

2 November 2022

The Warehouse Limited
26 The Warehouse Way
Northcote
Auckland 0627

By email:



Dear 

Fair Trading Act 1986: Warning for misleading representations about the country of origin of goods

1. The Commerce Commission (**Commission**) has been investigating The Warehouse Limited (**TWL**) under the Fair Trading Act 1986 (**FT Act**). We have now completed our investigation and are writing to inform you about our views.
2. The Commission considers that TWL is likely to have breached section 13(j) of the FT Act by representing online between June 2020 and June 2022 that its Necessities Brand rubbish bag products were “NZ Made” when they were manufactured in China. The representations were made on TWL’s website at www.thewarehouse.co.nz (the website) about two products: the Necessities Brand Rubbish Bags 60L 50-pack, and the Necessities Brand Rubbish Bags 60L 10-pack (**the products**).
3. The Commission has decided in this instance to issue TWL with a warning about its conduct. A warning reflects the Commission’s views of TWL’s conduct. Only the courts can conclusively decide whether a breach of the law has occurred. We have determined that at this time we will not be bringing legal action.¹

The investigation

4. The Commission received a complaint alleging that TWL was advertising the products on its website with “NZ Made” badges. However, on the packaging of the products

¹ Commission’s published *Enforcement Response Guidelines* at [41].

there was a statement that the products were made in China. Images of the website advertising and the packaging label are in **Attachment A** of this letter.

5. Based on information voluntarily provided by TWL, the Commission established the following:
 - 5.1 The products incorrectly featured “NZ Made” badges when displayed on TWL’s website between June 2020 and June 2022 because:
 - 5.1.1 The products were originally made in New Zealand, but their place of manufacture shifted to China in July 2017.
 - 5.1.2 TWL did not update the products’ country of origin information in its data management system after that shift.
 - 5.1.3 When the “NZ Made” badges were introduced to TWL’s website in June 2020, they were applied based on information showing in the data management system, which featured outdated country of origin information for the products.
 - 5.2 TWL was alerted to the misleading “NZ Made” badges by a customer three times during November and December 2021. TWL updated its data management system after the customer first made contact, but due to several errors in its complaint handling processes, TWL failed to remove the representations from its website.
 - 5.3 The “NZ Made” badges in respect of the products were only made online and not instore.
 - 5.4 A total of 7,762 units of the products were sold online between June 2020 and June 2022, resulting in sales revenue of \$49,888.35 (including GST).² Online sales comprised only 4.5% of total sales for the products.

The relevant Law

6. Section 13(j) of the FT Act prohibits false and misleading representations, in trade, concerning the country of origin of goods or services.

TWL’s response

7. TWL responded to the Commission’s investigation by:
 - 7.1 Promptly removing the “NZ Made” badges from the online listings for the products once contacted by the Commission.
 - 7.2 Reviewing all 800+ other products carrying the “NZ Made” badge on its website to ensure correct country of origin representations. TWL has told us

² 4,358 units of the 10-pack and 3,404 units of the 50-pack were sold to 3,649 unique customers.

that these were all found to be correctly represented as made in New Zealand.

- 7.3 Contacting the 3,649 customers who purchased the products online between June 2020 and June 2022 to apologise and provide them with store vouchers. The minimum value of each voucher was \$15, resulting in a total value of \$65,460 in vouchers being provided.
- 7.4 Auditing its compliance procedures including its processes for dealing with customer complaints. We also understand that TWL is currently implementing a master data management system that will automate product coding processes and reduce the number of manual processes required to update the system.

The Commission's view

8. The Commission has fully considered all relevant information received and has formed the view that it is likely that TWL's conduct breached section 13(j) the FT Act.
9. Where representations are ongoing, it is important that businesses have adequate processes in place to ensure those representations continue to be correct over time. This is especially important for businesses with a significant number of product lines like TWL.

Warning

10. After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning.
11. We have taken into account the steps TWL promptly took in relation to the Commission's investigation, including those taken to improve its compliance and customer complaint handling processes.
12. This warning represents our opinion that the conduct in which TWL has engaged is likely to have breached the FT Act, and that legal action remains available to the Commission in future if the conduct continues or is repeated.
13. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against TWL.
14. This letter is public information and will be published on the Commission's case register on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

15. The Commission is responsible for enforcing and promoting compliance with several laws that promote competition in New Zealand, including the FT Act. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the FT Act

16. As indicated above only the courts can conclusively decide if the FT Act has been breached. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
17. 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

18. We recommend that you seek legal advice if you are unsure about your obligations under the FT Act and we encourage you to regularly review your compliance procedures, training, and policies.
19. We have published a series of fact sheets and other resources to help businesses comply with the FT 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.
20. You can also view the FT Act and other legislation at www.legislation.co.nz.
21. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely

[REDACTED]

Kirsten Mannix
Investigations and Compliance Manager, Fair Trading

Attachment A

Website advertising



Packing label

Necessities[®]

50 Heavy Duty Rubbish Bags
Extra Large 90cm x 63cm
Fits 60L bins

Customer Guarantee: The Warehouse Ltd guarantees the quality of this product. If you are not completely satisfied please return the product for a full refund.

⚠ WARNING: CHOKING HAZARD - SMALL PARTS. NOT FOR CHILDREN UNDER 3 YEARS.
This bag is not a toy. To avoid danger of suffocation, keep this plastic bag away from babies and children. The film may cling to the nose and mouth and prevent breathing. Glass and sharp objects must be wrapped before putting into the bag. Do not put hot items into the bags.

Made in China
Marketed By:
The Warehouse,
26 The Warehouse Way,
Northcote, Auckland.
0800 422 274



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