

9 October 2018

Attn: []
Interroll Limited
Unit 2, 485d Rosebank Road
Avondale
Auckland 1026

By email only: []

Dear []

Fair Trading Act 1986: Warning and compliance advice to Interroll Limited

1. The Commerce Commission has been investigating Interroll Limited (**Interroll**) under the Fair Trading Act 1986 (the **Act**). We have now completed our investigation and are writing to Interroll to provide a warning and compliance advice.
2. In summary, the Commission considers that Interroll was likely in breach of section 13(i) of the Act by misrepresenting a debtor’s right to dispute the debt with Interroll.
3. In addition, we consider that Interroll possibly breached section 9 of the Act by misleading two debtors about the inevitability of court proceedings if they did not repay the debt.
4. The Commission is issuing a warning to Interroll in relation to the likely breach of section 13(i) of the Act, and compliance advice in relation to the possible breach of section 9 of the Act.

The investigation

5. We have investigated complaints from two debtors about statements made to them by Interroll when seeking payment for unpaid debts.
6. During our investigation, we considered information provided by Interroll in written responses and during an interview. We also considered information from Interroll’s website and telephone recordings provided by Interroll of conversations between Interroll staff and the two debtors. Interroll has cooperated with the Commission throughout the investigation.

Information provided by Interroll

Information about Interroll’s processes

7. Interroll provides services in debt recovery, tracing, document service, repossession and credit reporting.
8. It collects both assigned debts (purchased by Interroll) and contingent debts (collected on behalf of clients). Interroll’s process for resolving disputes and deciding

to issue legal proceedings varies depending on whether the debt is collected on an assigned or contingent basis.

9. Intercol advised that if a debt is disputed (whether it is the amount or the debt itself), the collection agent considers whether the dispute is legitimate. If Intercol considers the dispute is legitimate, collection activity stops and the file is updated to show as disputed. The claim is then investigated at length, and where appropriate, Intercol attempts to negotiate a settlement.
10. Intercol's process when deciding whether it will commence court proceedings for a debtor's file includes the following:
 - 10.1 A collection agent will refer a debtor's file to the General Manager or the senior leadership team of Intercol to consider whether legal proceedings are appropriate.
 - 10.1.1 If it is an assigned debt Intercol management will then decide whether to file proceedings.
 - 10.1.2 If it is a contingent debt Intercol will refer the file onto the client recommending proceedings. Intercol has an understanding with some of its clients to commence legal proceedings if collection cannot be achieved quickly.
 - 10.2 If legal proceedings are being contemplated, but not yet certain, the collection agent may advise the debtor that the file will be referred back to the office for a decision on whether legal proceedings should be issued.
 - 10.3 If the decision to issue legal proceedings is final, the collection agent may call the debtor to advise that proceedings will commence and perhaps make a final attempt to negotiate a payment plan.
 - 10.4 Even where debtors have been served with a notice of proceedings, Intercol will continue contact to try to arrange a payment plan.

Information about []

11. Intercol advised the Commission that [] debt had been assigned to it by []. When [] was contacted about the debt by Intercol, she indicated she was unsure as to the reason for the debt, as she understood her account to be fully settled. [] disputed the debt.
12. During the telephone call with an Intercol employee, the employee said to []:

"So long story short, if you wanted to question it and that, you would have to get your lawyer to take on [] over the amount and then you would recover it from us, however, they are two separate issues, the issue with us is between you and us now, nothing to do with [] because that is the amount that has been handed over to us."

13. During the call the employee referred to the fact that a manager was listening and at one stage, transferred the call to him. The manager took no steps to clarify the situation or the representation made by the employee.
14. Intercoll explained that this specific Intercoll employee was a trainee and the mistakes that occurred were “not part of the company’s modus operandi, ethics, protocols or training provided to staff” and the mistakes made by him are ‘inexcusable’.

