

12 June 2018

[REDACTED]  
Director - Premium Spices Torbay Limited  
[REDACTED]

By email: [premiumspicestorbay@gmail.com](mailto:premiumspicestorbay@gmail.com)

Dear [REDACTED]

**Premium Spices Torbay Limited: Warning under the Fair Trading Act 1986 for false or misleading place of origin representations**

1. The Commerce Commission has been investigating Premium Spices Torbay Limited (Premium Spices) under the Fair Trading Act. We have now completed our investigation and are writing to alert you to our concerns.
2. In summary, the Commission considers that Premium Spices has made misleading representations about the places of origin of its dried organic blackcurrants and its organic walnuts halves. In the Commission's view, Premium Spices' conduct is likely to have breached the Fair Trading Act.
3. If this behaviour is continuing at the present time, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the Fair Trading Act.

**The investigation**

4. During our investigation the Commission considered a complaint which alleged that, on its Trade Me listing, Premium Spices was representing imported walnuts halves as being from Canterbury, New Zealand.
5. We sought information from Premium Spices about the country of origin of a range of its products, including walnut halves and dried blackcurrants. In February 2018 we conducted an interview with Premium Spices to further clarify its claims regarding New Zealand grown products.

*Walnuts halves*

6. During the interview you said that Premium Spices currently sells organic Californian walnut halves. You explained that in the past you have sold organic New Zealand

walnuts, but you have not sold organic New Zealand walnuts since the beginning of 2017. This information is consistent with the invoices Premium Spices provided us showing it is supplied walnut halves from the USA.

7. However, in December 2017 the Commission purchased one kilogram of walnut halves from Premium Spices via Premium Spices Trade Me listing. The walnuts were represented on Trade Me as "NZ Walnuts Halves organic 1kg". The description of the Trade Me listing said "[t]hose Walnuts are from Canterbury and certifies organic".
8. Premium Spices was unable to explain how it sold walnut halves advertised as being from New Zealand when it had no supply of New Zealand walnut halves at that time.

#### *Dried blackcurrants*

9. Premium Spices' website advertised for sale dried organic blackcurrants. The description of the product said "Country of Origin: New Zealand". During the interview you admitted that the dried organic blackcurrants sold by Premium Spices are from the USA and not from New Zealand and that the representation on the website was therefore false.

#### **The law**

10. Section 13(j) of the Fair Trading Act prohibits businesses from making false or misleading statements about the place of origin of goods.

#### **The Commission's view**

11. The Commission has reviewed all of the available evidence, including taking into account Premium Spice's response. It is our view that Premium Spices has likely breached section 13(j) of the Fair Trading Act in its online representations of the places of origin of its organic walnut halves and dried organic blackcurrants.
12. We have reached this view about the organic walnut halves because you admitted that you had not sold walnuts halves from Canterbury since the beginning of 2017 but despite this falsely continued to advertise them as from there.
13. We have reached this view about the dried organic blackcurrants because you have admitted that the dried organic blackcurrants were not a product of New Zealand and that the country of origin on your website listing was false.
14. After considering our Enforcement Response Guidelines, we have decided it is appropriate to finalise our investigation by issuing you with a warning to ensure you understand your obligations under the Act. In 2011 Premium Spices received compliance advice from us about representing its spices as organic when not all of the spices it sold were organic. The fact that you have previously received advice from us about your obligations under the Fair Trading Act has been taken into account in our decision to issue you with a public warning.

15. The representations you make on your website and Trade Me listings need to be accurate at all times to ensure they are not false or misleading. You must also have reasonable grounds for making the representations, such as confirmation from your supplier that the products have been sourced from where they say they have been. We recommend that you seek legal advice about your obligations and encourage you to regularly review your compliance procedures and policies.
16. Country or origin claims are difficult for consumers to verify themselves. Consumers must therefore rely on traders' representations to make an informed choice. When a trader falsely represents the country of origin of a good, there is potential harm to the consumer who is not getting the product that they thought they had purchased. There is also potential harm to other traders who are supplying legitimate goods.
17. While we will not be taking any further action against Premium Spices at this time, we will take this warning into account 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 Premium Spices.
18. 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**

19. 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**

20. 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.
21. 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**

22. 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](http://www.comcom.govt.nz). We have also made a short video to help traders understand their obligations to not make unsubstantiated claims or claims that are false or misleading. You can view the video at <https://www.youtube.com/watch?v=a9a2HtaeNFE&feature=youtu.be>. We

encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.

23. You can also view the Fair Trading Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
24. Thank you for your assistance with this investigation. Please contact Anna Walton on (04) 924 3797 or by email at [anna.walton@comcom.govt.nz](mailto:anna.walton@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  
Consumer Manager - Wellington