Although most sellers are honest, some are not. Dishonest sellers may use deceptive or unfair sales techniques. In order to protect themselves, consumers should learn to recognize and avoid deceptive sales practices. This chapter introduces you to such sales practices, tells how sellers use them to deceive buyers, and teaches you how to recognize these deceptive techniques.

**Telemarketing Sales**

Telemarketing, the practice of selling or marketing goods and services by phone, is a popular sales technique. There are two kinds of telemarketing sales. The first occurs when the consumer receives an unsolicited call from the telemarketer. The other type happens when the consumer makes a call, usually to a toll-free number, in response to a print, radio, or other type of ad.
As with any marketing technique, consumers should take steps to ensure that they are dealing with a legitimate seller. Consumers should listen carefully to be sure that they understand the terms of the sale. In particular, consumers should ask how much they will have to pay, when the payments will have to be made, and what steps they can take to cancel the order, if necessary. Consumers should be very skeptical of any telemarketer who tells them they have just “won” something or who asks for payment by money order or cash.

The Federal Trade Commission (FTC) and the Federal Communications Commission (FCC) have many regulations to help protect consumers from telemarketers. Some of these regulations restrict when and how a telemarketer can contact you:

- Telemarketers are restricted to calling you between the hours of 8 A.M. and 9 P.M.
- After you ask a telemarketer not to call you, it is illegal for them to call you again.

Other rules regulate the information a telemarketer must provide:

- They must tell you who is calling and that it is a sales call.
- Telemarketers must tell you the total cost of products or services offered and any restrictions—such as all sales being final and nonrefundable—before you pay.
- For prize promotions, they must tell you the odds of winning, that no purchase or payment is necessary to win, and any conditions for receiving the prize.
- Advertisements that induce you to dial pay-per-call phone numbers (such as 900 numbers) must disclose the cost of the call.
- It is illegal for telemarketers to lie or misrepresent any information.

**Telemarketing Scams**

According to the Federal Trade Commission (FTC), telemarketing fraud robs people in the United States of billions of dollars each year. The FTC lists the following “offers” as the most common telemarketing scams:

- prize sweepstakes or lottery winnings in which you must buy something, give a credit or debit card number, wire money as a shipping or processing fee, or pay a tax on your winnings to collect something
- “free” travel packages
- credit card or loan scams
- investments, business opportunities, and other “get-rich-quick” schemes
- fake charities
In 2003, the FTC established the National Do Not Call Registry, which allows consumers to place their phone numbers on a list to reduce the number of unsolicited calls from telemarketers. You can register your phone numbers for free at www.donotcall.gov or by calling 1-888-382-1222. After your phone number is registered, you may file consumer complaints in the same way that you registered. Some telemarketers may still call you, even if your number is registered. However, you can ask the telemarketer not to call you. The Do Not Call Registry does not limit calls from political organizations, charities, or companies with which you already have a relationship. Calls from these sources are not considered to be telemarketing calls.

**Door-to-Door Sales**

Door-to-door sales are no longer common in many places. Where such sales practices do occur, most sellers offer products and services consumers need or want. Some, however, use high-pressure tactics and smooth talk to get you to buy things that you otherwise would not buy. Once in the door, this type of salesperson will not take no for an answer and will do almost anything to make the sale.

Some state laws and a Federal Trade Commission (FTC) rule give consumers a “cooling-off” period of three business days after they have signed any contract for more than $25 with a door-to-door salesperson. During this period, consumers can notify door-to-door sellers in writing that they wish to cancel the contract. It is best to send this letter by registered mail and to keep a copy. The FTC rule also requires door-to-door salespeople to tell their customers about the right to cancel and to put this notice in writing. If the seller does not do this, the consumer may be able to cancel the contract at any time by sending a letter to the seller.

