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from the IP and Technology Unit

Unfair Business Practices— a bid to restore consumer confidence



The Government has recently launched a consultation on its plans to adopt the EU Unfair Commercial Practices Directive into UK law.

Some marketing techniques which, at the moment may be unfair, but are not unlawful will, it is thought, be caught by the new legislation such as bogus closing down sales, creating the impression that the consumer cannot leave the premises until a contract is formed and aggressive door step marketing.

The planned legislation will introduce for the first time a general duty not to trade unfairly in relation to business-to-consumer commercial practices. It will also oblige businesses not to mislead consumers through acts or omissions, or to subject them to aggressive commercial practices such as high pressure selling. It will also provide additional protection for consumers who are particularly vulnerable because of their mental or physical infirmity, age or credulity, perhaps by having different tests for what is appropriate for the “average consumer” and the “vulnerable consumer”.

The Directive must be incorporated into UK law by 12 June 2007 and be effective on or before 12 December 2007.

The Government also intends to take the opportunity to simplify the existing UK consumer framework where it makes sense to do so.

The Consultation document recognises that a healthy market place requires confident consumers and with most people having first hand experience of some unscrupulous or sharp selling technique parting them from their money, consumer confidence has been waning. What the Government does not want to do, however, is penalise the vast majority of legitimate and honest retailers with a flood of complex legislation and an additional administrative burden.

The Directive, first of all, seeks to spread a wide net to catch unfair practices that fall between existing rules. Secondly, a general prohibition on unfair trading means that new rogue practices should be swept up as they emerge and particular legislation will not be required in each case. Thirdly, the Directive works on harmonising consumer rules across the European Union which should strengthen faith in the internal market.

For further information on what your business should and shouldn't do in relation to marketing contact:

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