Cherokee Nation Code Annotated
Title 12: Civil Procedure
Chapter 2: Unfair and Deceptive Practices
§ 25. Deceptive practices
Cite as: 12 CNCA § 25

A. Deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

B. It shall be a violation of this act, whether or not any person is in fact misled, deceived or damaged thereby, for any person to engage in, *inter alia,* the following deceptive acts or practices:

1. Passing off goods or services as those of another;

2. Misrepresenting the source, sponsorship, approval, or certification of goods or services;

3. Misrepresenting the affiliation, connection, or association with, or certification by another;

4. Using deceptive representations or designations of geographic origin in connection with goods or services;

5. Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities which they do not have or that a person has a sponsorship, approval, status, affiliation, or connection which he or she does not have;

6. Representing that goods are original or new if they have deteriorated unreasonably or are altered, reconditioned, reclaimed, used, or secondhand;

7. Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model if they are of another;

8. Disparaging the goods, services, or business of another by false or misleading representation of fact;

9. Using innuendo or ambiguity as to a material fact, which has a tendency to mislead;

10. Advertising goods or services with intent not to sell them as advertised;

11. Advertising goods or services with intent not to supply reasonably expectable demand, unless the advertisement discloses a limitation of quantity;

12. Advertising furniture without clearly indicating that it is unassembled if that is the case;

13. Advertising the price of unassembled furniture without clearly indicating the assembled price of that furniture if the same furniture is available assembled from the seller;

14. Making false or misleading statements of fact concerning reasons for, existence of, or amounts of price reductions;

15. Employs "bait and switch" advertising, which consists of an offer to sell the subject of a consumer transaction which the seller does not intend to sell, which advertising is accompanied by one or more of the following practices:

a. Refusal to show the subject of a consumer transaction advertised;

b. Disparagement of the advertised subject of a consumer transaction or the terms of sale;

c. Requiring undisclosed tie-in sales or other undisclosed conditions to be met prior to selling the advertised subject of a consumer transaction;

d. Refusal to take orders for the subject of a consumer transaction advertised for delivery within a reasonable time;

e. Showing or demonstrating defective subject of a consumer transaction which the seller knows is unusable or impracticable for the purpose set forth in the advertisement;

f. Accepting a deposit for the subject of a consumer transaction and subsequently charging the buyer for a higher priced item; or

g. Willful failure to make deliveries of the subject of a consumer transaction within a reasonable time or to make a refund therefor upon the request of the purchaser;

16. Misrepresenting the safety or efficacy of any product good, or service that is the subject of a consumer transaction, including but not limited to, food, medical devices, pharmaceuticals, motor vehicles, etc.;

17. Representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;

18. Representing that a part, replacement, or repair service is needed when it is not;

19. Representing that the subject of a transaction has been supplied in accordance with a previous representation when it has not;

20. Representing that the consumer will receive a rebate, discount, or other economic benefit, if the earning of the benefit is contingent on an event to occur subsequent to the consummation of the transaction;

21. Misrepresenting the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction with a consumer;

22. Inserting an unconscionable provision in a contract;

23. Advertising that a product is being offered at a specific price plus a specific percentage of that price unless (a) the total price is set forth in the advertisement, which may include, but is not limited to, shelf tags, displays, and media advertising, in a size larger than any other price in that advertisement, and (b) the specific price plus a specific percentage of that price represents a markup from the seller's costs or from the wholesale price of the product;

24. The home solicitation of a consumer who is a senior citizen where a loan is made encumbering the primary residence of that consumer for the purposes of paying for home improvements and where the transaction is part of a pattern or practice in violation of this Act;

25. Charging or receiving an unreasonable fee to prepare, aid, or advise any prospective applicant, applicant, or recipient in the procurement, maintenance, or securing of Cherokee Nation or other public social services. For purposes of this paragraph, the following definitions shall apply:

a. "Social services" means those activities and functions of government involved in providing aid or services, or both, including health care services and medical assistance, to those persons who are in need of that aid or those services and may benefit from them;

b. "Unreasonable fee" means a fee that is exorbitant and disproportionate to the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a fee, are based on the circumstances existing at the time of the service and shall include, but not be limited to, all of the following:

(i) The time and effort required;

(ii) The novelty and difficulty of the services;

(iii) The skill required to perform the services;

(iv) The nature and length of the professional relationship;

(v) The experience, reputation, and ability of the person providing the services;

(vi) Paragraph (22) shall not apply to attorneys licensed to practice law, who are subject to Rules of Professional Conduct.

26. Charging or receiving an unreasonable interest rate in connection with the purchase or sale of any good or provision or receipt of any service.

a. "Unreasonable interest rate" means an interest rate that is exorbitant and disproportionate to the total cost or value of the goods or services being purchased or sold. Factors to be considered, when appropriate, in determining the reasonableness of the interest rate are based on the circumstances existing at the time of the sale of the good or service and shall include, but not be limited to, all of the following:

i. The interest rate charged for comparable competitive goods or services;

ii. The interest rate charged for the same good or service sold or provided to another under similar circumstances and costs;

iii. The novelty or uniqueness of the good or service;

iv. The skill required to create the good or perform the service.

27. Charging an unreasonable price or receiving an unreasonable payment for a good or service.

a. "Unreasonable price" or "unreasonable payment" means a price or payment that is exorbitant and disproportionate to the value of the good provided or the services performed. Factors to be considered, when appropriate, in determining the reasonableness of a price or payment are based on the circumstances existing at the time of the sale of the good or service and shall include, but not be limited to, all of the following:

i. The price or payment for comparable competitive goods or services;

ii. The price or payment of the same good or service sold or provided to another under similar circumstances and costs;

iii. The novelty or uniqueness of the good or service;

iv. The skill required to create the good or perform the services;

v. Paragraph (23) shall not apply to attorneys licensed to practice law, who are subject to Rules of Professional Conduct.

28. Failing to adequately warn or instruct of the potential risks, side effects, or allergic reactions that the manufacturer or distributor knew or reasonably should have known about;

29. Making any decision relating to the purchase or sale of goods, or provision of services, or determination of the cost, fee, value, or interest rate to be charged to an individual based on their geographical location, race, gender, ethnicity, or tribal affiliation;

30. Violation of any law affecting or impacting on consumer goods, supplies, and services enacted by the United States;

31. Any other act or practice determined by the court to be deceptive with regard to the sale of any goods and/or services to consumers.

C. Remedies

1. Each violation of any of the provisions of this Act is punishable by a fine of ten thousand dollars ($10,000) for each violation or each individual transaction that constitutes a violation in addition to any other remedy provided by law and equity;except in the instances in which a Senior Citizen or a Disabled Person is the victim of such violation in which case the fine shall be twenty-five thousand dollars ($25,000).

2. In any action under this act in which judgment is entered against the defendant the plaintiff shall be awarded reasonable attorney fees together with the costs of suit;

3. The remedies or penalties provided by this act are cumulative to each other and to the remedies or penalties available under all other laws of the Cherokee Nation.

Historical Data

LA 16–16, eff. April 21, 2016. Amended LA 07–18, eff. May 18, 2018.