**Advertising and the Consumer**

Advertising is everywhere—on radio, television, and Internet sites; in newspapers and magazines; on billboards, bus shelters, and park benches; before movies and at sports arenas. Sellers use advertising to inform potential customers about their products. Ads help consumers by telling them about new goods and services and by letting them know when certain products or services are being sold at a reduced price. Some ads are even entertaining. While ads can be helpful, they can also mislead and deceive. Federal and state laws prohibit false or deceptive advertising.

A basic rule about advertising is that each advertising claim must be **substantiated** by the seller or advertiser before the ad runs. This means that a seller or advertiser must have a reasonable basis for any objective claims that it makes in its ads. For example, if a toothpaste manufacturer claims that its product reduces cavities, whitens teeth, and freshens breath, it must have some evidence or proof that backs
up this claim. If the advertiser does not have a reasonable basis for a claim, then the advertisement is unfair and deceptive and in violation of the Federal Trade Commission Act.

In many states, a seller distributing a deceptive ad can be ordered by the FTC to stop that or similar advertising. The FTC can also order advertisers to correct deceptive ads by providing more information, such as disclosures or warnings, or requiring that information be stated more clearly on a product or in an advertisement. The FTC can also order corrective advertising. This means that the advertiser must distribute future ads that correct the deceptive impression left by the false or misleading ad. For example, a well-known mouthwash company once advertised that its product cured sore throats and colds. When an investigation proved this claim false, the FTC ordered that all new ads state that the product did not cure sore throats or colds.

Although false or misleading ads are illegal, one type of ad is usually an exception to this rule. Ads based on the seller’s opinion, personal taste, or obvious exaggeration are called puffing. While perhaps not literally true, ads that puff are not illegal. For example, a used-car dealer that advertises the “World’s Best Used Cars” is engaged in puffing. A reasonable person should know better than to rely on the truthfulness of such a statement. Similarly, in announcing a sale at a furniture store, an ad reads: “2,750 items of furniture have to go tonight!” This ad is not literally true, but again, a reasonable consumer should understand that it is just “seller’s talk.”

In contrast, consider an advertisement that reads: “Important New Invention—Improves Auto Fuel Efficiency by 20%!” If the advertised product is not a new invention or does not improve automobile fuel efficiency by the amount claimed, this ad is deceptive and therefore illegal.
The ad is not puffing, because it is not based on the seller’s opinion, personal taste, or an obvious exaggeration. Rather, if untrue, it misleads consumers about important facts concerning the product.

The difference between illegal advertising and puffing may be slight, so consumers should be on guard. If an ad misleads consumers about an important fact concerning the product, it is probably illegal. If the ad is merely an exaggeration or a nonspecific opinion, it is probably puffing and therefore legal.

**Problem 26.1**

Bring to class three examples of puffing. For each, explain why the ad is not illegal, even though it may not be literally true. Find these ads in the newspaper, on a storefront sign, on the radio or on television, or on the Internet.

One of the most controversial types of advertising involves tobacco. Tobacco advertising is controversial because smoking is the nation’s leading preventable cause of death. More people in the United States die from illnesses related to smoking each year than from AIDS, car accidents, fires, homicides, suicides, and drunk driving combined. As a result, there have been efforts to eliminate or restrict tobacco advertising. For example, the U.S. Congress has enacted laws requiring health warnings on all packages and in all ads for cigarettes and smokeless tobacco products. Congress has also banned cigarette and smokeless tobacco advertising on radio and television. In addition, advertisements for tobacco products, like those for other products, must be truthful and accurate.
Even if the government does not bring about changes in the private sector through regulation, sometimes such restrictions can be agreed upon by the industry itself. For example, in 1998, the tobacco industry settled massive lawsuits brought against it by many states on behalf of their citizens to recover health care costs associated with tobacco-related illnesses. A primary concern in the lawsuits was the impact that tobacco ads had on children. As part of that settlement, the tobacco companies agreed to restrict the way that they advertise, including banning ads on billboards and in transit systems. The companies also agreed not to use cartoon characters to sell their products or to distribute free samples of cigarettes or smokeless tobacco products at events to which minors are admitted.

