

**3225 EXPRESS WARRANTY: STATEMENT OF OPINION**

A statement which is not based on actual knowledge but is a mere expression of a conclusion or judgment is an opinion. If the statement deals with a matter of common knowledge, it is generally an opinion since the parties to the agreement are both deemed to know facts of common knowledge. Where the thing represented is susceptible of actual knowledge, it is one of fact. A seller may resort to "puffing" his or her goods, provided his or her salesmanship remains within the range of "dealer's talk" and constitutes a mere expression of opinion.

"Puffing" refers generally to an expression of opinion not made as a representation of fact.

If the statement, although it is "puffing" or an opinion, is stated as a material fact and is made for the purpose of inducing a sale, and does in fact induce the sale, then such statement becomes an express warranty. In determining whether the statement made by the seller is mere "puffing" or an expression of opinion or a statement of fact, you will consider the surrounding circumstances under which it was made, the way the statement was made, and the usual effect and meaning of the words used in such statement.

**COMMENT**

The instruction and comment were originally published in their present form in 1971. The comment was updated in 1980. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

Wis. Stat. § 402.313(2) states, in part: "an affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty."

In Ewers v. Eisenzopf, 88 Wis.2d 482, 491, 276 N.W.2d 802 (1979), the court stated:

Courts of this state should carefully consider and evaluate the circumstances surrounding transactions where there is a claim made of an express warranty in a sale. Judicial decisions must not inhibit the free flow of relevant information between the buyer and the seller. Nevertheless, a merchant must be cautious in going beyond "puffing" in making claims and representations about their product. Further, the seller must give specific directions when he claims the goods are suitable for an intended and limited use. A merchant's vague or incomplete directions will induce the purchase of merchandise and often these directions are as misleading as when erroneous affirmations of fact are given. A merchant who knows the limitations of his product will bear no liability as long as he is truthful and accurate in his representations to the customer.

See also Kennedy-Ingalls Corp. v. Meissner, 11 Wis.2d 371, 105 N.W.2d 748 (1960); Vodrey Pottery Co. v. H. E. Home Co., 117 Wis. 1, 93 N.W. 823 (1903); White v. Stelloh, 74 Wis. 435, 43 N.W. 99 (1889); Tenney v. Cowles, 67 Wis. 594, 31 N.W. 221 (1887).