



The Deceptive Trade Practices Act

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Wisconsin's Deceptive Trade Practices Act (DTPA), set forth in [s. 100.18, Stats.](#), protects consumers from untrue, deceptive, or misleading advertisements or representations (fraudulent representations). It is one in a series of statutory and [common law](#) (or judicially-created) protections afforded to consumers. DTPA offers heightened protections and remedies for false advertising that are not otherwise offered by common law, and covers a broad range of entities, products, services, and modes of communication.¹

PROHIBITED DECEPTIVE PRACTICES

General Prohibitions

DTPA generally prohibits any person, firm, corporation or association, or employee thereof from making a fraudulent representation to the public with the intent to induce an obligation or sale. Although DTPA is most commonly considered in terms of fraudulent advertising and sales, it also prohibits fraudulently inducing someone to enter into a contract or obligation relating to employment, the use or lease of real estate, or other services.²

Since DTPA was originally enacted in 1913,³ the Legislature has expanded its scope to reflect technological developments and changes in marketing practices. DTPA now generally covers representations made on television, radio, and websites, and in private conversations between individuals—in addition to the print media covered by the original statute.⁴

Specific Prohibitions

In addition to the general prohibitions against making fraudulent representations to the public, DTPA also prohibits fraudulent representations in specific contexts. For example, DTPA specifically prohibits: (1) misrepresenting the price of any product as a [wholesaler's or manufacturer's price](#); (2) failing to [clearly and conspicuously disclose](#) the price of property or services; (3) [bait-and-switch advertising](#); and (4) falsely representing a sale as a [going-out-of-business sale](#). DTPA also contains industry-specific prohibitions, such as fraudulent representations relating to [real estate](#) advertisement, [motor fuel](#) pricing and advertisement, and the misrepresentation of the nature of a [local energy source](#).⁵

EXCLUSIONS

Statutory Exclusions

While DTPA is broad in scope, it does not apply to certain deceptive practices. For example, DTPA does not apply to any of the following: (1) a representation of the sale of food;⁶ (2) a representation related to the [insurance business](#); (3) a representation related to pricing of [custom-made goods](#); (4) a deceptive advertisement made [in print or on air](#) by an owner or employee of a newspaper, radio, or television station, if published in good faith and without knowledge of the falsity or deceptive character; or (5) an assertion made by a [real estate agent or broker](#), unless the assertion is made directly to the public, with the knowledge it is untrue, deceptive, or misleading.⁷

Court-Established Exclusions

Although DTPA expressly excludes some fraudulent representations from its prohibited conduct, courts have also clarified the scope of the general prohibition against making fraudulent representations. For example, the Wisconsin Court of Appeals held in [Goudy v. Yamaha Motor Corporation](#) that a fraudulent representation claim may not be successfully raised against a person who failed to disclose a defect or

correct a misconception about a product or service. Rather, under DTPA, a fraudulent representation must include an assertion, representation, or statement of fact, which does not include “silence.”⁸

Additionally, in *Tietsworth v. Harley Davidson*, the Wisconsin Supreme Court held that DTPA does not apply to exaggerations one would reasonably expect from a seller that cannot be distinctly proven as true or false—commonly referred to as “puffery.” A classic example of such statement is a sign advertising “the world’s best cup of coffee.” Statements of puffery are so general as to be incapable of being substantiated or refuted, and therefore do not constitute actionable misrepresentation.⁹

ENFORCEMENT

Both private individuals and the state, through the Department of Agriculture, Trade and Consumer Protection (DATCP) and Department of Justice (DOJ), and in some cases, a district attorney, may bring an action in court to enforce DTPA. DTPA violations may also be subject to [civil forfeiture penalties](#). Any action must be brought within three years of the fraudulent representation.¹⁰

Private Enforcement Actions

Under the DTPA, any person who sustains a pecuniary loss induced by a fraudulent representation is generally entitled to recover their loss, regardless of whether that individual has suffered any other harm.¹¹ The person may also recover costs, including reasonable attorney’s fees.¹² Moreover, if an individual sustains financial loss resulting from the violation of a court-ordered injunction related to fraudulent representation, the individual is entitled to recover twice the amount of damages.¹³

State Enforcement Actions

DTPA is also enforced through investigations and prosecutions by DATCP and DOJ, who share this enforcement responsibility.¹⁴ DATCP has broad authority to investigate consumer complaints, and may choose to bring an action in state court or may opt to refer complaints to DOJ.¹⁵ DOJ may, after consulting with DATCP, and any district attorney may, after informing DATCP, bring an action to restrain by temporary or permanent injunction an alleged DTPA violation.¹⁶

The Court of Appeals is currently reviewing the requirements for state DTPA enforcement actions. In *State v. Engine & Transmission World, LLC*, the two questions pending before the court are: (1) whether the state must prove someone sustained a financial loss similar to private enforcement actions, or if it need only prove that a fraudulent representation was made; and (2) whether DTPA applies to representations made in Wisconsin by in-state businesses, but received by persons out-of-state.¹⁷

¹ For more information, see DATCP, [Deceptive Advertising](#), (Oct. 2022).

² [s. 100.18 \(1\), Stats.](#)

³ The original statute was limited to deceptive advertising in newspapers, books, posters, and pamphlets. [s. 1747k, Stats. (1913).]

⁴ See *Madcap LLC v. McNamee*, 2005 WI App 173 (websites) and *State v. Automatic Merchandisers of America, Inc.*, 64 Wis. 2d 659 (1974) (private conversations).

⁵ s. 100.18 (2) to (10r), Stats.

⁶ Fraudulent representation in the sale and advertisement of food products is regulated under [ss. 100.183](#) and [100.26, Stats.](#)

⁷ s. 100.18 (12) (a), (2) (b), (9) (b), and (12) (b), Stats.

⁸ *Goudy v. Yamaha Motor Corp.*, 2010 WI App 55, ¶ 24.

⁹ See *Tietsworth v. Harley Davidson*, 2004 WI 32, ¶¶ 41-45.

¹⁰ [s. 100.18 \(1\) \(a\)](#) and [\(b\), Stats.](#)

¹¹ Because the “economic loss doctrine” generally prohibits an individual from recovering damages if the only harm suffered is pecuniary loss, it is difficult to successfully challenge a fraudulent representation under common law if the only harm suffered is a pecuniary loss. [See Wis. JI—Civil 2400 (2023).]

¹² For actions brought under common law, plaintiffs bear the cost of bringing a court action.

¹³ [s. 100.18 \(1\) \(b\) 2., Stats.](#)

¹⁴ In most states only the attorney general receives and investigates consumer complaints, and litigates enforcement action. [See John S. Greene, [Navigating Wisconsin’s Consumer Protection System](#), 90 Wis. Law. 22, 25 (2017).]

¹⁵ DATCP may issue subpoenas and civil investigative demands, administer oaths, and conduct hearings. [[s. 100.18 \(11\), Stats.](#)]

¹⁶ [[s. 100.18 \(11\) \(d\), Stats.](#)] Both DOJ and DATCP may also accept a written promise to discontinue the alleged DTPA violation in lieu of filing a court action. [[s. 100.18 \(11\) \(e\), Stats.](#)]

¹⁷ *State v. Engine & Transmission World, LLC*, No. 2022AP000788 (decision anticipated in late 2023).