



# Advertising Guidelines For ATAS Participants

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## Purpose

This document provides guidance and clarification as to the obligations that the ATAS Charter and the ATAS Code of Conduct (Code) places on ATAS Accredited entities in relation to advertising.

This 'Advertising Guidance' has been approved by the AFTA Board as an 'Additional Condition' pursuant to cl 2.5(m) of the ATAS Charter and as such compliance with this guide forms part of the eligibility criteria for ATAS Accreditation. Compliance with these guidelines is a mandatory requirement for all ATAS Accredited entities. The ATAS Compliance Manager may request evidence that demonstrates compliance with any of the below principles or guidelines pursuant to cl 2.5(c) or 2.5(e) of the ATAS Charter at any time. The applicable clauses are contained in the Appendix.

## AFTA Jurisdiction

AFTA, as administrator of ATAS, has jurisdiction to determine if a breach of the ATAS Charter or Code has occurred only, not to make a determination of a breach of the Australian Consumer Law. AFTA have however, drawn on the principles of the ACL, the ACCC guidelines and extensive case law in this area to develop this Guidance. AFTA has also drawn on its extensive experience in consumer complaint handling under the ATAS Code of Conduct and outcomes determined by the ATAS Compliance Manager and the ATAS Complaint Appeal Committee (ACAC).

These guidelines are not complete in detailing all of the obligations under the Australian Consumer Law (ACL) but seeks to highlight common issues in the travel industry. Where applicable, it builds on and clarifies issues specifically related to the travel industry and the requirement set by AFTA for ATAS accreditation.

Please note, that the below guidance is not legal advice and all ATAS Participants should seek their own legal advice as required.

## Key Principles

### Misleading or deceptive conduct

When deciding if conduct is misleading or deceptive, or likely to mislead or deceive, the most important question to ask is whether the overall impression created by your conduct is false or inaccurate.

When you are advertising travel, it is important that the overall impression created by your ad is an accurate one. This includes any representations, written or pictorial, about the price, inclusions and exclusions, restriction on dates of travel, departure airports any other essential information. These rules apply to not only the advertisement itself but also any other representation you make to a consumer when they are considering purchasing travel. This may include, for example:

- The characteristics of the travel you are selling;
- The price of the travel or package; or
- The buyers need for additional components.

A misrepresentation can be made via television or radio advertisements, in print such as newspapers or brochures, on websites, in contracts, over the telephone, in correspondence (such as letters or emails) or in person including in negotiations made.

You must not make false or misleading claims about goods or services that are of a **particular standard, quality, value**, grade or style.

#### AFTA CHECKLIST

- ✓ **Sell goods and services (including travel and any other extras) on their merits**
- ✓ **Look at the overall impression of your advertisement**
- ✓ **Who is the audience and what is the advertisement likely to mean to them?**
- ✓ **Remember, at minimum, it is the viewpoint of a layperson with little or no knowledge or experience in travel that should be considered.**



### Component Pricing

When advertising prices to your customers, you should state the total price. If you promote a price that is only part of the total price of goods or services, you must also include the total price (as a single figure) at least as prominently as the part price. You must not represent to consumers that the price of a component or components is the total price.

Components you are required to include are:

- o Charges of any description payable by a consumer to book and purchase the travel; and
- o A tax, duty, fee, levy or charge payable by the consumer for the supply (and use) of the travel.

#### AFTA GUIDANCE

- Some tours may have mandatory additional costs that are not payable to the travel agent or tour operator, but need to be paid to a third party. This includes:
  - Resort fees;
  - Gratuities;
  - Direct payments required to a 3<sup>rd</sup> party operator.
- As the above costs are mandatory for a consumer to be able to experience the advertised holiday, these additional costs must be included in the headline price.
- Whilst the amounts are not payable to you, from the consumer perspective this is the total cost to complete the advertised holiday.

Example: (see also below section on disclaimers)

INCORRECT

**\$4,990\***

\*AUD \$150 payable direct to tour operator in China.

CORRECT

**\$5,140**

The price should include the mandatory \$150 payable to the tour operator.

## Two-price Comparative advertising

Types of two-price comparison advertising include comparisons to:

- i) the company's previous pricing (including '**was/now**' or '**strike through**' pricing or by specifying a particular dollar amount or percentage saving).
- ii) The 'cost' or wholesale price;
- iii) The competitor's price;
- iv) The recommended retail price (RRP); and
- v) 'Valued at' or 'typically' prices.

Businesses that use such statements must ensure that consumers are not misled about the savings that may be achieved.

Statements such as 'Was \$150/Now \$100' or '~~\$150~~ Now \$100' are likely to be misleading if products have not been sold at the specified 'before' or 'strike through' prices in a reasonable period immediately before the sale commences.

