

7 March 2024

Tru Water Filters NZ
c/o SPG Consultants Pty Ltd t/a Tru Water AU
'Chifley Tower'
Level 29, 2 Chifley Square
Sydney NSW 2000
Australia

For the attention of: [REDACTED]

By email: [REDACTED]

Dear [REDACTED]

Fair Trading Act 1986: Warning letter to Tru Water Filters NZ

1. Further to our previous written correspondence, the Commerce Commission (**Commission**) has been investigating Tru Water Filters NZ (trading via www.truwater.co.nz) (**Tru Water NZ**) under the Fair Trading Act 1986 (**Act**). We have now completed our investigation and are writing to inform you about our views.
2. The Commission has decided to issue Tru Water NZ with a warning because in our view it has likely breached the Act. Namely, by:
 - 2.1 failing to deliver goods purchased by consumers through the Tru Water NZ website (**non-delivery**);
 - 2.2 failing to adequately disclose that prices listed on Tru Water NZ's website were in Australian Dollars (**AUD**) rather than New Zealand Dollars (**NZD**) (**pricing misrepresentations**);
 - 2.3 making false and/or misleading representations about Tru Water NZ's affiliation with the US Water Quality Association (**WQA**)¹ (**endorsement misrepresentations**).

¹ The WQA is a US-based not-for-profit organisation for the residential, commercial, and industrial water treatment industry, representing more than 2,500 member companies worldwide. Among other things, the WQA administers a certification program for water treatment products, which certifies that those products will work as advertised and are proven safe for household use.

3. The Commission considers that Tru Water NZ accepted payment without reasonable grounds to believe it would be able to supply goods within a specified or reasonable time, and that Tru Water NZ's conduct was liable to mislead the public and involved false and/or misleading representations; in likely breach of sections 13(e), 13(f), 13(g) and/or 21(c) of the Act.
4. A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that at this time we will not be bringing legal action.² The purpose of this warning letter is however to inform you of our view that there has been a likely breach of the Act, to prompt changes in behaviour and to encourage future compliance.

The investigation

5. The Commission began its investigation having received over 200 complaints about Tru Water NZ. Most of these complaints (over 85%) alleged that Tru Water NZ had failed to deliver goods purchased by consumers through the Tru Water NZ website.
6. Other common complaints related to allegations that Tru Water NZ:
 - 6.1 failed to adequately disclose that it was an Australian-based business, resulting in longer shipping and processing times than represented to consumers; and
 - 6.2 misled customers regarding price (in that Tru Water NZ failed to adequately disclose that prices listed on its website were in AUD rather than NZD).
7. A consistent theme through complaints was that Tru Water NZ was extremely difficult to contact by customers to resolve issues directly. Many complainants noted that at the time of their complaint they were unsuccessful in reaching Tru Water NZ despite several attempts using all available contact methods on its website.

The breaches

8. During our investigation, we obtained the following evidence, which we assessed as giving rise to likely breaches of the Act:
 - 8.1 **Non-delivery:** Tru Water NZ accepted payment from customers and either:
 - 8.1.1 delivered goods to those customers after an unacceptably long delay (eg, one customer was told their item would be shipped within 1-10 business days, but was actually shipped after 52 working days); or
 - 8.1.2 did not deliver goods after an unacceptably long delay, prompting those customers to request a refund (eg, one customer requested a refund when they were notified that their item had not yet been shipped 42 working days after purchase).

² Commission's published *Enforcement Response Guidelines* at [41].

