

15 July 2016

Reference: 15939

Sales Concepts Limited
17/465 Mount Eden Road
Mt Eden
Auckland

Attn: Kchitij Tiwari (KT) and Asha Srivastava

Email: kt@salesconcepts.co.nz

Dear Mr Tiwari and Ms Srivastava

Fair Trading Act 1986: Warning

1. The Commerce Commission has been investigating whether Sales Concepts Limited (**Sales Concepts**) has made unsubstantiated representations about the Concept Envirochip products (**Envirochip**).
2. Section 12A of the Fair Trading Act prohibits unsubstantiated representations made by a person in trade. A representation is unsubstantiated if the person making the representation does not, when it is made, have reasonable grounds for the representation, irrespective of whether it is false or misleading.
3. We had concerns about twelve different representations relating to:
 - 3.1 the impact of electronic products (such as mobile phones) on humans, including serious illnesses; and
 - 3.2 the benefits of the Envirochip, including protection from, or neutralisation of the negative impact of electronic goods.
4. The specific representations at issue are set out in **Attachment A**.
5. In summary, the Commission considers that Sales Concepts was unable to adequately substantiate eleven of the twelve claims at issue. In our view, Sales Concepts did not have reasonable grounds to make those claims and is therefore likely to have breached section 12A of the Fair Trading Act.
6. We understand that Sales Concepts has stopped marketing the Envirochips, but if any of 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.

AUCKLAND

L13, Forsyth Barr
55 Shortland Street
P.O. Box 105-222
AUCKLAND 1143, NEW ZEALAND
2515058.6

WELLINGTON

L9, 44 The Terrace
P.O. Box 2351
WELLINGTON 6140, NEW ZEALAND
Tel: (04) 924 3600 Fax: (04) 924 3700
Main Office

The investigation

7. Sales Concepts, among other activities, promoted the Envirochip products through the websites www.radiationchip.co.nz and www.salesconcepts.co.nz/concept-chip and other marketing channels such as radio and newspaper.
8. Sales Concepts sourced the Envirochip product from an [REDACTED] manufacturer [REDACTED]. The product is designed to be attached to electronic devices such as cell phones, tablets and computers, and is claimed to remove the adverse effects of the radiation that is said to be omitted by the products.
9. The Commission received complaints alleging that the Envirochip product promoted by Sales Concepts may be fake, have no scientific basis and purport to solve a problem that has not been established to exist.
10. During our investigation, the Commission considered the grounds provided by Sales Concepts on 10 March 2016 in response to the Commission's request to provide substantiation for the 12 representations we had concerns about.

What Sales Concepts told the Commission about the representations

11. Sales Concepts responded to the Commission's enquiries by providing the grounds on which the company had made the representations at issue. We have now assessed this response. To summarise, the grounds on which Sales Concepts was basing its claims included:
 - 11.1 Reference to various studies undertaken by third parties about the possible link between cell phone usage (or other variables) and a number of different illnesses or effects;¹
 - 11.2 Written materials and photography prepared by [REDACTED] and relating to the products, including the alleged impacts that electronic products have on humans. For example, a PDF titled 'FAQ's for Envirochip' which appears to have been copied word for word by Sales Concepts in a number of instances;
 - 11.3 Marketing materials used by [REDACTED] to market the products;
 - 11.4 Test results and certifications obtained by [REDACTED] for the Envirochip and submitted to Sales Concepts; and
 - 11.5 Evidence of communications between Sales Concepts and [REDACTED] organising supply, predominantly discussing specifications of packaging, pricing and order sizes. Also included is evidence of Sales Concepts requesting the product research reports and test results from [REDACTED] and stating to

¹ This material related to the claims about the impact of electronic goods on humans. The remaining materials related to the claims about benefits of the Envirochip products.

██████████ that Sales Concepts intended to get the products independently tested in Australia or New Zealand prior to selling them. ██████████

12. Sales Concepts stated that the representations it was making were substantively reproduced from the language used by ██████████ and that ██████████ approved the representations in advance.
13. Sales Concepts also stated that the majority of the information it was relying on when making the claims was supplied to it by ██████████ after the Commission's substantiation request was received.

