

1 **13-2503. Knowingly; definition.**

2 A claim of unfair or deceptive trade practices under the Unfair Practices Act requires that  
3 a [statement] [description] [or] [representation] be “knowingly” made. Knowingly is not the same  
4 as intentionally. A statement is knowingly made for purposes of the Unfair Practices Act if:

5 \_\_\_\_\_ (*name of defendant*) was actually aware that the statement was false  
6 or misleading when it was made, or

7 \_\_\_\_\_ (*name of defendant*), by using reasonable diligence, should have been  
8 aware that the statement was false or misleading.

9 USE NOTES

10 This instruction should be given in cases involving UPA claims when the second element  
11 of UJI 13-2501 NMRA—i.e., that the false or misleading representation was knowingly made —  
12 is disputed.

13 [Adopted by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

14

15 **Committee commentary.** — The UPA requires, as an element of a claim of unfair or deceptive  
16 trade practices, that a “false or misleading representation was knowingly made in connection with  
17 the sale, lease, rental, or loan of goods or services in the regular course of the defendant’s  
18 business.” *Lohman v. Daimler-Chrysler Corporation*. 2007-NMCA-100, ¶ 5, 142 N.M. 437, 166  
19 P.3d 1091 (citing NMSA 1978, § 57-12-2(D) (2003); *Stevenson v. Louis Dreyfus Corp.*, 1991-  
20 NMSC-051, ¶ 13, 112 N.M. 97, 811 P.2d 1308). “[K]nowingly made’ is an integral part of all

1 UPA claims and must be the subject of actual proof.” *Robey v. Parnell*, 2017-NMCA-038, ¶ 48,  
2 392 P.3d 642 (alteration, internal quotation marks, and citation omitted).

3 “[T]he misrepresentation need not be intentionally made, but it must be knowingly made.”  
4 *Stevenson*, 1991-NMSC-051, ¶ 15. The Court has discussed “knowledge” and “knowingly made,”  
5 in this context, as follows:

6 ‘Knowledge’ does not necessarily mean ‘actual knowledge,’ but means knowledge  
7 of such circumstances as would ordinarily lead upon investigation, in the exercise  
8 of reasonable diligence which a prudent man ought to exercise, to a knowledge of  
9 the actual facts. One who intentionally remains ignorant is chargeable in law with  
10 knowledge.

11  
12 The ‘knowingly made’ requirement is met if a party was actually aware that the  
13 statement was false or misleading when made, or in the exercise of reasonable  
14 diligence should have been aware that the statement was false or misleading. Thus,  
15 for example, in a bait-and-switch, although the party may advertise an item at a  
16 special price, and he only has a very limited amount of that particular item, he  
17 should be aware that his advertising is misleading.

18  
19 *Id.* ¶¶ 16-17 (internal quotation marks and citation omitted).

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