

**In the High Court of New Zealand
Auckland Registry**

**I Te Kōti Matua O Aotearoa
Tāmaki Makaurau Rohe**

CIV-2018-

Under Parts 1 and 5 of the Fair Trading Act 1986

Between **Commerce Commission** a body corporate established under section 8 of the Commerce Act 1986 having its offices at level 6, 44-52 The Terrace, Wellington

Applicant

And **viagogo AG** a body corporate incorporated in Switzerland having its registered office at Rue du Commerce 4, c/o Geneva Rhone 8 Sàrl, 1204, Geneva, Switzerland.

Respondent

**Interlocutory application without notice for
interim injunction**

29 November 2018

**MEREDITH
CONNELL**

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Interlocutory application without notice for interim injunction

To: the Registrar of the High Court at Auckland

This document notifies you that –

- 1 The applicant, the Commerce Commission, will apply to the Court on _____ for interim injunctions restraining the respondent from making representations to New Zealand consumers in breach of ss 9, 11 and 13 of the Fair Trading Act 1986 (FTA).
- 2 The grounds on which the orders are sought are as follows:
 - (a) The applicant has a good arguable case that:
 - (i) The respondent has made representations:
 - (A) that tickets for particular sporting, music and entertainment events in New Zealand were in short supply, when they were not;
 - (B) that tickets for such events were available to purchase at particular prices, when in fact the respondent also charged significant unavoidable fees; and
 - (C) that the respondent could guarantee the validity of the tickets sold to consumers through its website, when it could not;as outlined in the applicant's statement of claim;
 - (ii) The above conduct breaches the FTA;
 - (iii) If interim relief is not granted, there is a significant risk that the respondent will continue to breach the FTA by making the representations; and
 - (iv) Interim relief is therefore desirable to prevent ongoing breaches of the FTA pending resolution of these proceedings.
 - (b) The balance of convenience and overall justice of the case favour granting the interim relief sought, given:
 - (i) There is no prejudice to the respondent in being restrained in the manner sought, which will not affect the respondent's ability to continue carrying on business in New Zealand, provided that it does so in accordance with the FTA; and

- (ii) The public interest favours interim relief, since:
 - (A) the applicant has received numerous complaints from affected consumers who have been misled by the respondent's conduct;
 - (B) the respondent has continued to make the representations outlined above, notwithstanding previous attempts by the applicant to invite the respondent to cease making the representations of its own accord; and
 - (C) the applicant continues to receive complaints from consumers, which suggests that consumers are continuing to be misled by the respondent's representations, even after the applicant announced its intention to file this proceeding.

3 The application is made without formal notice to the respondent on the following grounds:

- (a) the respondent resides in Switzerland and has declined to accept service, meaning service through diplomatic channels is necessary and will take approximately six months;
- (b) the respondent has instructed solicitors in New Zealand who have advised that they are unable to accept service of these proceedings, but who have nonetheless been provided with a copy of the proceedings on a *Pickwick* basis;
- (c) requiring the applicant to proceed on notice will allow the conduct in question to continue for a further six months and cause ongoing harm to New Zealand consumers during that period; and
- (d) it is therefore in the interests of justice that the application be determined on a *Pickwick* basis.

4 The application is made in reliance on rr 7.23 and 7.53 of the High Court Rules 2016, ss 9, 11, 13(b), (g), (i), and 41(3), (4) of the FTA, *Commerce Commission v Discount Premium Holidays Ltd* HC Auckland CIV-2007-404-6451, 16/11/17, Cooper J, *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 (HL), *Pickwick International Inc (GB) Ltd v Multiple Sound Distributors Ltd* [1972] 3 All ER 384, and the affidavit of Veronika Andreeva filed in support.

5 We certify that:

- (a) the grounds set out in paragraph 4 on which the application relies are made out; and

- (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

Date: 29 November 2018

Signature



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