

20 September 2022

██████████  
Director  
Chilltainers Holdings Limited

By email: ██████████

Dear ██████████

### **Fair Trading Act 1986: Warning for misleading claims about the recyclability of Chilltainers' products**

1. The Commerce Commission (Commission) has been investigating Chilltainers Holdings Limited (Chilltainers) 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 Chilltainers is likely to have breached the Act by representing its products as recyclable, when Chilltainers' products are not currently accepted into kerbside recycling in some parts of New Zealand.
3. We are issuing you with this warning letter because in our view, Chilltainers' conduct is likely to have breached section 10 of the Act. 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 Chilltainers.<sup>1</sup>
4. We note that following contact from the Commission, Chilltainers amended its recycling representations on its websites and intends to review its on-package representations to make it clearer that Chilltainers' products are not accepted in kerbside recycling in some areas.
5. We recommend that Chilltainers also puts 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.

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<sup>1</sup> Commission's published *Enforcement Response Guidelines* at [41].

## The investigation

6. Chilltainers is a New Zealand based packaging company that specialises in cardboard packaging suitable for heat sensitive goods. The cardboard packaging has a reflective metallised polyester laminate coating that gives the packaging a silver appearance and the products can be used as an alternative to polystyrene boxes. Chilltainers' products are similar in nature to other coated cardboard products, albeit the silver colour of Chilltainers' packaging gives it a highly distinctive appearance.

### A Chilltainers' product



7. The Commission has investigated allegations that Chilltainers represents its products as recyclable, when some councils do not accept Chilltainers in kerbside recycling schemes. We also investigated allegations that Chilltainers represented that retailers and householders would be paid to recycle Chilltainers' products, when this is not the case.
8. During our investigation, we obtained the following evidence, which we consider indicates a likely breach of the Act:
- 8.1 Chilltainers made a range of representations on its websites relating to the recyclability of its products, including that they were recyclable, kerbside recyclable, and that retailers and householders would be paid to recycle Chilltainers' products. Attachment A shows some examples from Chilltainers' website before changes were made.
- 8.2 Some of Chilltainers' products had the statement "PLEASE RECYCLE THIS CHILLTAINER" printed directly on the products, alongside a recyclable logo.
- 8.3 A number of large city councils told the Commission that either the Chilltainers' products were not accepted, or that cardboard products with any lining or coating were not accepted in kerbside recycling and/or by the recycling contractor.
- 8.4 There is regional variability between Material Recovery Facilities (where kerbside recycling is sorted) as to whether or not Chilltainers' products are removed and sent to landfill or baled together with other cardboard and paper for recycling.

- 8.5 Chilltainers does not in fact pay householders or retailers to recycle its products.

### **How this conduct can break the Law**

9. 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.
10. If Chilltainers' conduct (including the way Chilltainers markets its products on its website) is liable to mislead the public about disposal options for the goods then the conduct is likely to breach the Act.

### **Chilltainers' response**

11. Chilltainers response to the Commission's enquiries included:
- 11.1 Explaining that the products can technically be recycled;
- 11.2 Sourcing independent tests showing the products are capable of being recycled and adding links to the tests on its website;
- 11.3 Explaining that there are many cardboard products that have coatings similar to Chilltainers that are widely accepted in kerbside recycling;
- 11.4 Identifying that the Materials Recovery Facility (where recycling is sorted) that services the Auckland region does not remove Chilltainers' products from the recycling stream if they are placed in kerbside recycling; and
- 11.5 Highlighting that, in its view, Chilltainers' products are far better for the environment than polystyrene boxes, for which Chilltainers' products are a substitute.
12. Chilltainers' has made a number of changes to its websites, including adding the qualifying statement:

Some New Zealand councils, such as Wellington, may not accept our products in kerbside recycling. Chilltainers are actively seeking to educate and convince them that, like other coated cardboard products, Chilltainers Boxes are recyclable as international trials prove and asking them to review their current stance which is unhelpful to the environment and consumers.

### **The Commission's view**

13. In this case, and having fully considered relevant information received, the Commission's view is that it is likely that Chilltainers' conduct breached the Act.
14. In our view Chilltainers is likely to have breached section 10 of the Act by representing that its products were recyclable, kerbside recyclable, and that retailers and householders would be paid to recycle Chilltainers' products.
15. We consider the conduct was liable to mislead the public because:

- 15.1 the reasonable consumer of Chilltainers' products on seeing one or more of the recyclability representations was likely to have formed the view that the Chilltainers' products were accepted in kerbside recycling throughout New Zealand and that products placed in kerbside recycling would in fact end up being recycled;
  - 15.2 this is not in fact the case for some regions of New Zealand as there is currently significant regional variability as to whether or not Chilltainers' products will in fact be recycled if placed in kerbside recycling; and
  - 15.3 there is no evidence that retailers and householders are paid to recycle Chilltainers.
16. 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. However, traders should ensure consumers are made aware of recycling limitations if goods that are not widely accepted in recycling.

### **Warning**

- 17. After considering our Enforcement Response Guidelines, we have decided to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings.
- 18. This warning represents our opinion that Chilltainers' 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.
- 19. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Chilltainers.
- 20. 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**

- 21. 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**

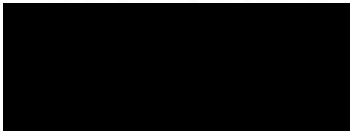
- 22. As indicated above only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.

23. 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**

24. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.
25. 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](http://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.
26. For more information, please read the Commission's Environmental Claims Guidelines.
27. You can also view the Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
28. 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](mailto:anna.walton@comcom.govt.nz) if you have any questions about this letter.

Yours sincerely



Kirsten Mannix  
Fair Trading Investigations and Compliance Manager

## Attachment A – Website representation examples prior to changes

### Example 1




### Highly recyclable and sustainable

Chilltainers allow you to enjoy the convenience of 'kerbside' recycling and the thermal performance of Polystyrene/EPS - *without* the environmental cost.

*Cost savings at every step of the supply chain >*




### Example 2



## How Chilltainers can save you money

#### Cheaper freight costs

Airline approved, non-leak Chilltainers mean *direct shipping from producer to retailer. No repacking saves time and money.*

#### Space Efficient


Chilltainers slimline profile means you can fit *more product in each box and more boxes in each transport container.*

#### Retailer-ready

Stylish and brandable Chilltainers carry your product to the customer. *No additional labelling or repacking required.*

#### Recyclable

Chilltainers are 95-97% recyclable in standard paper recycling. *Eliminate the disposal and environmental costs of Polystyrene/EPS.*



### Example 3



Chilltainers are 95-98% recyclable and highly sustainable. Chilltainers *don't* cost the earth.

### Example 4



**No disposal costs**  
Retailers are paid to recycle Chilltainers  
vs the economic and environmental  
cost of Polystyrene/EPS disposal

### Example 5



## Lower freight and handling costs

Retail packs can be sent directly from producer to retailer substantially reducing costs of freight, reprocessing and repackaging because Chilltainers do not require transshipping or repackaging



**Chilltainers** - direct delivery from the production line to the retailer or householder who is paid to recycle Chilltainers



**Polystyrene/EPS** - increased costs for repacking, transport and disposal

