

Current Legal Issues for Suppliers

Misleading Representations and Bait Advertising

The computer chain PB Technologies is the latest to have fallen foul of misrepresentation claims and bait advertising.

The Commerce Commission has laid 14 charges against the company for failing to give customers a summary comparing their rights under the Consumer Guarantees Act with those provided by the store's extended warranty.

Seemingly PB Technologies is not alone; reportedly it is widespread amongst retailers to fail to notify customers about benefits provided by extended warranties. As is bait advertising, ie deceptive promotional activity involving advertising goods or services which you know you cannot supply to attract customers.

Unsubstantiated claims

An extension to the above are the provisions in the Fair Trading Act that prohibit unsubstantiated claims. Essentially it is illegal for a trader to make a claim about a good or service without reasonable grounds for doing so. Published tips are:

- Don't make claims that you don't have reasonable grounds for believing to be true
- Rely on facts, figures and credible sources of information, not guesses and unsupported opinions
- Keep documentation or other information that you have gathered in the process of sourcing or researching a good or service
- You must have reasonable grounds for claims at the time they are made.

Reckless Trading

Reckless trading is the term afforded to directors' responsibility in trading while insolvent. This is a nightmare area for directors as their decisions are always viewed with the benefit of hindsight and it is often the case that hindsight will reveal insolvency and business risks which might not have been apparent at the time.

The Companies Act specifically legislates against reckless trading imposing personal liability for directors. The claim currently in the Courts against Jenny Shipley highlights the risks for directors. Ms Shipley was a director of failed Mainzeal. She is personally being sued for over \$47m for losses suffered by creditors allegedly as a result of decisions by directors of Mainzeal to continue to trade whilst the company was insolvent.

Putting Mainzeal aside, many directors will feel their responsibility for the company demands that they carry on and explore all avenues to trade out of insolvency. That is precarious to say the least. Another who is being sued along these lines is the Queenstown Mayor Jim Boulton who had been a director of Stonewood Homes, indeed I could give you a long list. Beware.

Don't hesitate to contact me for further information.