

14 September 2021

Glopac NZ Limited

Attention: [REDACTED]
Director

By email: [REDACTED]

Dear [REDACTED]

Fair Trading Act 1986: Warning for misleading claims about the recyclability of hot drink cups

1. The Commerce Commission (Commission) has been investigating Glopac NZ Limited (Glopac) under the Fair Trading Act 1986 (Act). We have now completed our investigation and are writing to inform you about our views.
2. The Commission considers that Glopac is likely to have breached the Act by representing its hot drink cups as recyclable, when hot drink cups are not currently accepted into New Zealand recycling streams.
3. We have determined in this instance to issue Glopac with a warning letter. A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that at this time we will not be bringing legal action against Glopac.¹
4. We note that following contact from the Commission, Glopac has agreed to stop making the recycling representations by removing all representations about the recyclability of its hot drink cups from its website, social media and the hot drink cups.
5. We recommend that Glopac put policies in place to ensure ongoing compliance with the Act. In relation to any disposal claims, it is important that you maintain an awareness of industry changes to ensure that your claims remain accurate over time.

¹ Commission's published *Enforcement Response Guidelines* at [41].

The investigation

6. Glopac sells packaging products marketed as “environmentally friendly”, including hot drink cups. The cups are 100% paper, polyethylene (PE) and polylactic acid (PLA) free. This means that they are distinct from typical hot drink cups, which have a PLA lining on the inside.
7. Glopac made representations about the recyclability of its hot drink cups on the hot drink cups, Glopac’s website and on Glopac’s social media accounts. Some examples of the representations are set out below.



8. Glopac provided the Commission with test results from a German testing facility showing that the board used to make the hot drink cups is capable of being recycled. Glopac relied on these test results and that its hot drink cups are 100% paper in representing its hot drink cups as recyclable. Glopac also pointed to its compostable certification by Din Certo.
9. Glopac engaged with two New Zealand recycling facilities and a city council to discuss the potential for its hot drink cups to be recycled in New Zealand. The recycling facilities indicated that, while clean used cups could in certain circumstances be accepted into the recycling stream, no hot drink cups were accepted through kerbside recycling. The circumstances where Glopac’s hot drink cups could be recycled included ‘closed loop’ events (like concerts or festivals) where only Glopac cups were available.
10. Glopac did not undertake any further steps to determine the cups’ recyclability in New Zealand.

The relevant law

11. Section 10 of the Act prohibits persons in trade engaging in conduct that is liable to mislead the public as to the characteristics of goods.
12. Section 13(a) of the Act prohibits persons in trade making false or misleading representations that good are of a particular kind.

13. Section 12A of the Act prohibits persons in trade making unsubstantiated representations, in other words, where the person making the representation does not have reasonable grounds to back up their claims.

Glopac's response

14. Glopac told the Commission that it did not intend to mislead consumers by representing that its hot drink cups are recyclable. It also told the Commission that it was aware that hot drink cups were not able to be recycled in New Zealand, but that Glopac considered that a reasonable consumer would understand this, not be misled and not put their hot drink cups into recycling.
15. Glopac has decided to no longer make recyclability representations about its hot drink cups. Glopac has removed all relevant representations from its website and social media. Glopac is in the process of removing the representations from the cups.

The Commission's view

16. In this case, and having fully considered relevant information received, the Commission's view is that it is likely that Glopac's conduct breached the Act.
17. The Commission considers that Glopac is likely to have breached sections 10, 13(a) and/or 12A of the Act by:
- 17.1 Engaging in conduct which is liable to mislead the public as to the characteristics of goods by marketing Glopac hot drink cups as recyclable when no hot drink cups are accepted into consumer recycling streams in New Zealand.
- 17.2 Making false or misleading representations that Glopac's hot drink cups are of a particular kind (namely recyclable), when no hot drink cups are accepted into the consumer recycling streams in New Zealand.
- 17.3 Making a representation about the recyclability of Glopac's hot drink cups without reasonable grounds for the representation (an unsubstantiated representation).
18. We have reached this view because:
- 18.1 Glopac made clear representations that its hot drink cups were recyclable. These representations were made on Glopac's cups, website and social media.
- 18.2 Glopac admitted to the Commission that it knew hot drink cups are not accepted into recycling in New Zealand.
19. The Commission considers that the reasonable consumer would understand the word 'recyclable', when referring to hot drink cups, to mean more than that the cup is technically possible to recycle. We consider the reasonable consumer on seeing a

representation that a cup is 'recyclable', would take it to mean that the cup would be widely accepted into the New Zealand recycling stream, when this is not the case.

20. We recognise that innovation in packaging should be encouraged. However, if traders are marketing a product as recyclable, they should consider whether appropriate recycling facilities are available to consumers likely to acquire the goods to avoid misleading them. Items that are widely accepted at kerbside recycling or council drop offs can be labelled as recyclable but other items that are less widely accepted, or that are not recycled through kerbside recycling, should specify where they can be recycled.

Warning

21. After considering our Enforcement Response Guidelines, we have decided to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings.
22. This warning represents our opinion that Glopac's conduct is likely to have breached the Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
23. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Glopac.
24. This warning letter is public information and will be published on the case register on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

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

Penalties for breaching the Act

26. As indicated above only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
27. 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

28. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.

29. We have published a series of fact sheets and other resources to help businesses comply with the 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.
30. For more information, please find attached the Commission's Environmental Claims Guidelines.
31. You can also view the Act and other legislation at www.legislation.co.nz.
32. Thank you for your assistance with this investigation. Please contact Anna Walton on 04 924 3797 or by email at anna.walton@comcom.govt.nz if you have any questions about this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsten Mannix', is written over a light grey rectangular background.

Kirsten Mannix
Fair Trading Investigations and Compliance Manager