

THE ILLINOIS CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES
ACT - LET THE SELLER BEWARE!

When marketing in Illinois, you should consider the Illinois Consumer Fraud and Deceptive Business Practices Act (the Act) when designing your marketing campaign. Due to the Act, the old maxim, *caveat emptor*, let the buyer beware, has to some extent been replaced by a new maxim, *caveat venditor*, let the seller beware.

Although the title of the Act specifically mentions consumers, the Act also covers transactions between businesses. Essentially, the Act imposes penalties on vendors who do anything that is deemed to be deceptive and who intend that others rely on their deceptive conduct in making a decision to purchase. The Act defines "deceptive" conduct very broadly. As you might expect, the Act applies to conduct that is intended to deceive someone. However, deceptive conduct under the Act also includes careless omissions of any important fact or conduct that unintentionally creates *alikehood* of confusion or misunderstanding concerning important features of your goods or services.

For an example let's consider someone, who we'll call Sara, who is marketing computers. Quite naturally, Sara intends that her customers will rely on the information that she gives them. If Sara inadvertently forgets to mention important information regarding the computers' limitations, her innocent mistake might be a deceptive practice under the Act. Conduct can be deceptive under the Act even if no one has in fact been misled, deceived, or harmed, because *alikehood* of confusion is sufficient.

In addition to providing the broad general definition, the Act also focuses on many particular marketing activities:

- Sales at consumers' homes. If you make a sale at a consumer's home for more than \$25, you must give the consumer three days to cancel the sale and a special notice that explains this cancellation right.
- Mail order sales. If you sell consumer goods or services by mail order with a post office box for return mail, you must disclose the name and street address of your business on all your marketing materials and on all your order forms.

- Sales of consumer credit records. If you sell to a consumer access to credit reports, you must disclose in a certain notice the fact that the consumer may be able to obtain those records from the government or from a credit reporting agency for free or for a nominal cost.
- Rejection of consumer credit. If, after investigating a consumer's credit history, you decline to sell on credit to that consumer, you must return all down payments and other fees paid to you by the consumer.
- Collection from a consumer's spouse. You may not attempt to collect a bill from a consumer's spouse except under the following circumstances: a) the spouse previously agreed to pay, b) the bill is more than 30 days past due, or c) the goods or services constitute items that are deemed to be "necessaries" under Illinois law.
- Collection by contacting a consumer's employer. You may not attempt to collect a consumer debt by notifying their employer unless the bill is more than 30 past due and you give the consumer at least five days advance notice of your intention to contact their employer.
- Advertising price and installment payments. If your advertisements include an offer to allow installment purchases, your ad must also clearly state the cash price, the down payment (if any), the number and due dates of the installment payments, and the rate of the charge for credit.
- Notice of prices. If you sell goods at retail, you must post the price of the goods on each item or near the shelf on which the item is displayed.
- Advertising credit rates. You may not use the words "bank rates," "bank financing," or similar terms unless you are a bank.
- Factory authorized services. You may not advertise your services as "factory authorized" unless you are in fact so authorized and can prove it by producing evidence of authorization given to you by the manufacturer.
- Negotiations in a language other than English. If you negotiate a retail sale in a language other than English, you must, before the sale is concluded, give the consumer a contract signed by you that is translated in the language you used to negotiate the sale.
- Offering free prizes. If you market goods or services by offering free prizes, you must, at the outset, clearly and conspicuously disclose all

important terms and conditions of the offer so that there is no reasonable probability that your offer might be misunderstood.

- Simulating checks. You may not use simulated checks unless the words "This is not a check, sample, or specimen" are printed on the front and back.
- Wholesale advertising. You may not state or imply that you are offering a wholesale price unless your price is significantly lower than the price local retailers offer for identical goods.

The Act imposes significant penalties for violations. The Illinois Attorney General can sue vendors, seek fines of up to \$50,000 (or \$60,000 if the victim is age 65 or over), and in the most egregious cases, seek to shut down a business. The Act also allows anyone who has suffered actual harm to recover their actual damages, punitive damages in egregious cases, plus attorneys fees.

Marketing is probably essential for the survival and growth of your business. Make sure you do not inadvertently violate the Act. *Caveat venditor!*