

Dell New Zealand admits Fair Trading breach

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Dell New Zealand has admitted that it breached the Fair Trading Act in promotional material for its computer equipment.

In 2006, the company marketed its 2007WFP computer monitors as being suitable for computer gaming and high end graphics, despite a technical flaw in the monitors which resulted in colour distortion.

Despite being aware of the issue, the company not only failed to notify consumers, but replaced returned monitors with ones with the same problem.

In a settlement with the Commerce Commission Dell also admitted to other breaches of the Fair Trading Act.

The company put out advertising material claiming that certain products were not available in shops, while they were on sale at The Warehouse.

It also offered a 'free' upgrade to Windows Vista when a \$40 delivery fee was required to obtain the upgrade, and promoted an online competition to win a laptop that was only available to Australian customers.

Acting Director of the Commission's Fair Trading Branch Stuart Wallace says that Dell's breaches demonstrated a "serious breakdown" in its internal procedures for ensuring compliance with consumer protection legislation.

"As part of the settlement, Dell has agreed to undertake a comprehensive review of its compliance programmes to avoid issues such as these in the future," Mr Wallace says.

Dell issued a statement saying the cases referred to in the settlement with the New Zealand Commerce Commission relate to "a very small number of Dell's consumer transactions in New Zealand".

Website Link: <http://m.nbr.co.nz/article/dell-new-zealand-admits-fair-trading-breach>

The Warehouse Fined \$209,600 For Fair Trading Act Breaches

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27 FEBRUARY 2009 - One of New Zealand's biggest retail stores has pleaded guilty to multiple breaches of the Fair Trading Act and has been fined a total of \$209,600 in the Auckland District Court today.

The charges related to The Warehouse misleading consumers about the advertised price of goods, using bait advertising, making false claims that certain products were 'exclusive to The Warehouse' and false labelling on some of their duvets.

"The Warehouse is one of the biggest retailers and advertisers in New Zealand, reaching millions of consumers via their advertising mailers and having a high turnover of goods. When a company such as The Warehouse breaches the Fair Trading Act thousands of consumers can be seriously affected. Competitors that do comply with the Act also suffer," said Adrian Sparrow, Commerce Commission Director of Fair Trading.

"The wide range of charges indicates that The Warehouse needs to ensure their compliance systems and staff training are of a sufficiently high standard so that they do not breach the Fair Trading Act and mislead their customers in the future. It is particularly disappointing to have to take action against The Warehouse as, under a 2004 Commission settlement, they had undertaken to improve both their staff training and compliance programmes relating to the Fair Trading Act. While The Warehouse did implement some Fair Trading Act compliance training as a result, it appears that they did not significantly enhance their compliance systems until 2008 - some time after the present proceedings were initiated," said Mr Sparrow.

"Representations about price, availability and exclusivity are important considerations when consumers choose one retailer over another. It is vital that this information is accurate. Consumers also rely on statements on packaging in making purchasing decisions. It is important that businesses ensure that representations about the composition of products are accurate," said Mr Sparrow.

The charges that The Warehouse pleaded guilty to included: Misleading pricing In November 2005, The Warehouse launched a nationwide promotion which was distributed in 1.3 million mailers nationwide advertising that a Madagascar DVD could be pre-ordered for \$10. Although there was nothing to indicate this in the advertising, The Warehouse intended that the \$10 be a deposit only, with the final cost of the DVD being \$24.86. Many consumers believed that the \$10 price was the total cost of the DVD. Judge Harvey noted in his judgment that the advertising in relation to the Madagascar DVD was "more egregious in nature and cannot be characterised as mere oversight."

In addition, representations as to the price of certain goods in The Warehouse catalogue were also misleading and led customers into the store only to discover the goods were much more expensive. The Warehouse also had labelling on some goods in store stating 'Advertised Special' when in fact the goods were not on sale at a reduced price.

Exclusivity In 2006, The Warehouse claimed that Lenovo brand computer products and a Duplo Thomas Load and Carry set were 'exclusive' to The Warehouse. The Commission's investigations found that the Duplo product was readily available at other retailers and that at least 45 different suppliers throughout New Zealand sold Lenovo computers.

Availability of goods In 2006, The Warehouse advertised products in their catalogues including Explorer Folder Scooters, My Little Pony Twin Gift Packs, 26" Men's and Women's mountain bikes, and Labyrinth, Dark Crystal and Hostel DVDs.

However consumers trying to purchase these goods were told that they were unavailable. Advertising goods without sufficient quantities being available in stock is also known as 'bait advertising.'

Judge Harvey also noted that "the behaviours are still demonstrative of carelessness and lack of cohesion within a large retail organisation, well known throughout New Zealand which advertises heavily in all media. One would have expected that such an organisation with such a considerable reliance on advertising and, no doubt, a significant advertising budget, would ensure compliance with the Fair Trading Act especially in regard to such simple matters as ensuring that products claiming to be exclusive would be as such."

