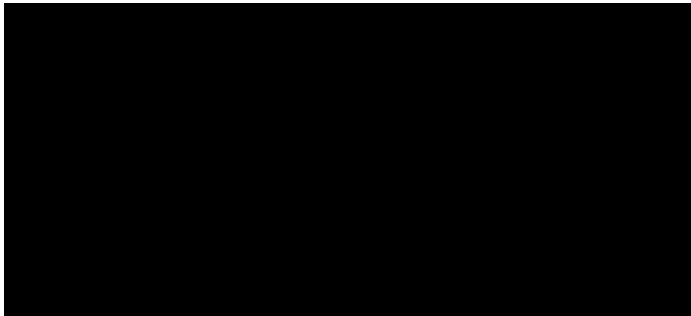


22 December 2022



Official Information Act #22.098 – Response

1. We refer to your request received on 13 December 2022 for information about WEAREBAMBOO Limited.
2. You requested a copy of the Commerce Commission's (**Commission**) written communication to the WEAREBAMBOO liquidator summarising complaints we had received in respect of that trader.
3. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

4. We have decided to grant your request.
5. Please find attached as **Attachment A** our 21 December 2022 letter to the liquidator which contains a summary of the complaints we have received.
6. Please note the Commission will be publishing this letter and the attachment on its website. Your personal details will be redacted from the published response.
7. Please do not hesitate to contact us at oia@comcom.govt.nz if you have any questions about this response.

Yours sincerely



OIA and Information Coordinator

Released Under Official Information Act 1982



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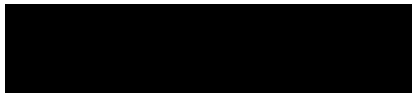
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21 December 2022

Iain Shepard
BDO New Zealand Limited
Level 1, Chartered Accountants House
50 Customhouse Quay
Wellington 6143

By email : bamboo.liquidators@bdo.co.nz



Dear Mr Shepard

WEAREBAMBOO Limited (in Liquidation)

1. As you are aware the Commerce Commission (**Commission**) has recently opened an investigation into the conduct of WEAREBAMBOO Limited (**WAB**) under the Fair Trading Act 1986 ("**the Act**").
2. However, as WAB is now currently going through the liquidation process,¹ the Commission considers it is appropriate to suspend its investigation into this matter. This decision was made after considering our Enforcement Response Guidelines² and the Companies Act 1993.
3. Although we have decided not to continue our investigation at this time, the Commission reserves its right to investigate and remains concerned about allegations made in connection with the conduct of WAB prior to its liquidation.
4. We are writing to provide you with a summary of the complaints the Commission has received about WAB.

Background

5. 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

¹ As confirmed by your written correspondence to the Commission on 12 December 2022.

² <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines>

prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

6. WAB is a New Zealand based retailer of specialised travel packages whereby WAB arranged for its customers to travel overseas to engage in various volunteer work projects.
7. Between 9 June 2022 and 16 December 2022, the Commission received 240 complaints regarding WAB. Many complaints contain similar themes.

Complaints

8. A considerable number of customer complaints received by the Commission describe how customers paid for travel packages from WAB that were cancelled during the 2020 – 2022 period due to covid restrictions. Following the cancellations, based on the complaint information, WAB would offer new tour dates, some of which were also cancelled and postponed. When customers sought refunds, in some cases after 2 – 3 years of deferred travel, complainants were told WAB had a 'no refund policy' and would offer new tour dates.
9. By way of email dated 31 October 2022, WAB advised its customers that it's business had closed down and advised the reasons for closure as covid related and that "*a small group of individuals...with the intent to destroy Bamboo*" had impacted WAB's business.³
10. In subsequent emails, WAB advised its customers it would not be offering customer refunds and cited its force majeure clause. During this process many customers complained of being unable to communicate with WAB.
11. Some complainants expressed concerns that:
 - 11.1 the activities of the 'Directors'⁴ on social media reflected a lifestyle that appeared incongruous with the company's alleged financial situation;
 - 11.2 when attempting to seek a refund of their travel insurance directly from the named travel insurance supplier they were advised by the insurer that it had not supplied insurance to WAB since September 2020; and
 - 11.3 WAB were promoting tours and seeking payments up to and including September and October 2022 and complainants allege that WAB would have known they would not be able to supply the tours.
12. In summary, the complainants have alleged that WAB:

³ A full version of that email communication is in Appendix One.

⁴ It is noted only **Colin Salisbury** was listed as a registered director on the Companies Office, however a number of complainants also inferred that **Mark Alan Foster** also had a director/owner type role at WAB.

- 12.1 accepted payments for tour packages when WAB had no intention to supply those packages or did not have reasonable grounds to believe that it would be able to supply the services;
- 12.2 did not process refund requests from customers on the basis of an incorrect application of a force majeure clause; and
- 12.3 accepted payments from customers for insurance cover, yet it did not arrange insurance cover.

Fair Trading Act

- 13. The allegations have not been investigated or proven, and only the courts can decide if there has been a breach of the Act. However, if the allegations are substantiated, we consider that the actions of WAB (and/or its Director/s) could give rise to a breach of the following sections of the Act⁵:

- 13.1 section 7 of the Act which prohibits unconscionable conduct;
- 13.2 section 9 of the Act which prohibits misleading and deceptive conduct generally;
- 13.3 section 11 of the Act which prohibits misleading conduct in relation to services;
- 13.4 section 12A of the Act which prohibits making representations where the person making the representation does not have reasonable grounds for the representation;
- 13.5 section 13(i) of the Act which prohibits false or misleading representations concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the Consumer Guarantees Act 1993; and
- 13.6 section 21 of the Act which prohibits demanding or accepting payment for services if at the time of the demand or acceptance that person does not intend to supply the services or does not have reasonable grounds to believe that that person will be able to supply the services.