**The Case of...**

**Easy Money**

Mr. and Mrs. Johnson were struggling to make ends meet and to feed their family of five. They decided that they needed to borrow money to pay their expenses for the month. They considered going to a bank for a loan, but they knew they each had poor credit histories, and they did not want to be paying off interest over a long period of time.

They were very interested when they read the following ad in the newspaper:

_EASY MONEY: Having trouble paying bills? Need a short-term loan just to get you through a rough time? We offer quick loans to anyone regardless of credit background. No interest payments. Just a nominal processing fee. Call today!! 1-555-EZ-MONEY._

The offer sounded too good to be true. The Johnsons were skeptical, but they called anyway. The operator said she would be happy to offer them a no-interest loan of $2,000, repayable in six easy monthly installments. All the Johnsons had to do was pay a one-time fee of $200 to process the paperwork.

The Johnsons did not have to meet anybody from the loan company, and nobody bothered them at their home. They scraped together the $200 and sent Easy Money, Inc., a money order.

When they had not received their money in three weeks, they began to worry. They again called the number listed in the paper, but the line had been disconnected. Finally, after two more weeks, they realized they were not going to get their loan and would never see the “processing fee” again.

**Problem 26.2**

a. Did any unfair or deceptive practices take place in the Johnsons’ story? Explain.

b. What could the Johnsons have done to prevent their loss?

c. What can they do now? Can any state or federal agencies help them?
Problem 26.3

Study the advertisement above and then answer the questions that follow.

a. What message is the advertiser trying to convey?

b. Is the advertisement likely to be effective? Explain.

c. As the manufacturer of the shoes in this advertisement, would you have any legal questions about this ad? Explain these possible concerns.

Bait and Switch

The bait-and-switch sales technique involves an insincere offer to sell a product on terms that sound almost too good to be true. The seller does not really want to sell the product, or “bait,” being offered. The bait is simply used to get the buyer into the store. Once the consumer is in the store, he or she finds that the product is much less appealing than expected. Furthermore, on some occasions, the store may have a very limited quantity of the “bait,” or the product may not be available at all. The seller then tries to “switch” the consumer to a more expensive item. Salespersons who use the bait-and-switch technique are told to “talk down,” or disparage, the advertised product and then encourage the consumer to buy a higher-priced item. As an incentive, salespeople may receive a higher commission if they sell the higher-priced item.
The Federal Trade Commission has rules against use of the bait-and-switch selling technique and will take appropriate action when it receives complaints from consumers. Many state and local agencies also handle such complaints. If state law prohibits bait and switch, a consumer may be able to cancel a contract with a seller who has used this technique.

Sellers can legally advertise specials at very low prices to get customers into their stores without violating the bait-and-switch law. The items offered in these specials are sometimes referred to as “loss leaders,” because the seller may lose money or make very little money on them. It is not illegal to advertise a loss leader, so long as the seller has an adequate supply of the item in stock and does not disparage the item in order to switch the buyer to a more expensive product.

**Problem 26.4**

Kara and her brother Aaron are shopping for a new motorcycle. They see an ad in the Friday newspaper that says, “Come to Big Wheel for the Best Deals on the Slickest Wheels in Town! This weekend only, a 250 cc street bike, only $1,395!”

When they arrive at Big Wheel, the salesperson tells them that the street bike is not very powerful, tends to vibrate above 40 miles per hour, and is uncomfortable for long trips. He suggests that they test-ride a 500 cc, four-cylinder motorcycle on sale this weekend for $2,795.

a. Role-play this encounter.

b. What is the best way for a customer to handle an aggressive seller?

c. Has the salesperson used the bait-and-switch technique, or was the advertised product a loss leader for Big Wheel? Would it matter if Kara and Aaron arrived at the store on Saturday at noon and were told that all the 250 cc cycles had already been sold? Do they have a right to buy one at the advertised price? Give reasons for your answer.

d. Assume that Kara and Aaron purchase the larger bike for $2,795 but later find out that another store across town is selling the same bike for $2,400. What, if anything, can they do?

