



Settlement Agreement

Regarding the Commerce Commission investigation into representations by New Zealand Wild Deer Velvet Limited about its deer products, employees, and affiliation to government agencies.

New Zealand Commerce Commission

New Zealand Wild Deer Velvet Limited

Mrs Hee Ja Yoo

THIS AGREEMENT is made on the 1st² day of October 2015

Parties

COMMERCE COMMISSION, a statutory body established under s 8 of the Commerce Act 1986 (Commission)

AND

New Zealand Wild Deer Velvet Limited, a limited liability company registered in New Zealand (company number 1151579) with a registered office at 120 Riri Street, Rotorua, (NZWDVL)

AND

Mrs Hee Ja Yoo (Mrs Yoo) also known as Hee Ja Kong of 34 Stanley Drive, Lynmore, Rotorua, the sole director and shareholder of NZWDVL.

(the Parties).

Purpose of the Agreement

1. The Commission has investigated allegations that NZWDVL and Mrs Yoo contravened the Fair Trading Act 1986 (FTA) by making false and misleading representations in relation to the NZWDVL's company affiliations, the nature, contents, characteristics, price and benefits of its deer products and qualifications and affiliations of its employees (the investigation).
2. NZWDVL and Mrs Yoo admit that the representations detailed in paragraph 8 of this agreement were made and that their conduct and representations has breached sections 10, 11, 13(a), (b), (e), (f) and (g) of the Fair Trading Act 1986.
3. This Settlement Agreement sets out the terms on which the parties have agreed to resolve all matters between them in relation to the Commission's investigation.

Interpretation

4. In this Settlement Agreement and its attached Undertakings -

Agreement means this Settlement Agreement and includes the Undertakings.

MPI means Ministry of Primary Industries. MPI was formerly Ministry of Agriculture and Forestry (MAF) and included NZ Food safety Authority (NZFSA).

Mr Barrow means Graham Jeffrey Barrow.

Mr Joo means Tae Young Joo.

Undertakings means the Undertakings provided under s 46A of the FTA and contained in Schedule 1 of this Agreement.

Person includes the normal meaning of the word 'person', and includes a local authority, and any association of persons whether incorporated or not as defined in section 2(1) of the FTA.

The Representations means the representations made by and on behalf of NZWDVL as outlined in paragraph 8 of this agreement.

Trade means any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in land.

The investigation

5. NZWDVL is a Rotorua based company that catered solely to organised international shopping tour groups.
6. NZWDVL sold deer by-products, which included powdered and sliced velvet (antler), pizzle and sinew. The whole and powdered velvet, pizzle and sinew were genuine products and were purchased from established New Zealand deer processing companies.
7. NZWDVL was required to have a process on its premises certified by the MPI as it processed raw velvet and, if purchased by an overseas tourist, the product was considered to have been exported by NZWDVL. This certification required registration of a Risk Management Programme that describes how products are processed to meet the requirements of the Animal Products Act 1999.
8. The Commission's investigation established that NZWDVL made false and/or misleading representations (**the representations**) that included:
 - 8.1 External signage representing that the premises were '**MAF New Zealand Government Approved Premises**', when in fact NZWDVL's premises were not MPI or MAF approved.
 - 8.2 Internal signage representing that the premises were a '**Restricted Duty Free Area**', when in fact the premises were not a Duty Free area as approved by NZ Customs.
 - 8.3 Representing that an employee, Mr Barrow, was '**representing the Ministry of Agriculture and Forestry in New Zealand, MAF**' at the premises, when in fact Mr Barrow was not an employee of MPI, nor of MAF, and he did not represent MAF on the premises.
 - 8.4 An employee, Mr Joo, representing that '**the deer velvet capsules being sold on the premises were powdered tip velvet only**', when in fact the deer velvet being sold in the powdered form by Mr Joo at the time was not only powdered tip.
 - 8.5 An employee, Mr Joo, representing that the '**deer velvet contains an immune hormone that helps prevent colds and flu and cures atopic**

dermatitis', when in fact there is no evidence to substantiate claims that 'deer velvet contains an immune hormone that helps prevent colds and flu and cures atopic dermatitis'.