Next steps

- 14. We request that during the liquidation process, you consider the above allegations and note any findings that may be relevant to those allegations within your final liquidation report.

⁵ The sections above have been summarised and can be viewed in full here : [Fair Trading Act 1986 No 121 \(as at 16 August 2022\), Public Act Contents – New Zealand Legislation](#).

15. We await your final liquidation report with interest and ask that you keep us updated on the process and the timing of the final report.
16. We request that a copy of the final liquidation report be emailed to [REDACTED]
17. Please acknowledge receipt of this letter.
18. If you have any questions about this letter or wish to discuss it, please do not hesitate to contact me on [REDACTED]

Yours sincerely

[REDACTED]

Senior Investigator
Fair Trading Branch
Commerce Commission

cc:

[REDACTED]
Manager Integrity and Enforcement
Integrity and Enforcement Team
Ministry of Business, Innovation and Employment

Released Under Official Information Act 1982

Appendix One

Dear

We wanted to reach out to you personally to share a very difficult decision we have had no choice but to make. Our dream to provide adventures across the globe that give back must sadly come to an end. We understand how shocking this is. Please allow us a few moments of your time to explain how this heartbreaking moment has unfolded.

The reasoning has two parts. As you would have personally experienced, Covid was long and difficult for all of us. With travel being shut down for two-plus years, our industry has been decimated beyond recognition. We had to keep the lights on during this time, and our global teams looked after. Without government support, we stepped in to financially support those who needed it most, in some cases simply to feed their families and survive. With no definite end in sight, it was very demanding on our resources. As you know, there was a lot of imperfect information, and we had to make decisions as best we could without fully appreciating when Covid would end.

Reopening the Bamboo tours has been especially difficult as we have had two-plus years of customers wanting to travel as soon as possible (for understandable reasons). Still, we have had to ensure our tours opened safely and appropriately in a different post-covid world. Hotels had closed down, infrastructure reduced, tour guides found alternative work to survive, and inflation negatively affected supply chains. This needed financial support to reopen across ten destinations with different levels of issues. With Covid still active in many destinations, we had to prioritize health and reduce tour numbers and tour dates to ensure the above was addressed before we could fully open and run a successful experience for you.

Despite the above and the frustrating challenges we faced, we had formulated a plan that would have ensured that everyone would get to go on a Bamboo tour. This required patience and understanding in order for us to carve a path through. Thankfully most of our customers were supportive and understood the difficult decisions we had to make.

However, and this may be the most heartbreaking to comprehend, there is a small group of individuals who were not prepared to wait, and their actions and online influence have broken us, which impacts us all.

Our intentions here are not to play the victim but simply share with you the levels to which this group has gone to ensure our downfall, and made it their sole purpose to attack us, our families, our staff, and our customers with the intent to destroy Bamboo. This gave us no choice but to close and not allow us to complete our plan and provide you with your tour. There is nothing we would want more than to see everyone on tour. This is, and always has been, our reason to exist.

Although we do not wish to subject you to everything that has happened or publish any personal information, we feel it is only suitable that you witness and appreciate the levels these individuals went to.

From some of the comments, we witnessed one from a frustrated but understanding customer that profoundly moved us. They state with reference to the group of individuals:

"...i'm really angry. I posted here to try to give some perspective in the group. To try and quell the angry. I asked people to be civil. (name withheld) seems to think you not a mob. But in fact when civility goes out the window, the group does in fact become a mob. I have received three DM this past 14hrs. All using foul language and speaking of threats to myself and my wife. I will not participate in this unreasonable and totally unscrupulous behaviour. Those persons don't deserve to travel with others who are trying to be good humans in a broken world..."

Sadly, this is not the worst that we witnessed, but without question, it has shaken us to our core and possibly to yours too. To see what was once our fantastic community become victims of online abuse. This is not why Bamboo was created.

Our lawyers have advised us that several individuals have crossed the line, and there is a case and evidence for criminal proceedings.

We totally understand that our decision to delay travel is frustrating, but it does not excuse the depths of abuse we and our families, staff, and customers have endured. They have posted personal contact details and encouraged people to verbally attack our families and us. They have also reached out to our new customers and have spread misinformation and lies online.

Again we understand the level of frustration, but to come at our children, our partners, and our young professional team members with vile hatred is beyond crossing the moral line and has left us no choice but to explore legal action against said individuals.

What this means is our sales have not been at the level they needed to be to ensure the future survival of Bamboo and for us to implement our plan and path through a post covid world. We, therefore, have had to make the gut-wrenching decision to close Bamboo's doors given this sequence of events we have just described.

Of course, you are wondering what this means for you. Right now, we are exploring legal options, but as it stands, and with deep sorrow, all tours beyond 2022 will not be able to proceed. All confirmed tours within 2022 will be honored and go ahead. All scheduled payments to Bamboo have been canceled, with no action required from anyone owing Bamboo.

If, like us, you are sickened by the actions of the few and wish to support us in standing up to hate, we have set up a reporting system to gather evidence of abuse. If you come across

anything you deem inappropriate towards yourself, our customers, our global partners, our families, or any individual that is being attacked, please send screenshots and evidence to report@wearebamboo.com.

The past few days, as we realized we could not continue, have been shocking, confusing, and hurtful. The team has rallied to try and help answer any questions you might have. We may not have all the answers just yet, and any amount of patience and understanding is very welcome. We are hurting with you and want to support you through this process to the best of our ability.

Through tears, the Bamboo dream is over but will live forever, in our broken hearts.

Mark & Colin

Released Under Official Information Act 1982