**Mail-Order Sales**

Mail-order shopping is convenient, items may cost less, and some items may be available that are not available in local stores. However, mail-order shopping can also cause problems. For example, mail-order packages can arrive late, broken, or not at all. In addition, shipping and handling costs can sometimes exceed any savings the customer might be expecting.

According to federal law (the “Mail Order Rule”), you have a right to know when you can expect merchandise to be shipped. Sellers must comply with the promises in their ads, such as “Will be rushed to you within a week.” If no shipping date is stated, the merchandise must be shipped within 30 days of the seller’s receipt of your order.
If the seller does not ship within 30 days, you have the right to cancel the order. The “Mail Order Rule” applies to items you purchase by mail, telephone, fax, or computer.

There are several things you can do to protect yourself when shopping by mail or the Internet:

- Carefully read the product description.
- Be sure to fill out the order form correctly and to provide all required information.
- Pay by credit card because the *Fair Credit Billing Act* provides special protection to consumers. However, make sure you trust the seller before providing your credit card information.
- Look for online verification from an Internet seller that your personal information is in a secure environment.
- Keep a copy of the order form, the seller’s name and address, and the date you mailed the order or submitted it online.
- Note the promised delivery time.
- Carefully inspect all mail-order packages upon receipt to be sure that nothing is missing or broken.
Consumers should watch out for ads sent through the mail offering “free” items in exchange for subscriptions or memberships. Offers of free items should be read carefully because they almost always require a commitment to purchase other items in the future. Consider, for example, “Four free books now if you purchase four more during the next year at the regular members’ price.” Taking advantage of this membership might result in your spending more for books rather than saving money.

Sending unordered merchandise is unlawful, and such activity should be reported to the U.S. Postal Service or the Federal Trade Commission. It is lawful for companies to send free samples and to ask for charitable contributions, but the receiver of the goods cannot be forced to pay for them.

Book, music, and movie clubs often mail catalogs to members on a monthly basis. The clubs preselect the item that will be sent to you unless you take some action—usually within 10 days—to make another selection or to reject all selections. These plans are legal, but they can be inconvenient. If you are not careful, they can also be expensive.

**Problem 26.5**

Britt receives a mailing announcing a special introductory offer for persons who join a popular music club. As part of the promotion, she can get six CDs for only $1, plus shipping and handling. In smaller print, the offer says that she will also be required to purchase at least three CDs per year over the next two years. The additional CDs are sold at the club’s regular members’ price, plus shipping and handling.

The club publishes a catalog of new releases every other month. The catalog is mailed to each member with one preselected CD identified. A member who does not want that CD must return a card to the company within two weeks of receiving the catalog. The member can also decline the CD online at the club’s Web site. Otherwise the CD will automatically be sent, along with a bill for the price of the CD plus shipping and handling.

**a.** Is this type of mailing legal?

**b.** If Britt takes advantage of this introductory offer, how many CDs will she have to purchase?

**c.** What are the advantages of membership in this club?

**d.** What are the disadvantages of membership in this club?
Many people purchase daily necessities such as groceries over the Internet. How can consumers protect themselves when making purchases online?

**Internet Commerce**

Online commercial activity, or e-commerce, offers consumers tremendous shopping opportunities ranging from books and clothing to financial services and groceries. Online search tools can provide extensive information about a wide variety of products. E-commerce also offers the ability to engage in comparison shopping for the best price and value with minimal effort. While e-commerce offers important advantages, many offline frauds operate just as readily online, including phony contests, fraudulent business opportunities, and health-related products promising instant weight loss or cancer cures.

