

Ala. Code 1975, § 13A-9-42

False Advertising

The defendant is charged with false advertising.

A person commits the crime of false advertising if, in connection with the promotion of a sale, transfer, consumption, or use of property or services, he/she makes or causes to be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.

To convict, the State must prove beyond a reasonable doubt each of the following elements:

- (1) The Defendant made or caused to be made a false or misleading statement, **[describe the statement]**;
- (2) The statement was made in an advertisement addressed to the public or to a substantial number of persons;
- (3) The statement was made in connection with the promotion of a sale, transfer, consumption, or use of property or services.

[Read as appropriate]: (AND)

- (4) The Defendant did so knowingly or recklessly.

[Read as appropriate]: *Property* is any money, tangible or intangible personal property, property (whether real or personal) the location of which can be changed (including things growing on, affixed to, or found in land and documents, although the rights represented hereby have no physical location), contract right, chose-in-action, interest in a claim to wealth, credit, or any other article or thing of value of any kind. [13A-8-1(11)]

[Read as appropriate]: *Services* includes, but is not necessarily limited to, labor, professional services, transportation, telephone or other public services, accommodation in motels, hotels, restaurants or elsewhere, admission to exhibitions, computer services, and the supplying of equipment for use. [13A-9-40(b) & 13A-8-10(b)]

A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense when he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]

A person acts *recklessly* with respect to a result or to a circumstance described by a statute defining an offense when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross

deviation from the standard of conduct that a reasonable person would observe in the situation. **[A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication, as defined in Section 13A-3-2(e)(2), acts recklessly with respect thereto.]** [13A-2-2(3)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of false advertising, then you shall find the defendant guilty of false advertising.

If you find that the State has failed to prove any one or more of the elements of false advertising, then you cannot find the defendant guilty of false advertising.

Use Notes

It is a defense to a prosecution under this section if the actor acts neither knowingly nor recklessly in making the false or misleading statement or in causing it to be made. The burden of injecting the issue is on the defendant, but this does not shift the burden of proof. [13A-9-42(b)]

A television or radio broadcasting station, or a publisher or printer of a newspaper, magazine or other form of printed advertising, which broadcasts, publishes or prints a false advertisement or a bait advertisement of another person or a telephone company which furnishes service to a subscriber, without knowledge of the advertiser's or subscriber's intent, plan or purpose, does not commit a crime under this section. [13A-9-44]

[Approved 02-27-17.]