The representations made by Sales Concepts

14. The 12 representations of concern are listed in **Attachment A**.

Claims about the impact of electronic goods on humans

15. The first six claims in that list made by Sales Concepts relate to the impact of electronic products on humans. The first four claims were headline claims accompanied by strong imagery which was likely to strengthen the overall message of the representation. The fifth and sixth claims were clear claims as to the impact of electronic products, but were not accompanied by imagery.
16. The first four claims were available for consumers to view on the home page of the radiationchip.co.nz website and each claim flashed across the screen in a rotating, and accumulative manner. By way of example, a cropped screenshot shows one of the representations and the arrows consumers could use to navigate through the claims or to read the research:



17. We consider that the reasonable consumer is likely to interpret all six of these claims to mean that the claimed illnesses or effects have been proven to occur through the everyday use of electronic products. These are the representations that Sales Concepts was asked to substantiate.

18. Sales Concepts could not adequately substantiate the claims. The information provided to the Commission (described at paragraphs 11 to 13 above) did not, in our view, provide a reasonable basis for making the claims.

Claims about the benefits of the Envirochip products

19. The final six claims relate to the benefits of the Envirochip products for humans.
20. We consider that the reasonable consumer is likely to interpret these claims to mean that the Envirochip products will deliver benefits of protection from, or neutralisation of, radiation. These claims are likely to imply to the reasonable consumer that mobile phones emit harmful radiation which is removed by Envirochip products.
21. We asked Sales Concepts to substantiate these representations. The information provided did not, in our view, provide a reasonable basis for making the claims.

The Commission's view on the representations

22. In this case, the Commission's view is that Sales Concepts' conduct is likely to have breached the Fair Trading Act because the grounds provided by Sales Concepts for making these representations were not likely to constitute reasonable grounds under section 12A of the Fair Trading Act.
23. When considering whether a business has reasonable grounds for a claim, relevant factors include:
- 23.1 the nature of the goods or services about which the claim was made;
 - 23.2 the nature of the claim;
 - 23.3 any research steps or other steps taken by or on behalf of the business making the claim, before it was made;
 - 23.4 the nature and source of any information the business relied on to make the claim;
 - 23.5 the actual or potential effects of the claim; and
 - 23.6 compliance with the requirements of any standards, codes or practices relating to the grounds for the claim.
24. The Commission would expect a claim that asserts that a product has a particular impact on humans or that a product has a particular benefit for humans to be supported by a high level of substantiation in the form of credible and reliable scientific and medical evidence.

Representations about the impact of electronic products on humans

25. The Commission considers that Sales Concepts did not have reasonable grounds for making claims regarding the impact of the everyday use of electronic products on humans. The information relied on by Sales Concepts did not reasonably indicate a causal link between the use of electronic products and the illnesses being claimed to occur in humans, including pregnant women, children and men.
26. The research and scientific studies being relied on by Sales Concepts for these claims were predominantly studies confined to laboratory or discrete observational settings. These studies only tested the relationship between one or a small number of the variables involved in real world use and the particular illness or effect. They did not test whether or not the everyday use of electronic products caused the illnesses or effects claimed in real world settings. Therefore, in our view, they could not constitute reasonable grounds for the representations as they lacked the strong scientific basis that readers of such claims would be entitled to expect.
27. In order to substantiate the types of claims at issue, we would expect Sales Concepts to rely on scientific studies that looked at (and found) causation between the everyday use of electronic products on humans and the illness or effect being tested for (such as infertility, cancer, etc). Sales Concepts did not provide the Commission with any such studies or research.

Representations about the benefits of the Envirochip products for humans

28. The Commission considers that the grounds being relied on by Sales Concepts for making claims regarding the benefits of the Envirochip products for humans were not reasonable. The information did not reasonably indicate a causal link between the use of the Concept Envirochip products and the benefits claimed by Sales Concepts (i.e. protection or neutralisation of the claimed illness or effects).
29. Two types of product testing were provided by Sales Concepts. In our view these tests were either irrelevant to the claims that were made, or their findings were unreasonably generalised by the manufacturer to support the claims that were made.
30. The first product testing examined the relationship between the use of the Envirochip products and human pulse rate. The finding of this testing appeared to be, generally speaking, that the Envirochip can lead to a lower pulse rate. Pulse rate appears to have been used as a proxy for stress levels and stress levels appear to have been used as a proxy for showing that radiation had an effect on the body.
31. The finding of a reduced pulse rate is largely irrelevant to the question of what the impact of the Envirochip is likely to be on human health, because it does not show that the Envirochip affects a cell phone's radiation in any way. Using pulse rate as a proxy for stress, which is in turn a proxy for showing that radiation has affected the human body, is insufficient on its own. The claims that were made by Sales Concepts went beyond the Envirochip's possible impact on pulse rate.

