COMMERCE COMMISSION NEW ZEALAND
Te Komihana Tauhokohoko

2 December 2016

United Steel Limited
293 Ti Rakau Drive
East Tamaki
Auckland 2013

Dear Sir/Madam

Fair Trading Act 1986: Compliance advice

1. The Commerce Commission has been investigating United Steel Limited (**United Steel**) under the Fair Trading Act. In particular, we have been investigating whether United Steel made false and/or misleading representations that its SE62 500E steel mesh complied with the requirements of AS/NZS 4671:2001 (the **Standard**).

2. We have now completed our investigation and are writing to you to provide advice to assist you to comply with the Fair Trading Act.

Summary of the Commission's concerns

3. In summary, the Commission considers that, in relation to two batches of SE62 steel mesh, United Steel risked breaching section 13(a) of the Fair Trading Act by representing that the SE62 500E mesh complied with the requirements of the Standard.

4. United Steel made representations in trade that the specific batches of SE62 steel mesh were 500E and/or compliant with the Standard. These representations were made on labels attached to the steel mesh and on its website.

5. The Commission considers that there is a real risk that two particular batches of United Steel's SE62 mesh did not comply with the testing requirements of the Standard. This is because United Steel used a retesting method for steel mesh that led to potentially inaccurate results being included in Long Term Quality (**LTQ**) data and potentially incorrect information being included in test certificates produced.

6. We bring these matters to your attention to assist you in complying with your obligations under the Fair Trading Act. If you are unsure about your legal obligations, you should seek legal advice.

The investigation

7. Since receiving a complaint in August 2015 the Commission has been investigating whether claims about steel mesh products supplied by three New Zealand companies breach the Fair Trading Act.

8. During our investigation of the complaint, it became apparent that other market players may have engaged in conduct that breached the Fair Trading Act. In March 2016 we opened an investigation into these companies.

9. In early April 2016 it was agreed that, because United Steel was the only significant player in the steel mesh market who were not currently subject to investigation, the Commission would proactively open an investigation into the claims being made by United Steel.

10. Our investigation has focussed entirely on SE62 mesh produced by United Steel on the basis that SE62 is the most popular type of 500E mesh.

Investigation Phase 1 – Testing of Steel Mesh

11. On 7 April 2016, the Commission obtained three sheets of SE62 mesh. Samples from these sheets were sent for testing by two independent labs, SAI Global (an IANZ accredited lab) and SGS, to conduct three sets of tests each.

12. On 21 April 2016 we received test results for these sheets.

13. Of the six tests conducted, five demonstrated that the mesh had the ductility and strength required by the Standard. The sixth showed that the mesh had a ductility of 9.1% - the Standard requires at least 10% ductility.

14. We passed these to United Steel on 21 April 2016 along with a request to provide the relevant batch test certificate for the sheets tested, its testing procedure and a copy of its LTQ results. United Steel provided all of the requested information between 22 and 27 April 2016.

15. As United Steel's own testing demonstrated that the batch complied with the Standard, we decided to take no further action.

Investigation Phase 2 - Retesting procedure

16. In early May 2016 we received a complaint that United Steel was producing 500E mesh that did not comply with the Standard.

17. In response to this, we requested additional information from United Steel on 4 May 2016. United Steel responded in full on 6 May 2016.

18. We assessed that information and concluded that United Steel appeared to be using a retesting procedure that did not comply with the requirements of the Standard.

19. Appendix B4.1.2(b) of the Standard requires that the ductility of each batch of steel mesh is determined by the average of the individual results obtained from four individual tests on one sheet of mesh. The individual tests must have an average of at least 10% ductility, although not all results need to be 10% or above. For example a batch with test results of 9%, 10%, 11% and 12% is deemed to comply with the Standard, as the average of the individual results is 10.5%. Similar conformance criteria which reference the average of four results applies to other mechanical properties also.

20. Batches with an average of lower than 10% are deemed to be non-conforming. The Standard allows these batches to be retested, using the more stringent requirements of Appendix B5 of the Standard. Appendix B5 requires that twice as many "items", i.e. two sheets of mesh and eight individual tests, are taken from the batch and retested. If these additional items comply, then the batch complies.

21. We are concerned that United Steel did not follow the retesting provisions of Appendix B5 by:

    21.1 First, instead of retesting where the average of four tests was less than 10%, it retested each time one individual test was below 10%. Using the example in paragraph 19, United Steel would have retested because there was one result under 10%, notwithstanding that the average of the test results exceeded 10%.

    21.2 Second, instead of performing eight retests as required by the Standard, United Steel conducted two tests for each item that failed the first test, i.e. where a batch provided results of 9%, 10%, 11% and 12%, it would re-test the 9% element twice.

22. This incorrect interpretation of the Standard affected two batches of SE62 mesh. The details of each of these batches are:

    22.1 Batch 99051 (manufactured on 22 January 2015). When first tested, this batch produced ductility results of 10.21%, 12.89%, 10.16% and 9.98%. With an average result of 10.81%, this batch meets the conformance criteria of 10% under the Standard, and was therefore not required to be tested further. United Steel, however, decided to retest the single result which fell below 10%, and obtained further results of 10.47% and 11.10%.