False claims on packaging/labelling In 2007 The Warehouse promoted and sold three types of feather and down duvets under the 'Nature's Pride' brand. The labelling and packaging claimed that the three duvet products contained 80 per cent goose down clusters, 80 per cent duck down clusters and 50 per cent duck down clusters respectively. The Warehouse was told by a supplier that all three duvet products contained less down than that stated on the labelling. Despite undertaking their own testing that confirmed that the labels were incorrect, The Warehouse made the decision to continue selling the incorrectly labelled duvets, but at a reduced price. Over 10,000 duvet products were sold at the reduced price.

The Warehouse gave no indication to consumers that the reason why the duvets had been discounted was that they were not of the quality that the labels and packaging indicated. Prior to being charged by the Commission, The Warehouse made no attempt to contact the thousands of customers who had already bought the incorrectly labelled duvets.

"The Commission's testing showed that the variance between what was on the label and the actual content of the duvet was considerable. None of the duvets tested by the Commission had the percentage of goose or duck down claimed on the label. In the worst case, the duvet tested claiming 80 per cent duck cluster only had 23 per cent actual duck down," said Mr Sparrow.

"Taken together, these charges represent a large number of consumers throughout New Zealand being misled," said Mr Sparrow. "This court judgment sends a clear message to The Warehouse and other retailers that they must compete honestly or risk the consequences of court sanction and loss of reputation with consumers

Website Link: <http://www.voxy.co.nz/national/warehouse-fined-209600-fair-trading-act-breaches/5/9676>

Telecom

Commerce Commission, Media Release 19 October 2011

Telecom has admitted breaching the Fair Trading Act after misleading some customers about the amount of broadband data they used.

Telecom said the inaccurate readings for approximately 97,000 customer accounts between November 2010 and June 2011 were due to a software fault in broadband data usage meters. Telecom discovered the fault following complaints from a number of their customers.

The result of the inaccurate readings was that around 47,000 of the customers were impacted in one or more of the following ways:

- Customers had the speed of their broadband service reduced (or ‘throttled’) to dial up speed once the reading reached their data cap.
- Customers upgraded to a more expensive monthly broadband plan to increase their monthly data allowance due to an incorrect perception about their data usage.
- Customers were charged overage fees for the amount of data that they used above their data cap.
- Customers reduced their data usage so as to not exceed their monthly data allowance.
- Customers were charged early termination fees for changing providers as a result of incorrect perceptions about their data usage.

Telecom issued a public statement in June 2011 outlining the fault and their intention to refund affected customers. To date, Telecom has written to their affected customers and has refunded more than \$2.7 million.

“We’re pleased to have reached a settlement with Telecom and that they have made prompt refunds directly back to the customers who have lost out,” said Stuart Wallace, Commerce Commission Competition Manager.

“Telecom brought this issue to our attention as soon as they were made aware by their customers and have co-operated fully with the Commission. Due to Telecom’s immediate admission of a breach of the Fair Trading Act, followed by appropriate compensation to customers, the settlement is the best possible outcome for those customers and avoids potentially lengthy and costly court hearings paid for by taxpayers,” added Mr Wallace.

A copy of the settlement agreement can be found on the Commission’s website at: www.comcom.govt.nz/fair-trading-act-enforcement-actions-register

Background

Under the Fair Trading Act 1986, it is an offence to make a false or misleading representation. Section 13(b) of the Fair Trading Act states:

No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services, —

Make a false or misleading representation that services are of a particular kind, standard, quality, or quantity.

And section 13(g) states:

No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services,—

Make a false or misleading representation with respect to the price of any goods or services.

Only the courts can decide if the Fair Trading Act has been breached and set appropriate penalties.

Website Link: <http://www.comcom.govt.nz/media-releases/detail/2011/telecom-refunds-customers-after-inaccurate-broadband-meter-readings/>

Vodafone pleads guilty to breaching Fair Trading Act

NBR Staff | Tuesday July 19, 2011 |

Vodafone has pleaded guilty to five charges of misleading representations under the Fair Trading Act in Auckland District Court yesterday.

The Commerce Commission is seeking a penalty in excess of \$500,000 from the company and has laid charges in relation to six different mobile and promotional campaigns.

The outcome dealt with one of those cases and Vodafone was defending the other five cases, which will be heard at a later date.

Vodafone said the charges related to the initial stages of accessing the internet via a mobile phone in 2007.

"During this period there was differential charging between V-live! and the rest of the mobile internet."

The company said the commission had accepted that the differential charging was an unintended result of technical problems and at no time did Vodafone intentionally mislead customers.

"However we accept that we could have done a better job explaining the charging mechanism.

We have apologised and co-operated fully with the Commerce Commission and wherever possible we believe we have refunded all the affected customers."

Vodafone said it had since put in place and would continue to improve measures to ensure customers were not confused by data charging.

Website Link: <http://www.nbr.co.nz/article/vodafone-pleads-guilty-breaching-fair-trade-act-aw-97295>