

13-2501. Unfair or deceptive trade practices; elements; misrepresentation.

The Unfair Practices Act prohibits unfair or deceptive trade practices. For _____ (*name of plaintiff*) to prove that _____ (*name of defendant*) engaged in an unfair or deceptive trade practice, _____ (*name of plaintiff*) must prove that:

1. _____ (*name of defendant*) made [an oral statement] [a written statement] [a visual description] [or] [a representation of any kind] that was false or misleading; and
2. The [statement] [description] [or] [representation] was knowingly made; and
3. [The [statement] [description] [or] [representation] was made [in connection with the sale, lease, rental, or loan of goods or services] [in the extension of credit] [in the collection of debts] [and] [in the regular course of the defendant's business]; and]
4. The [statement] [description] [or] [representation] was of the type that may, tends to, or does deceive or mislead any person.

[Practices prohibited by the Unfair Practices Act include _____ (*insert enumerated practice(s) from NMSA 1978, § 57-12-2(D)*).]

[A representation need not involve words in order to violate the Unfair Practices Act. A nonverbal action or failure to act may amount to a false or misleading representation.]

[A [statement] [description] [or] [representation] is false or misleading if it omits a material fact and, as a result, is deceptive or tends to deceive. A fact is material if a reasonable person would attach importance to its existence or nonexistence in determining a choice of action or if the maker of the [statement] [description] [or] [representation] knows or has reason to know that its recipient regards or is likely to regard the fact as important.]

[A false or misleading [statement] [description] [or] [representation] need not actually deceive any person in order to violate the Unfair Practices Act. The Act may be violated by any [statement] [description] [or] [representation] that may, tends to, or does deceive.]

USE NOTES

This instruction should be given in every case alleging an unfair or deceptive trade practice under the UPA. It sets out the elements of the claim with a focus on the foundational element of a false or misleading representation. The bracketed text in the four numbered sentences of the first paragraph should be used as required by the circumstances of the case. The third numbered sentence should be given, if at all, only to the extent it frames disputed issues for determination by the jury. The bracketed text

in the second paragraph may be used when the plaintiff asserts that the defendant has violated one of the enumerated practices listed in Section 57-12-2(D) NMSA 1978. The bracketed text in the third paragraph may be used when the defendant's nonverbal actions are alleged to amount to a false or misleading representation and the court determines that the conduct in question could be found to be a representation within the scope of the UPA. The bracketed text in the fourth paragraph should be used if the plaintiff's claim is based on an alleged material omission. The bracketed text in the final paragraph should be used if the court determines it would be helpful to the jury in understanding "tends to deceive." The definitional instructions that follow should be used in conjunction with this instruction as appropriate given the circumstances of the case.

[Adopted by Supreme Court Order No. 22-8300-001, effective for all cases pending or filed on or after February 21, 2022.]