    22.2 Batch 95332 (manufactured on 3 July 2014). When first tested, this batch produced ductility results of 12.31%, 12.89%, 7.25% and 9.29%. With an average result of 10.43%, this batch meets the conformance criteria of 10% under the Standard, and was therefore not required to be tested further. United Steel, however, decided to retest the two results which fell below 10%, and obtained further results of 12.96%, 12.55%, 11.03% and 12.45%,

23. As noted above, neither of these batches needed to be retested – the average for the batches was over the 10% ductility threshold required by the Standard. As a result, we have no concern about whether these batches comply with the strength and ductility requirements of the Standard.

24. However, we were concerned that United Steel's LTQ data could have been skewed by including the incorrect values obtained from the unnecessary retests. We are also concerned that unrepresentative values were included in test certificates produced for each of the batches. The test certificates included the higher values obtained from the unnecessary retests, rather than data from the initial tests.

25. We asked United Steel to amend its LTQ data to include the original test results for these two batches. The amended LTQ data shows that the SE62 complied with the requirements of the Standard.

26. Consequently, there appears to have been non-compliance with the Standard arising from the use of this retesting procedure. This is because United Steel used a retesting method for steel mesh that led to:

    26.1 potentially inaccurate results being included in LTQ data; and

    26.2 potentially erroneous information being included in test certificates produced.

27. Fortunately, neither of these departures from the Standard led to the production of substandard mesh. We are satisfied that United Steel ultimately produced mesh that had the strength and ductility characteristics required by the Standard. However, given the retesting method adopted by United Steel, there was a risk that these consequences could have arisen – because United Steel applied a method different from that required by the Standard.

28. As set out below, we consider that this conduct warrants compliance advice – an outcome aimed at helping to ensure that United Steel complies with all of its testing obligations in the future.

Investigation Phase 3 – Further Complaint

29. On 10 May 2016, the Commission received a further complaint, which was accompanied with test results for 10 sheets of United Steel's SE62 500E product. These sheets had been tested by the same labs previously used by the Commission, SGS and SAI Global. The complainant called for Commission to issue a stop-now letter to Untied on the basis of these results.

30. The results of the testing provided indicated:

    30.1 All of the sheets were from a single batch.

30.2 SGS results indicated a fail for one of the ten sheets tested with ductility of 9.7%. The results for the remaining sheets indicated a range between 10% and 11.3%.

30.3 SAI Global results indicated a fail for all ten sheets tested with average ductility values falling between 8.1% and 9.6%.

31. On 24 May 2016 we passed this information to United Steel. We asked United Steel provide all testing results relating to this particular batch, including all raw material and in-process testing carried out.

32. On 25 May 2016 United Steel provided all of the information requested. This testing information included:

32.1 Test certificates from Pacific Steel (who manufactured the wire that went into the mesh) that indicated that the wire had ductility of 12.3%, 13.3% and 14.3%.

32.2 Secondary testing of the Pacific Steel wire conducted by United Steel demonstrating ductility of 13.47%, 12.32%, 11.76% and 12.71%.

32.3 Further "in-process" testing performed after the wire had been "descaled" demonstrating ductility of 11.53% and 12.83%.

32.4 Further in-process testing performed after the wire had been straightened demonstrating a ductility of 11.64% and 12.03%.

32.5 Finished product testing demonstrating individual ductility results of 11.86%, 11.97%, 11.61% and 10.03%, with an average result of 11.36%.

33. This information shows that United Steel has a thorough testing process for its steel mesh:

33.1 The manufacturer tests the wire.

33.2 United Steel then tests the wire to satisfy itself as to its strength and ductility.

33.3 United Steel retests the wire after de-scaling.

33.4 United Steel further retests the wire after straightening.

33.5 Finally, the wire is again tested after the mesh has been manufactured.

34. In relation to the batch subject to the complaint, all of the testing conducted as part of this process demonstrates that the batch complied with the strength and ductility requirements of the Standard when tested by or on behalf of United Steel.

35. Accordingly, we decided to take no further action on this complaint, as we were not satisfied that there had been any likely breach of the Fair Trading Act in relation to that batch.

The Commission's view

36. In this case, the Commission's view is that some of United Steel's conduct gives rise to a possible breach of section 13(a) of the Fair Trading Act, which prohibits false or misleading representations that a product is of a particular standard, quality or grade.

37. We consider that United Steel made representations in trade that two specific batches of its steel mesh were 500E and/or compliant with the Standard. These representations were contained on labels attached to the steel mesh, invoices provided to customers, and United Steel's website made a number of representations that its steel mesh was 500E and complied with the Standard.

38. To comply with the Standard, steel mesh must have musthave undergone specified testing as set out in the Standard. We consider there to be a real risk that the re-testing method used by United Steel for the two affected batches did not comply with the requirements of the Standard. Consequently, we consider that the representations that those batches complied with the Standard or were 500E mesh, risked breaching the Fair Trading Act.

39. We recommend you seek legal advice on complying with the law and encourage you to regularly review your compliance procedures and policies.

The Commission's role

40. 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

41. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose severe 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.

42. You should be aware that our decision to issue this compliance advice letter does not prevent any other person or entity from taking private action through the courts.

Further information

43. 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.

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

45. Thank you for your assistance with this investigation. Please contact me on (09) 919 4446 or by email at brett.carter@comcom.govt.nz if you have any questions about this letter.

Yours sincerely

Ritchie Hutton
Investigations Manager