

Balloon Payments

A guide for businesses

no DEPOSIT

weekly
payments

monthly

charges

instalments

REFINANCING

CREDIT

The information contained in this guideline will assist you in the preparation of advertising material, particularly in relation to situations where 'balloon payments' are involved. It is based on fair trading legislation, including the *Trade Practices Act 1974* and the Consumer Credit Code.



The basic rule is that advertisements shall not be misleading or deceptive or be likely to mislead or deceive consumers.

Advertising essentially covers any matter which draws the attention of the public, or a portion of the public, to a product in a manner directly or indirectly calculated to promote that product.

Government consumer agencies have been concerned that consumers may be misled as to their overall commitment when entering into contracts involving 'balloon payments'. In some cases, such as where small monthly or weekly instalments are in large bold print and the balloon payment is in small inconspicuous print, consumers have expressed surprise at the balloon payment and not planned for dealing with it (eg full payment, re-financing or rolling over into another credit product). Advertising that creates an impression of easy repayment levels but fails to adequately draw a consumer's attention to a substantial final payment is of general concern. It is important that there is full and clear disclosure to the consumer of all repayment obligations.

The Basic Rule

The basic rule is that advertisements shall not be misleading or deceptive or be likely to mislead or deceive consumers.

What does it mean to mislead someone? This includes:

- misrepresentation
- leading the person to a wrong conclusion
- creating a false impression
- leaving out or concealing important information
- making false or inaccurate claims.

It is important to note that in Court, it is no defence to misleading conduct if there was no intention to mislead. Whether something is misleading is a question that is determined in the context of all the relevant surrounding facts and circumstances. Just as it is possible to mislead or deceive by the words used, it is also possible to mislead or deceive by omitting important information.



Fine print causes concern because it is often very difficult to read and lacks prominence.

Establishing the Likelihood of an Advertisement being Misleading

In order to establish the likelihood of an advertisement being misleading, ask yourself these questions.

- What impression does the advertisement create in the mind of the reader/listener?
- What is the message being conveyed?
- What is the impression left with the reader/listener?
- Is the impression different from that which the advertiser intends?

An advertisement may still be found to be misleading even if the statements it contains are literally true but convey a misleading impression.

Use of industry terms

Consumers may be ignorant of terms such as 'balloon payment' or 'residual'. When these terms are used in advertisements, the consumer should be able to fully understand the particular condition of the purchase, such as when ownership of the vehicle depends on the purchaser making a very substantial final payment.

Fine Print

Fine print, which often appears at the foot of advertisements and may contain important information, causes concern because it is often very difficult to read and lacks prominence.

The writing is small and the information tends to be unclear. Further, abbreviations and industry terms are often used which mean little to the general public.

Any information contained in an advertisement should be presented in a manner that is clear, prominent and easy to read. It should be set out in a way that is readily understood by someone unfamiliar with industry terms or jargon.



The advertiser must openly direct the consumer's attention to the terms and conditions that impact on the decision to purchase.

Remember that whether something misleads an audience depends on the overall impression created and the relationship between this and the actual facts of the matter. The consumer is not required to exhaustively search for those facts. Instead, the advertiser must openly direct the consumer's attention to the most significant of the terms and conditions – those having an important impact on the decision to purchase.

Consumer Credit Code

The Consumer Credit Code is based on the concept of truth-in-lending which allows borrowers to make informed choices when purchasing credit.

It is important to note that the Code applies where credit is provided or intended to be provided wholly or predominantly for personal, domestic or household purposes.

Credit providers and advertisers need to be fully aware of their obligations under the Code and should ensure that they have adequate systems in place to ensure ongoing compliance. Some of the more important provisions that may affect advertising and disclosure are:

- Sections 14 and 15 pre-contractual and contractual disclosure
- Sections 140–143 advertising
- Section 144 false or misleading representations
- Section 70 reopening of unjust transactions.

You should also pay particular attention to:

- Section 118credit providers' liability for suppliers' misrepresentations
- Section 119right to damages for misrepresentation etc under sale contract against both supplier and linked credit provider
- Section 176conduct of agents.



Advertisements should clearly state the amount of the 'balloon payment'

Best Practice Principles

The Best Practice Principles are consistent with good customer service and utilise best business practices.

Where 'balloon payments' are involved, in addition to complying with any specific regulatory requirements (eg s140 of the Consumer Credit Code), it is considered that the following principles should be followed.

- All advertising and other disclosures will be clear, conspicuous and legible.
- Advertisements will clearly state:
 - the required regular payment (eg weekly, monthly)
 - the amount of the 'balloon payment'
 - in the case of print advertisements, the amount of the 'balloon payment' immediately underneath the appropriate advertisement in type of no less than 9 point
 - the annual percentage rate or rates
 - the total period over which the instalments will be payable, and
 - the amount of any fees or charges which apply (or state that fees and charges apply or state the amount of some of the fees and charges that apply and that other fees and charges are also payable).

- Prior to entering into the credit contract, the borrower can expect:
 - his/her attention drawn to the total amount to be paid and not just the amount of the regular repayments
 - a plain language explanation of what a 'balloon payment' is and when it falls due
 - options on how to deal with the 'balloon payment'.
- Once the credit contract has been entered into, the borrower will be:
 - contacted by the credit provider 6 months prior to the 'balloon payment' falling due reminding of this payment
 - given information by the credit provider as to options on how to deal with the 'balloon payment' (eg full payment, re-financing or rolling over into another credit product)
 - encouraged to contact the credit provider to discuss any difficulties with the credit contract, and
 - informed of alternative sources of advice and assistance.



The borrower should be encouraged to contact the credit provider to discuss any difficulties with the credit contract.