Federal laws prohibiting fraud and deceptive practices also apply to e-commerce. Marketers are increasingly using e-mail messages or other online advertising to sell their products and services. Some consumers find unsolicited commercial e-mail—also known as “spam”—annoying and intrusive. More importantly, some consumers have lost money by responding to bogus offers that arrived in their e-mail inbox or have had their computers infected by harmful software attached to spam or pop-up ads. This software can take over your computer, causing, among other things, disclosure of personal financial information.

One particular type of online fraud called “phishing” has been especially effective with unwary consumers. Phishing occurs when Internet fraudsters send spam or pop-up messages that look like and claim to be from a business or organization you may have dealt with, such as an Internet service provider (ISP), bank, online payment service, or even a government agency. The message may ask you to “update,” “validate,” or “confirm” your account information or face serious consequences. The crook is trying to trick you into divulging your personal financial information in order to take money from your accounts or run up bills in your name.
Internet auctions are popular with consumers. Here, they can buy and sell goods in a massive marketplace. Auction sites give buyers a virtual international flea market through which to browse for nearly everything, and they give sellers a storefront from which to display anything they want to sell. While Internet auctions provide a great service for consumers and those looking to make money, buyers should take precautions to protect themselves. Buyers should:

• Research any product before you bid on it so you know what is a fair price.
• Understand the rules of the auction site, including the terms and conditions of the sale and who pays shipping costs.
• Identify the seller and read any feedback from other customers.
• Evaluate the methods of payment available to you and decide on one that is most secure, such as using a credit card or a third-party escrow service that will hold your money until you receive and approve the merchandise.
• You may also want to inquire whether the product you are buying is still covered under the manufacturer’s warranty. Otherwise, products sold in an Internet auction do not generally come with a warranty, unless the seller is an authorized dealer of that product.

The basic steps to take when shopping online are similar to those that are important if you shop in a store or by telephone:

• know who you are dealing with,
• know what you are buying and how much it will cost,
• pay by credit card to ensure maximum protection,
• make sure you understand the terms of the deal, and
• print and save records of your online transactions.

To protect yourself online, it is also critical to use antivirus and antispy software, as well as a firewall, and to update them all regularly. Further, use and protect your passwords.

**Problem 26.6**

Visit an Internet auction site. How does the site work? What are the advantages and disadvantages of using this site?

**Repairs and Estimates**

Even the highest-quality products sometimes require repair. It is always a good idea to find out ahead of time how much the repairs will cost. Sometimes service mechanics will give an oral estimate of the cost of the repair but then have you sign a repair agreement that says that you authorize all repairs deemed necessary. You should always get a written estimate and insist that any repairs not listed on the repair agreement be made only after you give your specific approval.
Some communities have laws that require repair shops to give written estimates. Frequently, these laws limit the percentage difference allowed between the estimate and the final bill. You should also watch out for “free estimates.” Sometimes the estimate is free only if you agree to have the shop make the repairs.

Another way to protect yourself when having repairs made is to ask the repair shop to save and return all used and replaced parts. This identifies you as a careful consumer. Also, if you suspect fraud, you will have the old parts as evidence to help you prove your case.

Being careful ahead of time is particularly important, because if you refuse to pay for repairs after they have been made, the repair shop or garage may be able to place a lien on the repaired item. This means the repair shop can keep the item until you pay the bill.

To protect yourself and your property when having repairs done, remember the following steps:

- Become familiar with how cars and major appliances operate.
- Get estimates from several repair shops. Find out if there is a charge for each estimate.
- Demand and keep an itemized written estimate.
- Insist that any repairs not listed on the estimate be made only after you give your approval.
- Consider requesting that replaced parts be returned to you.
- Search online for companies that compile consumer ratings of local service providers.

The Case of . . .

The Costly Estimate

Nicole’s car is running rough, so she takes it to City Repair Shop. The mechanic there tells her the car needs a tune-up and estimates the cost at $175. Nicole tells the mechanic to go ahead with the tune-up, but when she returns later to pick up the car, the total bill is $325. Did Nicole do something wrong? Did the repair shop do something wrong? What can happen if she refuses to pay the bill? Explain your answers.