


29 July 2019



By email: 

Dear 

Fair Trading Act 1986: Warning for promoting and operating Women's Gifting Circle

As you are aware, you have been under investigation by the Commerce Commission (Commission) because of your participation in the scheme known as Women's Gifting Circle. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers Women's Gifting Circle is likely to be a pyramid scheme. We are warning you for promoting and operating Women's Gifting Circle in likely breach of the Fair Trading Act 1986.

This warning letter is public information. We will be making public comment about this investigation, including issuing a media release and making comment to media.

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 to establish fault or taking any further enforcement action such as prosecution.¹

However, any person who continues to promote or operate Women's Gifting Circle in New Zealand risks being prosecuted and fined by a court.

The investigation

Our investigation involved assessing allegations that Women's Gifting Circle is a pyramid scheme and that you had promoted or operated Women's Gifting Circle.

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

How this conduct can break the law

Section 24 of the Fair Trading Act states that no person shall promote or operate a pyramid selling scheme. Section 24 also sets out the elements that are required for a scheme to be a pyramid scheme. In essence, a pyramid scheme offers a financial return based on the payments made by new recruits, and the return is dependent primarily on the continued recruitment of new members, not sales of a product or service. Many members are unlikely to attain the "promised" financial rewards due to the number of additional members that must be recruited.

Your response to the allegations

You responded to the Commission's allegations that you had promoted and/or operated a pyramid scheme by saying:

- you do not consider Women's Gifting Circle is a pyramid scheme because it does not provide goods or services and there is no one person at the top;
- you have not actively promoted Women's Gifting Circle; and
- no one operates Women's Gifting Circle. A Lotus has the role of bringing the Circle together, and everyone gets a chance to play a leadership role.

The Commission's view

In this case, and after considering the relevant information received, the Commission's view is that your conduct is likely to have breached the Fair Trading Act.

We consider Women's Gifting Circle is likely to be a pyramid scheme operating under the guise of a personal growth network because:

- it is a scheme that provides a service (access to a network of women and weekly group calls with those women) for money (US \$5000);
- to many participants it is primarily an investment opportunity (the opportunity to receive up to US \$40,000 when they become the leader of their group);
- becoming the leader of a group (and getting the financial rewards) can only be achieved by recruiting more women to join the group; and
- ultimately the scheme is likely to collapse, resulting in many women losing their money because the level of recruitment required is not sustainable.

We also consider that your involvement with Women's Gifting Circle, including your admission that you have been the Lotus of five or six Circles and have invited women to join Circles, amounts to you promoting and operating the scheme.

We consider inviting women to join a Circle amounts to 'promoting' the scheme because inviting involves sharing with the potential new member information about the benefits of joining a Circle, to encourage them to join.

Further, we consider being a Lotus of a Circle amounts to 'operating' the scheme because a Lotus controls her Circles, ensures the Circles follow the scheme guidelines, and manages the week to week functioning of her Circles.

Consequences of receiving a warning from the Commerce Commission

This warning represents our opinion that the conduct you have engaged in is likely to have breached the Fair Trading Act, and that legal action remains available to the Commission in the future if the conduct continues or is repeated.

We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against you, should proceedings be brought in relation to any future conduct.

We strongly recommend that you seek legal advice before you consider joining, promoting or operating any similar scheme in the future.

The Commission's role

The Commission is responsible for enforcing and promoting compliance with a number of laws in New Zealand, including the Fair Trading Act. The Fair Trading Act prohibits a range of conduct including promoting or operating a pyramid scheme and false and misleading behaviour by businesses.

Penalties for breaching the Fair Trading Act

The court can impose penalties where it finds the law has been broken. Individuals and companies that breach the pyramid scheme provision of the Fair Trading Act can be fined up to \$600,000 per offence. The court can also require an individual or company to pay an amount equivalent to the money gained through promoting or operating a pyramid scheme.

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

We have recently published an updated fact sheet about pyramid schemes to help individuals comply with the Fair Trading Act. The fact sheet is attached for your information and is also available on our website at www.comcom.govt.nz.

You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.

Please contact Anna Walton on (04) 9243 797 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 that reads "Kirsten Mannix". The signature is written in a cursive, flowing style.

Kirsten Mannix
Consumer Manager Wellington