

30 August 2018

[REDACTED]  
[REDACTED] /a Mr Bojangles  
[REDACTED]  
New Zealand

Dear [REDACTED]

### Fair Trading Act 1986: Warning to [REDACTED]

1. The Commerce Commission (**Commission**) has been investigating [REDACTED] trading as Mr Bojangles ([REDACTED]) under the Fair Trading Act 1986 (the **Act**). We have now completed our investigation and are writing to you to alert you to our concerns.
2. In summary, the Commission considers that [REDACTED] made misleading representations about 'Sparco' branded car racing suits advertised and sold via the mrbo.co.nz website (the **website**) and on TradeMe using the accounts "cheese3015" and "tcbwholesale". The suits were described as 'Sparco' products and 'flameproof' when they were neither. In the Commission's view, your conduct is likely to have breached the Act.
3. A warning is not a finding of non-compliance; only the Courts can decide whether a breach of the law has occurred.<sup>1</sup>

### The investigation

4. During our investigation, the Commission considered whether representations made in the advertising of racing suits supplied by [REDACTED] were false or misleading. The advertising included claims that the suits were:
  - 4.1 "Sparco" products;
  - 4.2 "Fireproof"; and
  - 4.3 "FIA 8856-2000 Rated".

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<sup>1</sup> Commission's published *Enforcement Response Guidelines* at [41].

5. Sparco™ is a well-established worldwide brand of racing suits and safety equipment based in Italy. Our enquiries indicated that the supplier, Guangzhou Volson Auto Accessories Co. Ltd, from which you purchased suits over the website AliExpress, was not an authorised supplier of legitimate Sparco products.
6. The Commission also received a suit from a consumer who bought it from your website (the **sample suit**). Sparco has confirmed that the sample suit was not a genuine Sparco product.
7. We had the sample suit tested by a testing house approved by the International Automobile Federation (the FIA) in accordance with the Standard 8856-2000 (the **Standard**).<sup>2</sup> The Standard requires a maximum permitted “mean after flame time” of only two seconds. This means that the flame must self-extinguish in less than two seconds. Also, no flaming debris, molten debris or holes can be formed during the test.
8. The testing results, provided previously to you, showed that the sample suit failed to meet the requirements of the Standard by exceeding the maximum allowable flame self-extinguishing time and producing flaming and molten debris. The tester’s opinion was that sample suit could not be accurately described as “fireproof”, “flame resistant”, or “fire retardant”.
9. We have identified 28 sales of racing suits by [REDACTED] via TradeMe. We have contacted all 28 Trade Me purchasers to advise them of the potential risks associated with using the suits.

#### **Your response to the Commission**

10. You have responded to the Commission’s enquiries by stating that:
  - 10.1 You purchased the racing suits from a seller on the AliExpress website and, as a result of the information and specifications provided by the seller (which you have been unable to produce for the Commission), you believed that the suits were genuine;
  - 10.2 You believed that the price differential (between purchasing from the seller on AliExpress and directly from Sparco in the USA) was as a result of items being generally cheaper in the Chinese market, and that postage costs were less from China;
  - 10.3 As soon as you were made aware of the potential problem with the suits, in around April 2017, you stopped selling them;

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<sup>2</sup> The Sample Suit was provided to the Commission and tested in a used condition and was likely to have previously been washed. Ordinarily, a suit is subject to testing before and after 15 wash cycles in order to test the durability of any fire retardant treatments. The Commission has been advised that genuine products would use inherently fire retardant fabric which is not affected by washing.

- 10.4 You are no longer trading, and that the mrbo.co.nz website is now operated by an unconnected third party; and
- 10.5 You have insufficient funds to refund purchasers of the suits.

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

- 11. The Commission's view is that your conduct is likely to have breached section 10 of the Act.
- 12. Section 10 of the Fair Trading Act prohibits persons in trade from engaging in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.
- 13. We have reached this view because:
  - 13.1 describing the suits as "Sparco" products on your website and in TradeMe advertisements when they were, in fact, not genuine Sparco™ products is likely to mislead the public as to the nature and manufacturing process of the suits;
  - 13.2 describing the suits as "FIA 8856-2000 Rated" on your website and in TradeMe advertisements when testing showed that they failed to comply with the Standard is likely to mislead the public about the characteristics and suitability for purpose of the suits; and
  - 13.3 describing the suits and being "fireproof" on your website and in TradeMe advertisements when the suits failed to comply with the Standard is likely to mislead the public about the characteristics and suitability for purpose of the suits.
- 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.
- 15. We also intend to provide information regarding this warning letter to motorsport organising bodies in New Zealand to alert them to the issue.
- 16. While we will not be taking any further action against [REDACTED] 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 [REDACTED]. If you decide to resume trading, we recommend that you seek legal advice about complying with the Act.
- 17. 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**

18. 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 Fair Trading Act**

19. 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.
20. 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**

21. 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](http://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.
22. You can also view the Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
23. Thank you for your assistance with this investigation. Please contact my colleague [REDACTED] on [REDACTED] or by email at [REDACTED]@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Kirsten Mannix  
Wellington Consumer Manager