

COMMERCIAL TORTS 21

Consumer Fraud (Elements of Claim)

[*Name of plaintiff*] claims that defendant committed consumer fraud. To establish this claim, [*name of plaintiff*] must prove:

1. [*Name of defendant*] [used deception,] [used a deceptive act or practice,] [used fraud,] [used false pretense,] [made a false promise,] [made a misrepresentation,] or [concealed, suppressed, or omitted a material fact] in connection with the sale or advertisement of merchandise;
2. [*Name of defendant*] intended that others rely upon such [deception,] [deceptive act or practice,] [fraud,] [false pretense,] [false promise,] [misrepresentation,] or [concealment, suppression, and/or omission of a material fact];
3. [*Name of plaintiff*] suffered damages as result of reliance on defendant's [deception,] [deceptive act or practice,] [fraud,] [false pretense,] [false promise,] [misrepresentation,] [concealment, suppression, or omission of a material fact]; and
4. [*Name of plaintiff*]'s damages.

SOURCE: A.R.S. § 44-1521 *et seq.*

USE NOTE: 1. Use the applicable bracketed words or phrases.

2. **Burden of Proof:** The burden of proof for consumer fraud is preponderance of the evidence. *Dunlap v. Jimmy GMC of Tucson, Inc.*, 136 Ariz. 338, 666 P.2d 83 (Ct. App. 1983). Give RAJI (CIVIL) 4th Standard 2 (Burden of Proof—More Probably True) with this instruction.

3. **Definition of Terms:** In some cases, definitions of “sale,” “advertisement,” and/or “merchandise” may be needed. If so, the following additional instructions should be given:

“Sale” means any sale, offer for sale, or attempt to sell any merchandise for any consideration, including sales, leases and rentals of any real estate subject to any form of deed restriction imposed as part of a previous sale.

A.R.S. § 44-1521(7).

“Advertisement” includes the attempt by publication, dissemination, solicitation or circulation, oral or written, to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise.

A.R.S. § 44-1521(1).

“Merchandise” means any objects, wares, goods, commodities, intangibles, real estate, or services.

A.R.S. § 44-1521(5).

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