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Undertakings to the Commerce Commission under s 46A of the Fair Trading Act 1986

Sales Concepts Limited

Kchitij Tiwari

Asha Ajit Srivastava

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1 Persons giving Undertakings

- 1.1 These Undertakings are given to the Commerce Commission (**Commission**) for the purposes of s 46A of the Fair Trading Act 1986 (**FTA**) by:
- (a) Sales Concepts Limited, a company incorporated in New Zealand having its registered office at Unit 17, 465 Mt Eden Road, Auckland (**Sales Concepts**);
 - (b) Kchitij Tiwari, of [] Auckland (**Mr Tiwari**); and
 - (c) Asha Ajit Srivastava, of [] Auckland (**Mrs Srivastava**).
- 1.2 In these Undertakings **Undertaking Parties** means Sales Concepts, Mr Tiwari and Mrs Srivastava.

2 Background

Sales Concepts

- 2.1 Sales Concepts is a door to door seller of electrical products.
- 2.2 Mr Tiwari and Mrs Srivastava are Directors of Sales Concepts.
- 2.3 The Commission is investigating complaints about the sales practices of Sales Concepts. The complaints raise issues under the FTA, the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) and the Crimes Act 1961.
- 2.4 The Commission is part way through its investigation into these sales practices. During its investigation the Commission has received relevant information from Sales Concepts and has taken signed statements from a number of Sales Concepts' customers.
- 2.5 The evidence gathered during the investigation raises concerns that Sales Concepts has engaged in conduct that has breached the FTA and that consumers are being harmed by this conduct.
- 2.6 The Commission is concerned that Sales Concepts has engaged in widespread and concerted misleading and deceptive conduct in breach of the FTA.
- 2.7 In summary, the Commission is concerned that Sales Concepts has engaged in conduct and made representations that breach sections 9, 11, 13(e),(f), (g) and (i) and 21(c) of the FTA.
- 2.8 The Commission has particular concerns about sales practices relating to bundles of goods known as "Christmas Deals" to customers. Those Christmas Deals (as set out in the Christmas Deals brochure Sales Concepts has provided to the Commission) are 11 different bundles of goods, ranging in price from \$599 to \$1,599. For the purpose of these Undertakings, these bundles of goods are referred to as a **2015 Christmas Deal**.

- 2.9 The details of the full extent of the Commission's concerns are set out in a letter from the Commission to Sales Concepts dated 10 December 2015.

3 Purpose of the Undertakings

- 3.1 These Undertakings are given by the Undertaking Parties in order to satisfy the Commission that there is no need to seek urgent injunctive relief.

4 Undertakings

- 4.1 The Undertaking Parties undertake to the Commission that they will not, personally or through employees, agents or contractors:
- (a) Represent that goods purchased by Sales Concepts' customers will be delivered to customers by Christmas 2015, or by any particular date, when Sales Concepts does not intend to, or reasonably expect that it can, deliver by that date.
 - (b) Make misleading representations about the benefits customers can receive from vouchers provided by Sales Concepts.
 - (c) Make misleading representations about the price of goods being offered for sale by Sales Concepts - including by:
 - (i) failing to adequately disclose the delivery fee;
 - (ii) stating incorrect repayment amounts in the contract.
 - (d) Make misleading representations as to the country of origin of goods sold by Sales Concepts.
 - (e) Make misleading representations about consumers' rights, including their rights to cancel contracts, payments required on cancellation and entitlements to refunds on cancellation.
 - (f) Misrepresent the nature of the documents being signed by customers, including by misleading customers into signing contracts to purchase goods by representing that the document is something other than a contract to purchase goods.
 - (g) Alter contracts after they have been signed by customers, without first receiving the customer's consent to the alteration.
 - (h) Enter into consumer credit contracts (as defined under the CCCFA) without:
 - (i) providing all of the information required by section 17 of the CCCFA; and
 - (ii) being registered on the Financial Services Providers Register.
- 4.2 The Undertaking Parties further undertake to the Commission that they will:

- (a) By 31 December 2015, contact all customers who entered into contracts to purchase a 2015 Christmas Deal and clearly and accurately disclose to each customer:
 - (i) the total price of the bundle that the customer has agreed to acquire;
 - (ii) the total number of payments the customer is required to make under the contract; and
 - (iii) the total number of payments required before the customer can expect delivery of the goods.
- (b) Ask each customer to elect:
 - (i) to receive a refund of all amounts paid to Sales Concepts for the 2015 Christmas Deal and cancel the contract with Sales Concepts; or
 - (ii) to affirm their contract with Sales Concepts on the agreed amended basis that 100% of the goods contained in the 2015 Christmas Deal they selected will be delivered to them on the payment by that customer of the specified number of payments set out in their contact (and not only following full payment).
- (c) In relation to all monies received by Sales Concepts in connection with a 2015 Christmas Deal:
 - (i) hold in a New Zealand bank account an amount equivalent to the amount received from each customer for the benefit of that customer; and
 - (ii) continue to hold an amount equivalent to the amount received from each customer until the customer has either elected:
 - (A) to receive a refund of all amounts paid to Sales Concepts for the 2015 Christmas Deal and cancel the contract with Sales Concepts; or
 - (B) to affirm their contract with Sales Concepts on the agreed amended basis that 100% of the goods contained in the 2015 Christmas Deal they selected will be delivered to them on the payment by that customer of the specified number of payments set out in their contact (and not only following full payment).
- (d) For those customers who elect to receive a refund, or who could not be contacted by 31 December 2015, refund all amounts paid by those customers for the 2015 Christmas Deal by 22 January 2016, and cancel their contracts with Sales Concepts.
- (e) Within 30 days of the Undertakings coming into effect (and as soon as practicable):
 - (i) provide to all employees, agents or contractors of Sales Concepts a copy of the undertakings; and

