

28 July 2021

Greenback Ecommerce Limited, trading as The Safety Warehouse

Attn: [REDACTED]

By email only to: [REDACTED]

Dear [REDACTED]

### **Fair Trading Act 1986: Warning for misleading conduct in relation to "The Drop" event**

1. The Commerce Commission has been investigating whether Greenback Ecommerce Limited trading as The Safety Warehouse (**TSW**) breached the Fair Trading Act 1986 (**FT Act**) in the promotion of an event known as "The Drop" held in Aotea Square in Auckland on 5 December 2020 (**the event**).
2. We have now completed our investigation and are writing to alert TSW to our concerns.
3. The Commission considers that TSW's promotion of the event on social media platforms and its website was liable to mislead consumers by creating the impression that \$100,000 in cash would be given away at the event, when in fact only a total of \$3,600 of actual money was given away.
4. We are issuing TSW with this warning letter because in our view, TSW's conduct is likely to have breached section 11 of the FT 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 to establish fault or taking any further enforcement action such as prosecution.<sup>1</sup>

#### **The investigation**

5. The Commission has investigated complaints that TSW misled consumers about the sum of money to be given away at the event by promoting the event as a "\$100,000 live giveaway".

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

6. During our investigation we obtained the following evidence, which we consider indicates a likely breach of the FT Act:
  - 6.1 In its promotion of the event across online platforms, TSW variously described the event as:
    - 6.1.1 “The Drop - \$100,000 LIVE Giveaway - Auckland”;
    - 6.1.2 “New Zealand’s very first Mass Cash Drop”;
    - 6.1.3 “The Drop – 100K Live Cash Giveaway NZ”;
    - 6.1.4 “THE DROP \$100K CASH GIVEAWAY”.
  - 6.2 TSW’s promotion of the event included the following representations<sup>2</sup>:
    - 6.2.1 “we’re dropping \$100,000 in value from the sky in Aotea Square at 12pm on Saturday the 5<sup>th</sup>. Yes, ACTUAL MONEY will be flying from the sky”;
    - 6.2.2 “Register through our website to get your share of 100K just in time for the Christmas rush”;
    - 6.2.3 Images of actual cash (\$5 notes), stylised bags of money, cash notes, and “\$” symbols.
  - 6.3 TSW advised the Commission that only a total of \$3,600 of actual money was given away at the event. TSW has also confirmed that it gave out 40,000 look-alike \$5 notes at the event and these were vouchers in relation to TSW and other businesses for which you are a company director.
  - 6.4 Attendees to the event have said that they were disappointed to discover that most of the “money” being given away at the event was vouchers in the form of look-alike \$5 notes. As a result of the advertising they viewed, they told the Commission they gained the impression that \$100,000 cash would be given away at the event.

### **The relevant law**

7. Section 11 of the FT Act prohibits conduct in trade liable to mislead the public as to the nature, characteristics, suitability for a purpose, or quantity of services.

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<sup>2</sup> See **Appendix A** for examples of representations made.

### **TSW's response**

8. As the managing director of TSW, you have been the Commission's point of contact throughout the investigation.
9. You provided the Commission with some information about the event and attended a voluntary interview. You advised the Commission that:
  - 9.1 the \$100,000 reference in the advertising was in relation to the total value of products being given away at the event;
  - 9.2 \$3,600 of actual cash was given away at the event;
  - 9.3 the marketing clearly referenced "in value" and the public should have realised that this meant there would not be \$100,000 in cash given away. In your view there was very little reason for anyone to believe \$100,000 in cash would be given away;
  - 9.4 the equivalent total monetary value (in your view) of the vouchers given out at the event was \$2,972,000.00;
  - 9.5 it was "hugely unfortunate" that the headings didn't all say "in value", but that it was like any marketing to "entice" people, and on reading the event description they could have found out more about what the event entailed;
  - 9.6 the event was a charity event and TSW's purpose was to "give back, be a good company."

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

10. In this case, the Commission's view is that TSW's conduct is likely to have breached section 11 of the FT Act because the advertising for the event created a misleading overall impression about the fundamental nature and characteristics of the event. It gave the public the impression that \$100,000 of actual money would be given away, when it was not.
11. The Commission notes that a reference to "in value" was on some occasions included in the description for the event. In the description for the event on Facebook, this "in value" reference was also accompanied by the words, "Yes, ACTUAL MONEY will be flying from the sky" and "Register through our website to get your share of 100K just in time for the Christmas rush." The event was also described as "New Zealand's very first mass cash drop", which is likely to have impacted consumers' understanding of "value" in this context. Therefore, in our view the "in value" reference was insufficient to remedy the impression attendees gained that \$100,000 in cash was going to be given away.

## Warning

12. After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than commencing legal proceedings.
13. In reaching our enforcement decision, we have taken into account the following:
  - 13.1 this was a one-off, free event;
  - 13.2 TSW has indicated that the event was designed to “give back” to the community;
  - 13.3 TSW has not come to the attention of the Commission before.
14. However, although the event was free, the Commission notes that the event likely misled some financially vulnerable consumers, some of whom spent money travelling to attend the event. We recommend that TSW carefully considers the way in which it advertises (including in the promotion of any future events). Where appropriate, these considerations should include engaging legal and any other professional advice. While we will not be taking any further action against TSW at this time, we will take this warning into account if TSW engages in similar conduct in the future.
15. This warning represents our opinion that the conduct TSW has engaged in is likely to have breached the FT 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 TSW, should proceedings be brought in relation to any future conduct.
16. We recommend TSW seeks legal advice on complying with the law and encourage TSW to regularly review its compliance procedures and policies.
17. This warning letter is public information and will be published in the case register on our website. We will make public comment about this investigation, including issuing a media release and making comment to media.