It is also important to remember that a 'sale' or 'discounted' price should only be available for a limited period. This is because if a reasonable amount of time has elapsed and an item is still 'on sale', the discounted price effectively becomes the new selling price, so it may be misleading or deceptive to continue to call it a 'discount' or 'sale' price.

## AFTA Guidance

### 'Typically' and 'Valued at'

- The use of the words "Typically" and "Valued at" in advertising, is deemed to be a two price comparison and the above principles are to be applied when using these words in advertising.
- The use of the words may convey to a potential customer that they are getting a good deal because the sale price is less than the 'value' or RRP or what the product is usually or 'typically' sold for. If the product has never been previously sold at the RRP, or the RRP does not reflect a current market price, then this type of comparison may misrepresent the savings that may be achieved and is thus misleading.
- **The ATAS Compliance Manager requires ATAS Participants to retain records where the entity uses "typically' or "valued at" in its advertising to demonstrate compliance.**

## AFTA GUIDANCE - WHAT NOT TO DO

The below explanation for a 'was', 'typically' or 'valued at' price is not acceptable. You must be able to substantiate and demonstrate exactly how the price was calculated.



**"When we compare a particular tour package that has similar qualities to ours, our criteria is based on the cities/attractions visited, number of hotel nights stayed, standard of hotels used, airlines used, number of meals provided etc"**

## AFTA Checklist

- ✓ **The comparison must be genuine and accurate.**
- ✓ **The price must have been offered in a sufficient and reasonable number and for a reasonable time before being discounted.**
- ✓ **You need to retain records and be able to substantiate the offer whether that be to the ATAS Compliance Manager or the ACCC. This includes:**
  - **records of how long the product was offered for sale at the “was” price;**
  - **what other prices were offered during that period;**
  - **how many sales were made at the “was” price and how many sales were made at other prices.**
- ✓ **A ‘sale’ or ‘discounted’ price should only be available for a limited time.**
- ✓ **Any previous price should be genuine and not inflated, so the discount is real.**

## Fine Print/ Conditions Apply/Disclaimers

Asterisks and hyperlinks are often used to draw attention to qualifications. An asterisk should not be used as an attempt to correct a misleading impression that may be created by the advertisement as a whole.

General disclaimers such as ‘terms and conditions apply’ should be used with caution and not to conceal important information.

You must also ensure that the disclaimer is effective by ensuring it is:

- Able to be readily identified by a consumer;
- Placed close to the main price representation; and
- Clear in meaning.

A consumer should not need to extensively search the advertisement or pages of a brochure for additional disclaimer information. It is your responsibility to ensure that consumers are clearly directed to and made aware of any fundamental terms and conditions that relate to the travel advertised.

## ACCC TIPS

### Electronic audio visual: Television, cinema and the internet

- The point size of a visual disclaimer must be clearly readable in that context and remain on screen for sufficient time to be noticed and read.
- A disclaimer must also be made in close proximity to the main representation.
- It should not be assumed that a consumer will read through an entire internet advertisement if it involves scrolling through more than one screen. Repeating disclosure for a lengthy advertisement may assist here.
- Material terms and conditions should be prominently displayed.

### Print advertisements: press, point of sale and billboards

- The font type and point size of a disclaimer must be clear and able to be read in the context in which it appears. You should also consider the degree to which the font contrasts against the background of the advertisement.
- A disclaimer must also be made in close proximity to the main representation.
- Material terms and conditions should be prominently displayed.

### Electronic audio media: radio

- The disclaimer should be clearly stated in close proximity to the main representation, so that it can be reasonably understood.
- Material terms and conditions should also be given clearly.

## 'Free'

Businesses should be particularly careful of the use of the word 'free'. The idea of getting goods or services without charge can create keen interest in consumers. Consumers will usually think of 'free' as absolutely free – which is a justifiable expectation.

Simply put, businesses may get into trouble with free offers if they do not reveal the complete truth, **including any conditions that the consumer must comply with.**

**Example:** A business makes a 'buy one, get one free' offer, but raises the price of the first item to largely cover the cost of the second (free) item. This is likely to be misleading or deceptive.

## AFTA GUIDANCE

- **Where an ATAS accredited entity is advertising something as 'free', be certain that it is truly free.**
- **Where 'free' cruises or airfares are offered, an ATAS Participant must include in the terms and conditions and make it clear in the offer that the 'free' component only applies if all portions are taken. The terms and conditions should detail what will occur in the event that a component is cancelled. For example, where a river cruise is cancelled due to lower water levels.**

## Bait Advertising

Bait advertising occurs when travel is advertised at an attractive 'bait' price but, when the consumer goes to make a booking and purchase the product, it is not available and the agent seeks to switch the consumer to a higher priced product or service.



### AFTA CHECKLIST

- ✓ **Ensure travel advertised is available in reasonable quantities at the advertised price for a reasonable period.**
- ✓ **You must state clearly if the good is in short supply or on sale for a limited time.**

## Testimonials

Online reviews provide consumers with information about products, services and businesses based on the experiences of other consumers. Reviews may appear on a business' own site, on social media or on a review platform.

