

16 August 2018

[REDACTED]
Senior Lawyer
Amaysim Operations Pty Ltd

Via email only: [REDACTED]

Dear [REDACTED],

Fair Trading Act 1986: Warning

The Commerce Commission has been investigating Amaysim Operations Pty Ltd (trading as Buy Mobile) under the Fair Trading Act. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that Buy Mobile has made unsubstantiated representations about the price of some of its products. In the Commission's view, Buy Mobile's conduct is likely to have breached the Fair Trading Act.

The investigation

During our investigation, the Commission asked Buy Mobile to substantiate discount claims made on its website.

Section 12A of the Fair Trading Act states:

- (1) A person must not, in trade, make an unsubstantiated representation.*
- (2) 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 the representation is false or misleading.*

Buy Mobile responded to the Commission's enquiries by stating that whilst it does have a process in place for substantiating discount claims it makes, it could not substantiate the discount claims we enquired about. At the time of its response to the Commission, Buy Mobile removed all discount claims from its website.

The Commission's view

In this case, the Commission's view is that Buy Mobile's conduct is likely to have breached the Fair Trading Act.

We have reached this view because, despite claiming to have a system designed to ensure the discount claims Buy Mobile made were substantiated, Buy Mobile was unable to substantiate the discount claims we enquired about.

We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.

While we will not be taking any further action against Buy Mobile at this time, we reserve the right to take further action 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 Buy Mobile.

This warning letter is public information. We may 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 \$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

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 Zeb Walker on 04 924 3635 or by email at zeb.walker@comcom.govt.nz if you have any questions about this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsten Mannix', written in a cursive style.

Kirsten Mannix
Wellington Consumer Manager