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29 October 2015

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Reform Limited t/a Baa Baa Beads
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Dear []

Fair Trading Act 1986: Warning

1. The Commerce Commission has been investigating Reform Limited t/a Baa Baa Beads (Baa Baa Beads) under the Fair Trading Act. We have now completed our investigation and are writing to you to alert you to our concerns.
2. The representations that the Commission requested to be substantiated broadly related to the therapeutic benefits, composition and popularity of the products for treating teething babies.
3. In summary, the Commission considers that Baa Baa Beads was unable to adequately substantiate all of the claims relating to the therapeutic benefits of the products. In the Commission's view, reasonable grounds did not exist for all of the claims made by Baa Baa Beads and therefore Baa Baa Beads' conduct is likely to have breached the Fair Trading Act.
4. If any of this behaviour is continuing at the present time, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the Fair Trading Act.

The investigation

5. During our investigation, the Commission considered the grounds provided by Baa Baa Beads in response to the Commission's request to provide substantiation for fourteen different representations. Baa Baa Beads sells a small range of Baltic amber products through the website www.baabaabeads.co.nz. The products are targeted at babies, adults and pets. Some of the key representations included:
 - 5.1 "For generations it is said when worn on the skin, the amber warms and releases the oil that helps soothe and relieves symptoms";
 - 5.2 "Recent scientific research has also proved that succinic acid has a very positive influence on the human organism";
 - 5.3 Succinic acid "strengthens the body, improves immunity"; and

- 5.4 Succinic acid has been “proven” to be “the equal or better of many commercial drugs and is significantly less expensive”.
6. Section 12A of the Fair Trading Act prohibits unsubstantiated representations made by a person in trade. A representation is unsubstantiated if the person making the representation does not, when the representation is made, have reasonable grounds for the representation, irrespective of whether it is false or misleading.
7. Baa Baa Beads responded to the Commission’s enquiries by providing the grounds on which Baa Baa Beads had made the representations at issue.
8. Baa Baa Beads stated that it believed that the information it provided to consumers was based on information from reputable suppliers, studies and scientific journals.
9. Baa Baa Beads has now removed or modified a number of the representations that the Commission requested to be substantiated.

The Commission’s view on therapeutic claims

10. In this case, the Commission’s view is that Baa Baa Beads’ conduct is likely to have breached the Fair Trading Act because the grounds provided by Baa Baa Beads for making these representations were not likely to constitute reasonable grounds under section 12A of the Fair Trading Act.
11. When considering whether a business has reasonable grounds for a claim, relevant factors include:
- 11.1 the nature of the goods or services about which the claim was made;
 - 11.2 the nature of the claim;
 - 11.3 any research steps or other steps taken by or on behalf of the business making the claim, before it was made;
 - 11.4 the nature and source of any information the business relied on to make the claim;
 - 11.5 the actual or potential effects of the claim; and
 - 11.6 compliance with the requirements of any standards, codes or practices relating to the grounds for the claim.
12. The Commission would expect a claim that asserts that a product has a particular therapeutic benefit to be supported by a high level of substantiation in the form of credible and reliable scientific and medical evidence.

Representations relating to the therapeutic benefits of the goods

13. In regard to the therapeutic benefits of the products, the Commission considers that the information being relied on by Baa Baa Beads did not substantiate a causal link

between the use of Baa Baa Beads' products and the therapeutic benefits being claimed for adults, babies or pets.

14. The research and articles provided by Baa Baa Beads were predominantly focused on the composition and history of Baltic amber. This included a range of materials which stated that Baltic amber does, or may, contain low levels of succinic acid (generally ranging from three to eight percent). Baa Baa Beads also relied on articles which claimed that Baltic amber necklaces provided benefits for adults, babies and pets through contact with the skin or fur.
15. Prima facie, these articles did not appear to be from credible or authoritative sources qualified to assess the health benefits of succinic acid. We would expect Baa Baa Beads to rely on scientific studies that looked at the impacts of low levels (or any level) of succinic acid on humans, babies or pets through contact with the skin. Baa Baa Beads did not provide the Commission with any such studies.
16. Taking all of the research and analysis together as a whole, the Commission considers that there was insufficient scientific basis to substantiate the claim that succinic acid (and particularly low levels of succinic acid) leads to the benefits being claimed by Baa Baa Beads for humans and pets. The information provided did not indicate that Baa Baa Beads knew the approximate level of succinic acid found in its products. Without that knowledge, Baa Baa Beads is unlikely to know the likelihood or level of benefits that any customer would receive by using Baa Baa Beads' products.
17. While we will not be taking any further action against Baa Baa Beads 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 Baa Baa Beads.
18. This warning letter is public information and will be published 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 view on other claims

19. The Commission considers that the claims being made by Baa Baa Beads relating to the composition of the products and the popularity of the products for treating teething babies were also at risk of being unsubstantiated. For example, Baa Baa Beads made the representation that its products are "100% Baltic Amber" and that amber necklaces "are fast becoming the number one alternative choice" for teething babies.
20. Baa Baa Beads should take care to ensure that these representations are not made without a reasonable basis.
21. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.

The Commission's role

22. 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

23. 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.
24. 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

25. 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.
26. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.
27. Thank you for your assistance with this investigation. Please contact Jack Bisset on 04 924 3634 or by email at jack.bisset@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Stuart Wallace
Consumer Manager - Competition Branch