

SPAZIO CASA LIMITED

AND

COMMERCE COMMISSION

SETTLEMENT AGREEMENT

DATED

9 November

2010

AGREEMENT DATED
2010

day of

PARTIES

SPAZIO CASA LIMITED (*Spazio Casa*)

COMMERCE COMMISSION (*the Commission*) a statutory body established under section 8 of the Commerce Act 1986

1. PURPOSE OF AGREEMENT

- 1.1 The Commission has investigated alleged contraventions of the Fair Trading Act 1986 (*the Act*) by Spazio Casa in relation to alleged false and/or misleading representations as to the standard, quality, price, and country of origin of goods offered for sale by Spazio Casa,
- 1.2 Spazio Casa has co-operated with the Commission in relation to the Commission's investigation (*the investigation*).
- 1.3 This Settlement Agreement (*the Agreement*) records the background to the investigation, the conclusions reached by the Commission and the means by which the investigation is to be resolved.
- 1.4 By this Agreement the Commission agrees to forego its right to issue legal proceedings in respect of Spazio Casa's conduct as set out in 2.1 to 2.11 of this Agreement, on the basis that Spazio Casa acknowledges having breached the Act and agrees to pay compensation to affected customers as detailed in Part 4 of this Agreement and implement a compliance programme as detailed in Part 5.

- 1.5 The parties agree to take such steps as are necessary or desirable to give full effect to the terms of this Agreement.

2. BACKGROUND

- 2.1 Spazio Casa is a New Zealand registered company. Its head office, distribution centre and a showroom is at corner George Bolt Memorial Drive and Manu Tapu Drive, Auckland International Airport. It has eight franchised retail outlets throughout New Zealand.
- 2.2 From late 2007 until 21 April 2010 Spazio Casa distributed an advertising brochure (the brochure) that promoted goods supplied by Spazio Casa.
- 2.3 It is alleged that Spazio Casa made false and misleading representations in the brochure by stating:
- *“Everything is unique”, “hand selected to produce this unique range of products”, “everything is perfect, unique and tailored just for your project”, and “Spazio brings you style, design, and value”;*
 - *“You will never find an equivalent item for less”;*
 - *“Our clients are guaranteed the best value for money”, “The best value your money can buy” and “Spazio Casa can guarantee you superior value for money”;*
 - *“Spazio Casa cut out the middle man and offer outstanding VALUE not seen before in NZ”, and “one of the main reasons for Spazio Casa’s success is the great value for money we can offer to our customers”;*
- 2.4 It is alleged that Spazio Casa made false and/or misleading representations as to the price of goods it offered for sale on its website (www.spaziocasa.co.nz) by failing to adequately disclose the fact that the prices advertised were exclusive of Goods and Services Tax (GST).

- 2.5 It is also alleged that Spazio Casa made various misleading representations as to the country of origin of goods it sold.

"Everything is unique"

- 2.6 The Commission's investigation established that Spazio Casa's so-called "unique" products were readily available from competing suppliers. The Commission's investigation focused upon 135 products from which a ready comparison could be made with the products of competing companies. The comparisons were made using photographs and product codes from Spazio Casa's website.
- 2.7 The Commission then compared these products with those offered for sale by two competitors. The Commission identified 19 products offered by Spazio Casa that were also offered by competitors.

"You will never find an equivalent item for less"...

- 2.8 Without exception, each of those 19 products was available from a competitor at a price lower than that offered by Spazio Casa. The percentage difference between the competitor's price and Spazio Casa's price ranged between 29% and 229%.

Price representations on website

- 2.9 All prices listed on the Spazio Casa website were exclusive of GST. This fact was not clearly disclosed. Spazio Casa did make some disclosure of the fact that

the prices were exclusive of GST, but the Commission considers that the disclosure was insufficient to stop consumers being misled.

Representations as to country of origin of goods

- 2.10 During visits to the showrooms of Spazio Casa in Wellington on 11 February 2010 and Auckland International Airport on 4 March 2010 by Commission staff, sales staff of Spazio Casa represented that all Spazio Casa taps were manufactured in Italy to Italian design. This is contrary to fact as a significant percentage of the taps sold by Spazio Casa are manufactured in China.
- 2.11 Also, in an advertising brochure and on the website, Spazio Casa emphasised what it called 'the Italian thing'. Representations including "Genuine Italian shopping experience", "the Italian thing", "Italy", "the most awarded design studios in Italy", "to produce a breathtaking range of unique products specifically designed for New Zealand tastes", "as they are handed their genuine Italian espresso" and 'your new Italian designer interior' were made. It was not disclosed anywhere on the website or in the brochure that approximately 60% of the product was manufactured in China.

