

19 January 2021

[REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

Official Information Act #20.101 - Greenwashing complaints

1. We refer to your request received on 5 November 2020 for information about complaints received by the Commerce Commission (**Commission**) in relation to greenwashing, specifically:
 - 1.1 how many complaints has the Commission received since 2015;
 - 1.2 copies of the complaints; and
 - 1.3 action taken as a result of these complaints.
2. We have treated this as a request for information under the Official Information Act 1982 (**OIA**).
3. On 30 November 2020, in response to our emails of 13 and 19 November 2020, you advised that you are interested in claims which purport that products are more environmentally sound than they are, and we advised that we would clarify the scope of your request to the keywords and sections of the Fair Trading Act 1986 (FTA) outlined at paragraph [7] below.
4. On 1 December 2020, we advised that we would be treating your clarified request as a new request with a due date of 19 January 2021, under section 15(1AA) of the OIA.

Our response

5. We have decided to grant your request.
6. In response to paragraph [1.1] of your request, the Commission has received 234 complaints in relation to greenwashing during the period from 1 January 2015 to 10 November 2020.

7. We identified these complaints by searching our complaints database for complaints containing one or more of the following keywords,¹ with alleged breaches under sections 12A, 13(a), 13(b) or 13(e) of the FTA,² and manually reviewing the results:
- 7.1 “environmental”; or
 - 7.2 “greenwashing” or “green washing” or “green”; or
 - 7.3 “compostable”; or
 - 7.4 “biodegradable” or “degradable”; or
 - 7.5 “recyclable” or “recycling”; or
 - 7.6 “disposable”; or
 - 7.7 “sustainable” or “sustainably”; or
 - 7.8 “renewable”; or
 - 7.9 “plastic”; or
 - 7.10 “organic”; or
 - 7.11 “eco-friendly” or “eco friendly”.
8. In response to paragraph [1.2] of your request, as discussed with you on 18 January 2021, in the interests of providing you with information as soon as possible we have provided the key issue from each complaint (in **Attachment A** to this letter), under section 16(e) of the OIA. We understand you will use this information to make a further request (or requests) for copies of specific complaints.
9. The complaints fall broadly into six categories: bio-degradability/degradability claims, certification claims, organic claims, composition claims, environmental impact claims, and recycling claims. However, we have kept the issues as specific as possible in Attachment A to ensure the information is as useful as possible.
10. In response to paragraph [1.3] of your request, we have also provided the action taken by the Commission in response to each of these complaints, below and in Attachment A. We have also included a glossary below which explains the outcomes. You can find further information about the Commission’s enforcement responses on our website.³

¹ Please note this method relies on the terms used by complainants in making a complaint to the Commission.

² These sections relate to unsubstantiated representations (s 12A) and false or misleading representations (s 13). We consider that complaints relating to greenwashing would be categorised under these sections by Commission enquiries staff.

³ Enforcement Response Guidelines: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines>

Glossary of outcomes	
Outcome	Explanation
No Further Action (NFA) ⁴	The Commission may decide not to take further action in relation to a complaint for a number of reasons. These reasons include, but are not limited to, circumstances where we consider the complaint is better suited to private action by the complainant, the complaint is subject to the jurisdiction of another agency, or where there is no clear breach of the law.
Information Passed To Trader (IPTT)	We may take the opportunity to contact a trader to assist them in better understanding and complying with the law. We refer to this as Information Passed to Trader (IPTT). We find that raising such issues directly with businesses can help them to understand and better comply with their legal obligations.
Added to demand	A demand is the name the Commission gives a matter where we intend to complete further work. We place demands on a list and prioritise them based on our Enforcement Criteria ⁵ and current strategic priorities. ⁶ We review our demand lists on a regular basis and sometimes demands are removed from the list, this is called a resource review. We may remove a demand from our list of pending work for several reasons (e.g. the trader has amended its conduct, the trader is no longer operating, and/or other matters have come to our attention that have de-prioritised previous demands).
Compliance Advice Letter (CAL) ⁷	CALs are educative and are issued in response to problematic conduct that we have identified. Accordingly, what the letter advises of is the risk of conduct breaching the law, and how to avoid a potential breach in future. A CAL does not represent a finding that a trader has contravened the law. Only the Courts can decide if a breach of the law has occurred.
Warning Letter ⁸	The purpose of a warning letter is to inform the trader of our view that there has been a likely breach of the law, to prompt a change in the trader's behaviours, and to encourage future compliance. A warning letter does not represent a finding that a trader has contravened the law. Only the Courts can decide if a breach of the law has occurred.
Litigation	Where we decide to issue court proceedings (either civil or criminal).
Ongoing	These are complaints which are still being assessed and/or investigated by the Commission and have not yet resulted in an outcome.

⁴ Page 7, Commission's Enforcement Response Guidelines.

⁵ Enforcement criteria: <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>

⁶ Our priorities: <https://comcom.govt.nz/about-us/our-priorities>

⁷ Page 7, Commission's Enforcement Response Guidelines.

⁸ Page 8, Commission's Enforcement Response Guidelines.

Summary of outcomes	
Action taken	Number of complaints
NFA	143
IPTT	41
Added to demand(s)	21
CAL	14
Ongoing	8
Litigation	3
Warning letter ⁹	1
Added to Demand(s) and NFA	3

11. If you are not satisfied with the Commission's response to your OIA request, section 28(3) of the OIA provides you with the right to ask an Ombudsman to investigate and review this response. However, we would welcome the opportunity to discuss any concerns with you first.
12. Please note the Commission will be publishing this response to your request in the OIA register on our website.¹⁰ Your personal details will be redacted from the published response.
13. Please do not hesitate to contact us at uia@comcom.govt.nz if you have any questions about this request.

Yours sincerely

Mary Sheppard
OIA Coordinator

⁹ Page 8, Commission's Enforcement Response Guidelines.

¹⁰ Official Information Act register: <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>