

Exaggerating the Truth or Misleading: A Legal Perspective

‘However, there can be a fine line between a mere “puff” and misleading or deceptive conduct; the later is against the law’.



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Ponder this...

- Can you use pictures of gardens or houses for “indicative” or “illustration” purposes only?
- Can you stop another real estate agent from using the same colours and font as your own logo?
- Can you use an image of Bart Simpson on a sign board advertising a property for sale in “Simpson Street”?

The fine line between stretching the truth and lying...

It is understandable that agents will want to emphasise and highlight any positive attributes a property might have to a “potential buyer”.

The law permits a degree of “puffery”, that is when agents make statements of superiority or exaggeration - for example, “Situated in the best part of St Kilda!” The courts generally accept that there is a degree of scepticism among consumers and they don’t need protection from such statements.

However, there can be a fine line between a mere “puff” and misleading or deceptive conduct; the later is against the law.

This article very briefly takes you through some of the issues agents should bear in mind when making representations of any sort to potential purchasers.

The truth, the whole truth and nothing but...

In summary, the main section of the Trade Practices Act 1974 (C’wealth) (TPA) essentially provides that “a corporation must not in trade or commerce engage in conduct

that misleads or deceives or is likely to mislead or deceive”.

The prohibition under the Act is very broad and the following principles apply at law:

- You must tell the truth, the whole truth – ask yourself: can all your representations be factually substantiated?
- Sometimes the overall impression you create, whether it is via pictures, sign board advertisements or otherwise can in themselves be misleading;
- It is no defence to say that you did not intend to mislead or deceive;
- Even if there is no proof that anyone was actually misled or deceived, if there is a likelihood that people could have been misled or deceived liability under the Act can arise; and
- The rule applies to all conduct – not just written statements and visual pictures. So, as you would be aware from recent ACCC action, it includes oral statements made before or after an auction.

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