

Uber's safety branding contradicts its service

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Speed read

In this article, first published in National Business Review, we note the legal impact of the mismatch between what it claims and what it does, and we deal with the Fair Trading Act implications.

In December, Uber promised New Zealanders a credit if they pledged not to drink and drive over summer – offering *"Whether it's a work party, a night out, or dinner with friends, put away the keys and let Uber get you home safely."*

Promoting sensible behaviour around drinking and driving is laudable – unfortunately, committing to getting passengers home safely is exactly what Uber says it doesn't do.

The reality is that in the Uber contract with customers, which it's highly unlikely many customers read as it's over 4000 words of legalese, Uber contracts out of getting passengers home and it contracts out of getting them home safely.



The Detail

Last month it amended its contract terms to make that even clearer.

For example, the contract states, when confirming Uber only provides the app and online services and not transportation from A to B:

"You acknowledge that Uber does not provide transportation or logistics services or function as a transportation carrier and that all such transportation or logistics services are provided by independent third party contractors who are not employed by Uber or any of its affiliates."

The contract confirms that Uber has no safety liability for its drivers and their cars.

"Uber does not guarantee the quality, suitability, safety or ability of third party providers."

This small print is important because that is what Uber commits to do for its customers and that is opposite to what its marketing says it does.

Before turning to brand strategy aspects of piggy-backing off the drink drive campaign, what is the legal position?

I consider it is likely that there is a breach of the Fair Trading Act, which states:

"No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services."

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This covers situations where the marketing says one thing and the fine print such as in the contract is contrary to that.

There are multiple examples of suppliers being prosecuted where the marketing is contradicted by the small print, typically where customers are attracted into using the service by misleading marketing.

The concept the courts use is the "marketing web." Customers are lured into the supplier's "marketing web" by statements about goods and services, when the actual position does not match the marketing statements.

Here, customers are lured in to the marketing web by statements pointing out that Uber safely carries passengers from A to B when that is exactly what it does not under its contract.

What about the marketing also giving a credit where customers pledge not to drink and drive? As Blair Mainwaring, a branding specialist at Ocean points out, Uber can gain a brand for safety by associating itself with well-accepted safety campaigns such as what it is aligning with here. As Mr Mainwaring says:

"Brands often look to associate themselves with an idea that they believe their potential customers may find attractive.

And over time, through careful design and management, a company's brand can become intrinsically linked to this concept. For example, Volvo has over the years run a number of marketing campaigns that successfully tell its safety story."

Mr Mainwaring adds about Uber's use of this strategy:

"Through this campaign, Uber is looking to associate its brand with the concept of safety. An additional reason may follow from the fact that when a technology disruptor enters a market it sometimes needs to overcome negative customer perceptions. In Uber's case, potentially the company felt it had to mitigate prospects' fear of using its new platform, and so has deliberately created a campaign to address this."

The problem is that this branding, associated with a safety message that Kiwis respect, is completely contrary to what Uber states: that it has no responsibility for carrying passengers from A to B, and is not responsible for safety on that trip.

That is context which is relevant to the extent of the breach of the Fair Trading Act: it adds to the impact of Uber's "marketing web."

On Tuesday, the government released its review of small passenger vehicle services such as taxi and Uber services.

The review proposes having all such vehicles in one class, with the main focus being on minimum safety standards for all including taxis, Uber and their drivers, to be managed by taxi companies and companies such as Uber.

These minimum safety standards are not protectionist in nature: peeled away are some of the safety obligations that taxis must comply with.

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The remaining safety standards are those that most Kiwis would want companies and their drivers to meet.

If Uber is prepared to walk the talk of its marketing campaign, it would welcome the proposals with their safety obligations on Uber.

Disclosure: we act for the NZ Taxi Federation in relation to Uber.

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