## The Commission’s role

18. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the FT Act. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

**Penalties for breaching the Fair Trading Act**

19. Only the courts can decide if there has actually been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 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**

20. We have published a series of fact sheets and other resources to help businesses comply with the FT 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 FT Act.
21. You can also view the FT Act and other legislation at <https://www.legislation.govt.nz/>
22. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

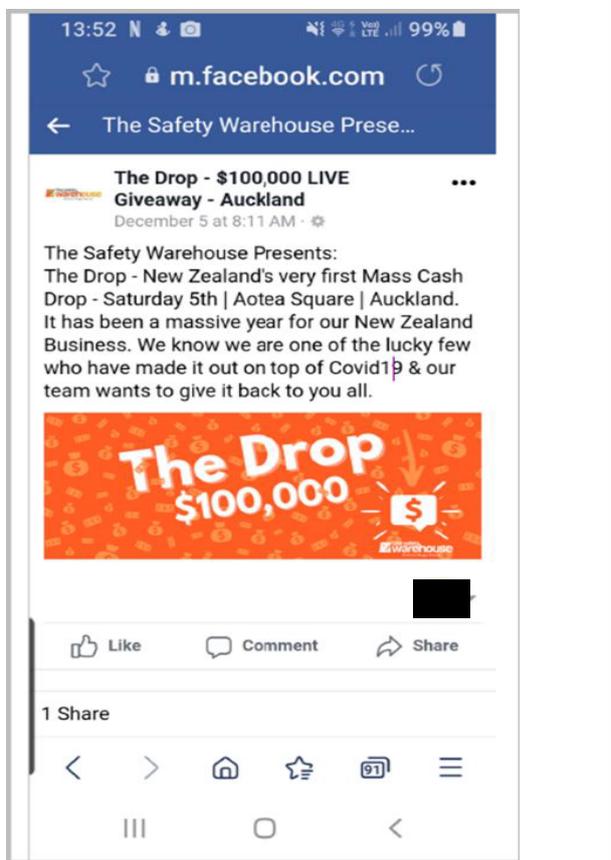
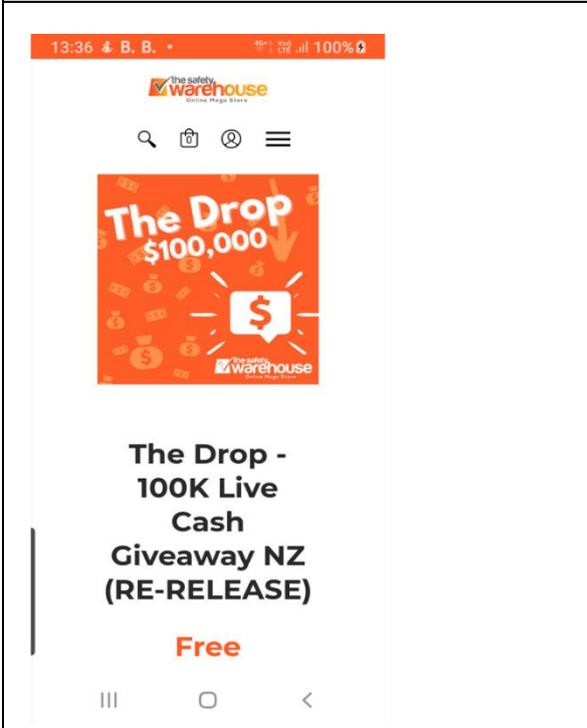
Yours sincerely



Kirsten Mannix  
Fair Trading Investigations and Compliance Manager

Attachment A

Examples of social media advertising for "The Drop" event promoted by The Safety Warehouse



The Drop - \$100,000 LIVE Giveaway - Auckland

REGISTER NOW FOR YOUR FREE TICKET & INVITE - WE HAVE LIMITED CAPACITY.

The Safety Warehouse Presents:  
The Drop - New Zealand's very first Mass Cash Drop - Saturday 5th | Aotea Square | Auckland.

It has been a massive year for our New Zealand Business. We know we are one of the lucky few who have made it out on top of Covid19 & our team wants to give it back to you all.

Kiwi's have had to fork out for Safety PPE they never anticipated needing to buy & Covid19 has made many families lives harder.

We are the peoples company & proud of it, so we're dropping \$100,000 in value from the sky in Aotea Square, at 12pm on Saturday the 5th. Yes, ACTUAL MONEY will be flying from the sky.

Gates open at 11am, and with special guests, live music & other product giveaways you'll want to be there! You must be within the gates by 11.45am.

Remember, first in first served for registration, so spread the word to friends and family as quick as possible!

Much love,  
The Safety Warehouse Team

Register through our website to get your share of 100K just in time for the Christmas rush! [See Less](#)

Causes Kid Friendly Volunteering Eventing Charity

Aotea Square, Auckland, New Zealand  
Auckland

Go With Friends [See All](#)

1.2K GOING 1.2K INTERESTED

Invite Invite Invite

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Schedule · Saturday, December 5, 2020

Example of voucher given away at the event

RESERVE BANK OF GREENBACK  
WHAKAPAIPAI GREENBACK

THIS NOTE IS NOT LEGAL TENDER FOR FIVE DOLLARS

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USE DISCOUNT CODE "THEDROP" FOR 60% OFF TOTAL ORDER AT [THE SAFETY WAREHOUSE.ORG](http://THE SAFETY WAREHOUSE.ORG)

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