Businesses may be engaging in misleading or deceptive conduct if they:

- Use fake reviews, including as a form of false advertising or to damage the reputation of a competitor;
- Use tactics to influence a consumer to provide a positive review or refrain from a negative review; or
- Selectively remove or edit reviews, particularly negative reviews, for commercial or promotional reasons.

### CASE EXAMPLE

The Federal Court found that from November 2014 to October 2015, Meriton engaged in misleading or deceptive conduct by taking steps to prevent guests it suspected would give an unfavourable review from receiving TripAdvisor's 'Review Express' prompt email.

Meriton did so by:

- Inserting additional letters into guests' email addresses provided to TripAdvisor so that the prompt email never reached the guest, or
- Not sending guest email addresses to TripAdvisor.



## AFTA CHECKLIST

- ☒ **DO NOT** encourage family and friends to write reviews about your business without disclosing their personal connection with your business in that review.
- ☒ **DO NOT** write reviews when you have not experienced the good or service reviewed or which do not reflect a genuinely held opinion.
- ☒ **DO NOT** solicit others to write reviews about your business or a competitor's business if they have not experienced the good or service.
- ☒ **DO NOT** selectively remove or edit reviews, in particularly negative reviews.

## Appendix 1: ATAS Charter (relevant provisions)

### Clause 2.5(c):

*In submitting the Deed Poll, the applicant acknowledges that it understands, and will comply with, any relevant obligations under the Australian Consumer Law (ACL).*

*The Compliance Manager may request specific information or examples in order to demonstrate that the participant is complying with this criterion.*

### Clause 2.5(e)

*In considering the application or existing accreditation, the Compliance Manager may have regard to any information he or she sees fit.*

### Clause 2.5(m)

*ATAS may impose additional conditions on a Participant's accreditation as it sees fit, these conditions form part of the eligibility criteria once imposed and are in accordance with the objectives of ATAS.*

## Appendix 2: Code Obligations (relevant provisions)

As per cl 2.1, the Code supports the overall objectives of ATAS by:

- a) *Setting minimum standards of behaviour and service delivery;*
- b) *Holding all ATAS accredited travel agents to the same standard of behaviour; and*
- c) *Building the professionalism of the travel agent industry into the future.*

The ATAS Code makes no specific reference to Advertising however the 'Service quality promise' as detailed in cl 3.2 lists a number of general obligations which are inclusive of all behaviour including marketing and advertising.

Cl 3.2(a) *In providing our services, we will:*

- (iii) Disclose all relevant information in a plain and easy-to-understand form;*
- (viii) Not engage in any acts or omissions of a misleading or deceptive nature;*
- (ix) Act fairly and in a reasonable and ethical manner; and*
- (xi) Comply with the Australian Consumer Law.*

## Appendix 3: Relevant Australian Consumer Law provisions

### Section 18 Misleading or deceptive conduct

- (1) A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive.

The below provisions have specific sections in the ACL which generally carry a pecuniary penalty which s 18 does not. Allegations of breaches of the below sections are usually accompanied by an allegation of a breach under s18.

## Section 29 False or misleading representations about goods or services

A person must not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of good or services:

- (b) make a false or misleading representation that services are of a particular standard, quality, value or grade;
- (e) make a false or misleading representation that purports to be a testimonial by any person relating to goods or services;
- (f) make a false or misleading representation concerning
  - (i) a testimonial by any person; or
  - (ii) a representation that purports to be such a testimonial;

Relating to goods or services.

- (i) Make a false or misleading representation with respect to the price of goods or services;

## Section 32 Offering rebates, gifts, prizes etc.

- (1) A person must not, in trade or commerce, offer any rebate, gift, prize or other free item with the intention of not providing it , or of not providing it as offered, in connect with:
  - a) The supply or possible supply of goods or services; or
  - b) the promotion by any means of the supply or use of goods or services.

## Section 35 Bait advertising

- (1) A person must not, in trade or commerce, advertise goods or services for supply at a specified price if:
  - a) There are reasonable grounds for believing that the person will not be able to offer for supply those goods or services at that price for a period that is, and in quantities that are, reasonable, having regard to:
    - i) The nature of the market in which the person carries on business; and
    - ii) The nature of the advertisement; and
  - b) The person is aware or ought reasonably to be aware of those grounds.

## Section 48 Single price to be specified in certain circumstances

A person must not, in trade or commerce, in connection with:

- a) The supply, or possible supply, to another person of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- b) The promotion by any means of the supply to another person, or for the use by another person, of goods or services of a kind ordinarily acquired for personal, domestic or household use or consumption;

Make a representation with respect to an amount that, if paid would constitute a part of the consideration for the supply of the goods or services unless the person also specifies, in a prominent way and as single future, the single price for the goods or services.