

1 **13-2504. In connection with the sale of goods or services.**

2 A claim of unfair or deceptive trade practices under the Unfair Practices Act requires that
3 a false or misleading [statement] [description] [or] [representation] be made in connection with the
4 sale, lease, rental, or loan of goods or services. A transaction between _____ (*name of*
5 *defendant*) and _____ (*name of plaintiff*) is not required. It is sufficient if _____ (*name of*
6 *defendant*) made a false or misleading misrepresentation in connection with a sale, lease, rental,
7 or loan of goods or services to a third party.

8 USE NOTES

9 This instruction should be given when the alleged UPA violation does not involve a
10 transaction directly between the plaintiff and the defendant.

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

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14 **Committee commentary.** — The requirement under the UPA that a false or misleading
15 representation be made in connection with the sale of goods or services has been liberally
16 construed and applied in keeping with the plain language and remedial purpose of the Act. “The
17 conjunctive phrase ‘in connection with’ seems designed to encompass a broad array of commercial
18 relationships.” *Lohman v. Daimler-Chrysler Corporation*, 2007-NMCA-100, ¶ 21, 142 N.M. 437,
19 166 P.3d 1091. An “unfair or deceptive trade practice” does not require a transaction between a
20 plaintiff and a defendant; nor does it require a misrepresentation during the course of a sale

1 between a plaintiff and a defendant. *See id.* ¶ 30 (discussing NMSA 1978, § 57-12-2(D) (2003));
2 *see also id.* (“Similarly, the UPA allows claims to be brought by ‘any person’ who suffers damages
3 ‘as a result’ of any unfair or deceptive trade practice by another.” (citing NMSA 1978, § 57-12-
4 10(B) (2005)). “[I]t merely requires that the misrepresentation be made in connection with the sale
5 of goods or services generally” by the defendant. *Maese v. Garrett*, 2014-NMCA-072, ¶ 18, 329
6 P.3d 713 (internal quotation marks, citation, ellipsis, and alteration omitted). As a consumer
7 protection statute, the scope of the UPA is broad—“arguably, broad enough to encompass
8 misrepresentations which bear on downstream sales by and between third parties.” *Lohman*, 2007-
9 NMCA-100, ¶ 30. “[A] commercial transaction between a claimant and a defendant need not be
10 alleged in order to sustain a UPA claim.” *Id.* ¶ 33.
11 [Adopted by Supreme Court Order No. 22-8300-001, effective for all cases pending or filed on or
12 after February 21, 2022.]