

Chapter 352.

Commercial Advertisement (Protection of the Public) Act 1976.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 352.

Commercial Advertisement (Protection of the Public) Act 1976.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Commercial Advertisement (Protection of the Public) Act 1976,

Being an Act to protect the public from untrue or inaccurate or misleading or misrepresentative or unreasonable manner of commercial advertisement and for related purposes.

PART I. – PRELIMINARY.

1. PURPOSE OF THE ACT.

It is declared for the purposes of Section 38 of the *Constitution* (*general qualification of qualified rights*) that because of the general lack of sophistication and educational standards of many people in the country and the general tendency of the public to rely on almost any form of advertisement, the purpose of this Act is to restrict or regulate the right of freedom of expression and publication granted by Section 46 (*freedom of expression*) of the *Constitution* in order to protect public safety, public welfare and public health (including animal and plant health) from the bad consequences of relying on commercial advertisement that is untrue or inaccurate or misleading or misrepresentative or unreasonable in the manner of describing the goods or services advertised.

2. INTERPRETATION.

In this Act–

“**advertisement**” means every form of advertising in the country inviting the public to purchase or use the goods or services advertised or to do certain other things, but does not include advertisement in a journal, magazine, document or other form originated outside the country and is intended for the world at large unless the advertisement is–

- (a) specifically sent to or directed at particular persons; or
- (b) extracted, removed or taken whole and used as original or for the purpose of the advertisement,

in the country;

“advertiser” means the person on whose behalf the advertisement is published;

“commercial advertisement” means advertisement for gain or benefit of any kind to the advertiser or to some other person, directly or indirectly, as a consequence of persons responding to the advertisement;

“goods” includes land, buildings, electricity, vehicles, vessels, aircraft, animals and articles and things of any description and rights in respect of goods;

“publish” in relation to an advertisement means to place the advertisement before the public or a section of the public by any means;

“unfair statement” means a statement or representation contained in an advertisement that is untrue or inaccurate or misleading or misrepresentative or unreasonable in describing the size, quality, quantity or nature of goods or services in a material particular or a material way.

PART II. – CERTAIN ADVERTISEMENTS PROHIBITED.

3. PROHIBITION OF COMMERCIAL ADVERTISEMENT IN CERTAIN WAYS.

Subject to Section 4, a person, who publishes or causes to be published any unfair statement in any commercial advertisement, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

4. DEFENCE.

(1) It shall be a defence to proceedings for an offence under Section 3 for the defendant to prove that at the time of the publication he believed on reasonable grounds–

- (a) that the statement or representation complained of was not an unfair statement; or
- (b) that the statement was not likely to deceive or mislead the complainant.

(2) Section 3 does not apply to–

- (a) an owner, publisher or printer of any newspaper, publication, periodical or circular; or
- (b) an owner of any radio or television station; or
- (c) an advertising agent; or
- (d) a newsagent or book seller; or
- (e) a servant, employee or agent of any of the persons referred to in Paragraphs (a) to (d),

who was concerned in the publication of the advertisement but not as the advertiser and had no knowledge of the fact that the advertisement contained an unfair statement.

PART III. – MISCELLANEOUS.

5. INSPECTION.

(1) The Minister responsible for consumer affairs may, from time to time by notice in the National Gazette, appoint persons to be authorized officers for the purposes of this Act.

(2) A person authorized under Subsection (1) may at all reasonable times, with or without complaint from any person–

- (a) enter any building or premises where an advertisement is published; and
- (b) inspect any advertisement; and
- (c) seek any information, explanatory or otherwise, as to the nature of any advertisement.

(3) A person, who wilfully gives false information to or obstructs an authorized officer in the execution of his duties, is guilty of an offence.

Penalty: A fine not exceeding K200.00.

6. PROSECUTIONS.

A prosecution for an offence under this Act shall not be instituted without the prior written consent of the Public Prosecutor.

7. COURT MAY ORDER CORRECTIONS.

Where a court finds a person guilty under this Act, it may, in addition to any penalty, order the correction of any unfair statement.

Office of Legislative Counsel, PNG