32. No tests were provided which tested the relationship between humans using electronic products in actual real world conditions and the reduction of the radiation levels entering the human body due to the presence of the Envirochip. In addition, no testing was provided which tested the effect of radiation from the everyday use of electronic products on humans (regardless of whether an Envirochip was used or not). The Commission would expect to see such tests as part of a trader's reasonable grounds that might substantiate these claims. In the absence of such evidence we consider the claims likely to be unsubstantiated.
33. The second product testing provided to the Commission allegedly established that the product 'doesn't reduce / alter the strength of Electromagnetic Radiation by fixing it on any electronic device'. This testing is irrelevant to the question of whether the Envirochip can remove or reduce harmful radiation. However it is relevant to the claim (at paragraph 10 of Attachment A) relating to Envirochip's effect on the normal functioning of electronic devices. As a result we acknowledge that that particular claim may have been adequately substantiated.

Effect of this Warning letter

34. While we will not be taking any further action against Sales Concepts at this time in relation to the representations referred to in this letter, 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 Sales Concepts.
35. This warning letter is public information and will be published 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

36. 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

37. 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.
38. 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

39. 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. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
40. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.
41. Thank you for your assistance with this investigation. Please contact Jack Bisset by email at jack.bisset@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Stuart Wallace

Consumer Manager - Competition Branch

Attachment A: The claims the Commission requested to be substantiated

Representations about the impact of electronic products on humans

1. "Using a mobile phone while pregnant can seriously damage your baby."
2. "Keeping mobile phone in pocket can lead to infertility".
3. "The bone marrow in a child's head absorbs 10 times more radiation than adult".
4. "Extensive studies indicate a range of early learning & behavioural disorders in children exposed to mobile phone radiation".
5. "Constant waves (Radiation) emitted from electronic gadgets disturb the cellular communication of the body."
6. "The nature of electromagnetic radiation / waveforms from any electronic gadget is 'constant', whereas the nature of radiation / waveforms from the human body is 'random'. Whenever any 'constant' waveform comes in contact with the human body's 'random' waveforms, the body perceives it to be a threat and tries to fight it, just like when a harmful bacteria / virus has entered the body."

Representations about the benefits of the Envirochip products for humans

7. "The "**Envirochip**",protects the human body from Radiation emitted by Mobile Phones, Laptops, Desktop PC's, Tablets, Wi-Fi Routers & other Wi-Fi equipped gadgets."
8. "Radiation Protector Chip which when fixed on a Mobile Phone, neutralizes the harmful **effects of Electromagnetic Radiation** emitted from the Mobile Phone completely. This is done by changing the nature of harmful radiations and making it non-bio-effective for the human body without reducing the signal strength or quality from the device."
9. "The Envirochip[®] takes care of the non-thermal aspect of Radiation emitted from electronic gadgets by changing the harmful nature of electromagnetic radiations emitted from them, so that there is no biological damage to the human body."
10. "The Envirochip[®] does not absorb, deflect or reduce the intensity of the radiation, and therefore the signal quality or functioning of any electronic gadget it is fixed on is not compromised."
11. "The Envirochip[®] is a passive device and generates random waves at higher frequencies, which carry the constant Microwaves emitted from Mobile Phones, Computers and other Wi-Fi devices in a random form to make them compatible with the body's waveforms, which is no longer harmful for the human body."
12. "...so imagine what mobile phones are doing to your brain. That's because the electromagnetic radiation it omits is harmful. But there is a chip that you can stick on

the back of your phone, iPad or laptop that disrupts this radiation making it safe, without any disruption to your device. It's called Concept Envirochip, look it up at radiationchip.co.nz."