- (ii) provide to the Commission written confirmation from each of their respective employees, agents and contractors to the effect that the employee, agent or contractor has received a copy of the undertakings.
- (f) Ensure that any new employee, agent or contractor is provided with a copy of these Undertakings before carrying out any duties.

5 Effect of the Undertakings

5.1 The Undertakings are:

- (a) Court enforceable undertakings in terms of s 46A of the FTA; and
- (b) made without admission of liability by the Undertaking Parties as to the conduct described in section 2 above, and in the Commission's letter to Sales Concepts dated 10 December 2015.

6 Commencement of Undertakings

6.1 The Undertakings come into effect when:

- (a) the Undertakings are executed by the Undertaking Parties; and
- (b) the Commission confirms its acceptance of the Undertakings.

7 Duration of the Undertakings

7.1 These Undertakings will continue to have effect until the earlier of:

- (a) five years from the date of acceptance;
- (b) a court (or subsequent appeal court in the event of appeal) determines that the conduct described in section 2 above, and in the Commission's letter to Sales Concepts dated 10 December 2015, is not in breach of the relevant obligations in the FTA or CCCFA; or
- (c) the Commission agrees to discharge the Undertaking Parties from the Undertakings.

8 Compliance with the Undertakings

8.1 If any of the Undertaking Parties becomes aware of a breach of these Undertakings, whether advertent or inadvertent, they will notify the Commission with seven days of becoming aware, giving full particulars of the breach.

8.2 If the Commission has a good faith basis to believe that the Undertaking Parties have not complied with the Undertakings, and requests the Undertaking Parties to do so, the Undertaking Parties will engage at their own cost KPMG (or another reputable third party approved by the Commission) (**Reviewer**) to conduct a review of their

compliance with the Undertakings as directed by the Commission (**Compliance Audit**), and to report its findings to the Commission.

- 8.3 For the purposes of the Compliance Audit, the Reviewer may review:
- (a) any or all relevant customer files for the purpose of assessing compliance with the undertakings; or
 - (b) may agree with the Commission a suitable sample of files to be reviewed.
- 8.4 The Undertaking Parties are to comply with all reasonable requests of the Reviewer in conducting the Compliance Audit.
- 8.5 For the avoidance of doubt, nothing in paragraphs 8.1 to 8.4 above prevents the Commission from directly seeking any information from the Undertaking Parties at any time during the course of any criminal and/or civil proceedings for the purpose of checking compliance with the undertakings.

9 Miscellaneous

- 9.1 No amendment to the Undertakings will be effective unless it is in writing, executed by the Undertaking Parties, and signed as accepted by the Commission.
- 9.2 These Undertakings are properly executed if each Undertaking Party signs the same copy, or separate identical copies of the execution page. Where separate copies are signed by the Undertaking Parties or the Commission, the signed copy can be the original document, or a faxed or emailed copy.
- 9.3 The Undertaking Parties acknowledge that:
- (a) The Commission may make the Undertakings publicly available including by publishing them on the Commission's enforcement response register on its website.
 - (b) The Commission may, from time to time, make public reference to the Undertakings including in news media statements and in the Commission's publications.
 - (c) Nothing in the Undertakings is intended to restrict the right of the Commission, or the right of any other person, to take action under the FTA or under any other statute or law.

Execution

Signed by and on behalf of Sales Concept Limited

Kchitij
Authorized signatory

KCHITIJ TIWARI
Name

In the presence of:
Witness Name: Samuel William Holmes
Witness Address: []
Witness Occupation: Solicitor

Date: 21/12/15

Signed by Kchitij Tiwari

Kchitij
Kchitij Tiwari

In the presence of:
Witness Name: Samuel William Holmes
Witness Address: []
Witness Occupation: Solicitor

Date: 21/12/15

Signed by Asha Ajit Srivastava

Ashajit
Asha Ajit Srivastava

In the presence of:
Witness Name: AJIT SRIVASTAVA
Witness Address: []
Witness Occupation: NATIONAL SALES MANAGER

Date: 19/12/2015

Acceptance

Accepted by the Commerce Commission by

Marie Newman Berry
Authorised signatory

MARIE NEWMAN BERRY
Name

Authorised signatory

Name

In the presence of:

Witness Name:

Schaar
Catherine NICOLA SCHARR

Witness Address:

Auckland

Witness Occupation:

Investigator

Date:

21 December 2015