The law

15. Section 13(i) of the Act prohibits a person 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, from making false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy available under the Consumer Guarantees Act 1993.
16. Section 9 of the Act prohibits a person in trade from engaging in conduct that is misleading or deceptive or is likely to mislead or deceive.

The Commission’s view

17. The Commission has reviewed the available evidence, including taking into account Intercoll’s response. It is our view that Intercoll’s conduct is likely to have breached section 13(i) and gives rise to a possible breach of section 9 of the Act.
18. After considering the factors set out in our Enforcement Response Guidelines,¹ we are issuing Intercoll with:
 - 18.1 a **warning** over the representations an Intercoll employee made to [] about her right to dispute the debt with Intercoll; and
 - 18.2 **compliance advice** over the representations made to [] and [] about the inevitability of Intercoll initiating court proceedings when it was yet to be considered by Intercoll management or its client.

Misleading representations about a debtor’s right to dispute the debt with Intercoll

19. In our view, Intercoll has likely breached section 13(i) by misrepresenting that [] had no right to dispute the debt with Intercoll.
20. We consider that Intercoll’s telephone representations were likely to mislead [] as to her rights and that, specifically she was required to pay Intercoll and then to dispute the amount with the original owner of the debt.
21. [] had a right to dispute the debt or the amount with Intercoll directly. There was a legal transfer of the debt from the original owner to Intercoll, and Intercoll had become the owner of the debt for the purposes of collecting the outstanding amount.

¹ [Enforcement Response Guidelines – October 2013](#).

Misleading debtors about the inevitability of court proceedings

22. Intercol has also possibly breached section 9 of the Act by making statements to two debtors that gave the impression that court action was inevitable if payment was not made. The records in these debtor files suggest that court action was not inevitable at the time the statements were made to the debtors.

22.1 In relation to [] Intercol advised during a telephone conversation that it had pending legal action at the Manukau District Court for 5.30pm that Friday. The agent advised [], “if you don’t reply by 4 o’clock I’m just going to send it to Court”.

Intercol advised the Commission that it did not have a claim filed when it made this statement to []. In addition, the collection agent did not have the authority to initiate legal proceedings at the time the statement was made.

22.2 In relation to [] Intercol advised in a text message that the file “will go legal”. However, information provided to the Commission by Intercol shows that it did not discuss legal proceedings with its client until two weeks later.

The outcome of that discussion was that, despite the usual arrangement with the client to take legal action, they declined to do so in [] case because the file was dated.

23. Intercol advised that when a debtor’s file is being considered for legal action, a collection agent may advise debtors that the file has been referred to the General Manager in the case of assigned debts and to the client in the case of contingent debt to consider legal proceedings. The collection agent may also outline the possible costs of legal action to the debtor.

24. The investigation found that Intercol advised two debtors, [] and [], that their files would proceed to legal action if the debt remained unpaid. On review of these debtors’ files, it appears that neither had been considered for legal action by Intercol’s management or the client at the time of the statement.

25. We acknowledge that debt collectors are entitled to outline the possible consequences of non-payment to debtors. However, Intercol must ensure that its statements to debtors are accurate. It must be careful to ensure that debtors are not told or given the impression that non-payment will inevitably result in legal action, if it is only a possibility at the time the statement is made.

Additional information

26. We encourage Intercol to regularly review its compliance procedures and policies.

27. While we will not be taking any further action against Intercol at this time, we will take this warning into account if this conduct continues or if you engage in similar conduct in the future. We may also draw this warning to the attention of a court in

any subsequent proceedings brought by the Commission against Intercoll for similar or related conduct.

28. This warning letter is public information. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

29. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the Fair Trading Act

30. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
31. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

Further information

32. We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
33. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.
34. Thank you for your assistance with this investigation. Please contact Esther Kim on (04) 924 3867 or by email at esther.kim@comcom.govt.nz if you have any questions about this letter.

Yours sincerely,



Ritchie Hutton
Head of Strategy, Intelligence and Advocacy
Competition and Consumer Branch