3. ADMISSIONS

- 3.1 Spazio Casa was interviewed by Commission staff on 21 April 2010. At that interview, Spazio Casa admitted the facts as outlined in 2.1 to 2.11 above.
- 3.2 Spazio Casa admits and agrees that, by the conduct outlined in 2.1 to 2.11 of this Agreement it has contravened ss 10, 13(a) and 13(j) of the Act (*the admissions*).
- 3.3 In explanation, Spazio Casa advised the Commission that:
- 3.3.1 It believed that it was the exclusive importer of certain products from China.

3.3.2 The reference to country of origin was mainly based around its genuine Italian made/designed tiles that are a feature sale product of Spazio Casa.

3.3.3 40% of all its bathroom products were made in Italy with a majority of the remainder manufactured in China.

3.3.4 Staff in Wellington and Auckland were incorrect to state that the tapware was made to Italian design in Italy.

4. CONSUMER REMEDY

- 4.1 Spazio Casa will, within 10 working days of this Agreement being signed, prepare a Notice advising consumers of the contraventions of the Act (*the Notice*). The content, size and font of the Notice are to be approved by the Commission. Within one week of approval, the Notice is to be prominently displayed in the front window and on the public service counter of all Spazio Casa's showrooms for a period of two months.
- 4.2 In consideration for the Commission agreeing to forego its right to issue legal proceedings in respect of Spazio Casa' conduct, Spazio Casa will make its best endeavours to compensate any purchaser (*affected purchaser*) who considers that they have suffered loss caused by Spazio Casa' contraventions of the Act.
- 4.3 In the event that Spazio Casa fails to provide compensation to the satisfaction of any affected purchaser, Spazio Casa acknowledges that the affected purchaser may bring Court proceedings, including proceedings in the Disputes Tribunal, to recover any loss caused by Spazio Casa contravention of the Act. In the event of such proceedings, Spazio Casa agrees that the admissions made in Part 3 of this Agreement shall be evidence of Spazio Casa' contravention of the Act for the

purposes of those proceedings and that this Agreement can be tendered as evidence of that fact.

- 4.4 For the avoidance of doubt, the admissions made in Part 3 of this Agreement are not evidence that any affected purchaser has in fact suffered any loss caused by Spazio Casa contravention of the Act. Whether loss has been suffered will be a matter solely determined by the relevant court or tribunal.

5. COMPLIANCE REVIEW REQUIREMENT

- 5.1 In further consideration for the Commission agreeing to forego its right to issue legal proceedings in respect of Spazio Casa's conduct, Spazio Casa will institute a Compliance Programme to ensure future compliance with the Act.
- 5.2 Spazio Casa will provide a report to the Commission on that Compliance Programme within four months of the date of signing of this Agreement of Settlement.

6. IMPLEMENTATION AND EFFECT OF THE AGREEMENT

- 6.1 This Agreement does not preclude any person taking their own action against Spazio Casa in relation to the conduct outlined in 2.1 to 2.11 of this Agreement.

- 6.2 The Commission agrees to be bound by this Agreement and discontinue the Investigation and not bring any further or other action in relation to the matters referred to in 2.1 to 2.11 of this Agreement, subject to clause 6.4 below. Nothing in this Agreement shall prevent the Commission from commencing an investigation or bringing Court proceedings in relation to any conduct that occurred outside of the relevant period.
- 6.3 Either party may publish the facts of this investigation and settlement and may subsequently refer to them. This may include publicity by press statements, articles, publications or speeches prepared or given by Commission members or staff.
- 6.4 If there is any material breach of Spazio Casa obligations under this Agreement, the Commission may in its complete discretion recommence the Investigation and take any action it deems appropriate including commencing criminal prosecution and/or civil proceedings under the Fair Trading Act 1986.
- 6.5 If the Commission commences any Court proceedings pursuant to clause 6.4 above, Spazio Casa hereby waives any limitation defence that may be available to it in respect of those proceedings to the extent that limitation arose solely as a result of the settlement recorded in this Agreement.
- 6.6 This Agreement may be executed in any number of counterparts each of which is deemed an original, but all of which together are to constitute an instrument. It is acknowledged that this Agreement may be executed by an exchange of facsimile copies and executing of this Agreement by that means is valid and sufficient execution.

EXECUTED ON BEHALF OF THE COMMERCE COMMISSION by:

Anam Berry

EXECUTED ON BEHALF OF SPAZIO CASA LIMITED by

[Signature]
Director

[Signature]
Director