



**COMMERCE
COMMISSION**
NEW ZEALAND
Te Komihana Tauhokohoko

9 April 2015

Mr Craig Douglas

52 Grange Road

Hamilton

31 January 2015

Dear Mr Douglas

Fair Trading Act 1986: Warning

The Commerce Commission has been investigating Clearwater Homes under the Fair Trading Act (the Act). We have now completed our investigation and are writing to you to issue a formal warning.

In summary, the Commission considers that you are likely to have breached sections 13(e) and 13(f) of the Act by posting false or misleading testimonials on the Clearwater Homes website and by claiming over twenty years' experience for the partnership.

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

Clearwater Homes is a partnership between Craig Douglas, property developer and project manager and Stephen Donald, builder. The partnership was formed some time after you first met in 2008 when Stephen Donald built a house for you.

The Clearwater Homes website at www.clearwaterhomes.co.nz was set up by you in late 2010. You have acknowledged that you set up the website and are responsible for the content.

Testimonials

Three of four testimonials on the website appeared to be from satisfied customers who had had new homes built by Clearwater Homes. The text of the testimonials is reproduced in Attachment A to this letter.

Testimonials 1 & 2

- Each of these two parties had some work undertaken by Stephen Donald but this was minor work that did not require a qualified builder. Neither party had undertaken a new build with Clearwater Homes and had no intention of doing so.
- The first party was unaware of the identity of the person who carried out the work and was unaware of any connection between that person and Craig Douglas or Clearwater Homes.
- The second party was unaware of any business connection between Stephen Donald, Craig Douglas and Clearwater Homes.
- Both testimonials were written by Craig Douglas.
- Neither party provided or authorised the testimonials and neither was aware the testimonials were on the website, until it was brought to their attention recently.

Testimonial 3

The third testimonial was provided by a friend. You have acknowledged that, at the time of placing the testimonial on the website, Clearwater Homes had undertaken no new builds for this party, although you have stated it had since done so.

Section 13(f) of the Fair Trading Act prohibits false or misleading endorsements of a person.

Business experience

The homepage of the Clearwater Homes website states: "Clearwater Homes is a new home build and construction company based in Canterbury. We have been building new homes in Canterbury for over 20 years."

You have stated that Stephen Donald had been a builder for over 20 years but admitted that the Clearwater Homes partnership had been in existence for less than three years at that time and that you were new to the building industry.

Section 13(e) of the Fair Trading Act prohibits false or misleading representations about the performance characteristics of services.

The Commission's view

The Commission's view is that your conduct is likely to have breached the Fair Trading Act. We have reached this view because:

- Testimonial One implied several new builds had been undertaken on behalf of this satisfied customer but this customer had undertaken no new builds with Clearwater Homes and had not provided a testimonial.
- Testimonial Two implied a new build had been undertaken on behalf of this satisfied customer but this customer had undertaken no new builds with Clearwater Homes and had not provided a testimonial.

- Testimonial Three implied two builds had been undertaken for a satisfied customer when, at that time, Clearwater Homes had built no new homes for this customer.
- The claim to have been building new homes in Canterbury for over 20 years implied 20 years building experience for the Clearwater Homes partnership in the Canterbury region when:
 - the partnership had been in existence for less than three years;
 - You were new to the building industry; and
 - Stephen Donald had been a builder on his own account for over 20 years, but several years of his recent experience had been in Auckland.

The testimonials were removed from the website in late October 2014. However, the claim of 20 years building experience in Canterbury for the partnership is currently still on the website and, in our opinion, should be removed.

We recommend that you seek legal advice and encourage you to regularly review your website content and any other promotional materials for which you are responsible to ensure all statements made are accurate and not capable of misleading.

While we will not be taking any further action against you 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 you or any business in which you are a principal.

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 role

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

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 \$60,000 per offence.

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 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.

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

Thank you for your assistance with this investigation. Please contact [redacted] if you have any questions about this letter.

Yours sincerely



Stuart Wallace
Consumer Manager
Competition Branch
Commerce Commission

Testimonial 1

“Dear Steve, We have had the privilege to build with Clearwater Homes on several occasions now and are about to embark on a new project with them. Steve and the team have worked hard and given us nothing but quality and professionalism coupled with their dedication to excellence. We are hooked! People say building is stressful and hard work – our experience with the Clearwater Team has been fun, creative, exciting and nothing has ever been too big a problem. We just get them to draw-up our wish list, then go and get some beer for the roof shout!”

Testimonial 2

“Thanks for getting me through the last few months and for all your help and assistance by keeping in touch and bringing everything together for us. We really appreciate it and look forward to enjoying our new home. Thanks again.”

Testimonial 3

“Dear Steve, Once again I would like to thank you on the outstanding work you have done for me. You have made my last 2 building projects a breeze. Thank you for your input in the building process and the recommendations you gave. I really appreciate your reliability and your ability to follow through with your promises. Be it arriving on site at a specific time or just giving me practical advice on the best way to do stuff. I would have no hesitation in recommending your work to other people and look forward to our next project together.”

Home Page

“We have been building new homes in Canterbury for over 20 years”

