your own advice and be guided accordingly.

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