- 8.2 **Pricing misrepresentations:** Tru Water NZ’s customers were likely to believe that prices displayed on the website were in NZD due to representations on Tru Water NZ’s website that indicated it was a New Zealand-based business (eg, use of a ‘.co.nz’ domain name and New Zealand based contact details, including a phone number and physical address in New Zealand). Prices on the Tru Water NZ website were actually displayed in AUD, meaning customers were charged more than expected. While Tru Water NZ’s website displayed text in one location in fine print that stated “All prices in AUD”, this text was not displayed next to/near the prices displayed for each product available for sale.
- 8.3 **Endorsement misrepresentations:** Tru Water NZ made representations on its website that it was affiliated with the WQA (eg, Tru Water NZ’s ‘About Us’ page stated “Tru Water Filters NZ is a long standing member of the WQA and enjoys an active ongoing relationship with the community”). Tru Water NZ also made representations that some of its goods had been tested and certified by the WQA (eg, Tru Water NZ displayed the WQA’s Gold Seal on some products available for sale on its website). However, our investigation determined that Tru Water NZ is not (and has never been) a member of the WQA and the WQA has not tested or certified any of Tru Water NZ’s products.

Legislative context and the Commission’s view

Failure to deliver goods

9. Section 21(c) of the Act prohibits a person from accepting payment for goods, if at the time of the acceptance that person does not have reasonable grounds to believe that that person will be able to supply the goods within any specified period; or if no period is specified, within a reasonable time.
10. Significant delays in customers receiving their goods (or not receiving goods at all) indicates Tru Water NZ did not have reasonable grounds to believe that it would be able to supply products within:
- 10.1 the timeframes stated to customers, noting some customers were repeatedly told their products were being shipped within the next few days, despite those products never arriving (and therefore appearing to have never been shipped); and/or
- 10.2 a reasonable timeframe.

Failure to adequately disclose that Tru Water NZ’s prices were in AUD

11. Section 13(g) of the Act prohibits a person from making a false or misleading representation with respect to the price of any goods.
12. Tru Water NZ’s website gave the overall impression to consumers that it was a New Zealand-based business. It is therefore reasonable for consumers to believe that prices displayed on the Tru Water NZ website were in NZD.

13. By not making sufficiently prominent and proximate disclosures with respect to the actual currency of prices displayed on its website (ie, that prices were in AUD and not NZD), Tru Water NZ has likely misled consumers as to the price of those goods.

False and/or misleading representations about Tru Water NZ's affiliations and endorsements

14. The Act prohibits a person from making a false or misleading representation that:
 - 14.1 goods have any endorsement (section 13(e) of the Act); and/or
 - 14.2 a person has any endorsement or affiliation (section 13(f) of the Act).
15. By making the representations on its website (set out above) that it was a member of the WQA and some of its products had been certified by the WQA despite having no previous affiliation with, or endorsement by, the WQA, Tru Water NZ is likely to have breached sections 13(e) and 13(f) of the Act.

Tru Water NZ's response

16. The Commission has made numerous attempts to contact Tru Water NZ via phone, email and post to outline the nature of the allegations and give it an opportunity to respond.
17. We did not receive any acknowledgement or response from Tru Water NZ to any of these attempts.
18. As a result, no explanation was provided by Tru Water NZ as to why the alleged breaches may have occurred and any steps it has taken to mitigate or remedy the conduct.

Warning

19. In this case, and having fully considered relevant information received, the Commission's view is that:
 - 19.1 the evidence that has been gathered is sufficiently strong to establish a prima facie case;
 - 19.2 it is likely that Tru Water NZ's conduct breached sections 13(e), 13(f), 13(g) and/or 21(c) of the Act; and
 - 19.3 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 letter rather than by issuing legal proceedings.
20. This warning represents our opinion that Tru Water NZ has engaged in conduct that is likely to have breached the Act and that legal action remains available to the Commission in future if the conduct continues or is repeated. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Tru Water NZ.

21. This warning letter is public information and will be published on the case register on our website. We also intend to make public comment about this investigation and conclusion, which may include, but is not limited to, issuing a media release and/or making comment to media.

The Commission’s role

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

Penalties for breaching the Act

23. As indicated above only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
24. 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

25. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.
26. We have published a series of fact sheets and other resources to help businesses comply with the 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.
27. You can also view the Act and other legislation at www.legislation.co.nz.
28. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely

[REDACTED]

[REDACTED]

Acting Investigations and Compliance Manager, Fair Trading