- 8.6 An employee, Mr Joo, representing that the deer velvet diabetes capsules being sold on the premises '**would allow diabetics to replace insulin injections**', when in fact this is false and replacing insulin injections with deer velvet could have fatal consequences for a diabetic.
- 8.7 An employee, Mr Joo, when greeting shopping tourists and conducting sales at NZWDVL, wore a name badge that stated that he was a '**Doctor**' and that he had been '**approved by MAF**', when in fact:
- 8.7.1 Mr Joo has no medical or academic qualifications on the basis of which he could represent that he is a doctor; and
- 8.7.2 Mr Joo had not been approved by MAF or MPI.
9. Mrs Yoo is a shareholder and the sole director of NZWDVL and took an active part in the day to day activities of the business including being present when tour groups arrived, making sales to tour group purchasers and the general management of the business.
10. Mrs Yoo had knowledge of and assisted in NZWDVL's conduct and representations.

Admissions by NZWDVL and Mrs Yoo

11. NZWDVL and Mrs Yoo:
- 11.1 admit that the conduct and representations set out in 8 above contravened sections 10, 13(a), (b), (e), (f) and (g) of the FTA;
- 11.2 admit that NZWDVL engaged in conduct and made representations as set out in 8 above, and thereby breached sections 10, 13(a), (b), (e), (f) and (g) of the FTA;
- 11.3 admit that Mrs Yoo knowingly assisted the conduct of NZWDVL set out in 8 above, and thereby breached sections 10, 13(a), (b), (e), (f) and (g) of the FTA;
- 11.4 confirm that NZWDVL has ceased engaging in the conduct and making the representations;
- 11.5 agree to alter their practices pursuant to the undertakings to ensure that, in the future, no such false or misleading representations are made.

Enforceable Undertakings by NZWDVL and Mrs Yoo

12. NZWDVL and Mrs Yoo have offered, and the Commission has agreed to accept, court-enforceable undertakings provided pursuant to section 46A of the FTA.

No Further Action by Commission

13. Following the signing of this Agreement, the Commission will not issue any civil or criminal proceeding against NZWDVL and Mrs Yoo in relation to the conduct to which this Agreement applies, other than any proceedings that may be brought as a consequence of NZWDVL or Mrs Yoo failing to comply with the Agreement or any of the Undertakings.
14. Nothing in this Agreement will limit or affect:
- 14.1 the Commission's ability to:
- 14.1.1 issue proceedings against NZWDVL or Mrs Yoo in respect of matters not related to this Agreement, or in respect of conduct engaged in by NZWDVL or Mrs Yoo after the date of this Agreement;
- 14.1.2 seek or issue any enforcement outcome against any other entity or individual in relation to this investigation;
- 14.1.3 apply to the Court for orders under section 46B of the FTA; or
- 14.2 the ability of any other person to pursue any available legal rights or remedies.

Miscellaneous

15. The Parties will each take such steps as are necessary or desirable to give full effect to the terms of this Agreement.
16. This Agreement will be governed by and interpreted in accordance with the laws of New Zealand, and if necessary will be enforced in New Zealand.
17. The Parties agree that:
- 17.1 neither the Agreement nor the fact that NZWDVL and Mrs Yoo has entered into the Agreement or given the Undertakings is confidential;
- 17.2 the signed Agreement and the Undertakings may be published on the Commission's website after it has been signed;
- 17.3 the Commission may issue a media release, and/ or make public comment, about the Agreement and the Undertakings;
- 17.4 the Parties may make public statements in relation to the signed Agreement and the undertakings; and,

17.5 any public statement must be consistent with the matters set out in the Agreement.

18. NZWDVL and Mrs Yoo agree that they will not make any public comment in relation to the Agreement until after the Commission has issued any media release notifying the public of it.

19. Any notice or communication that is given or served under or in connection with this Agreement of the Undertakings must be given in writing in the following manner:

19.1 if addressed to the Commission, by hand delivery or email to the following address:

Commerce Commission
Level 19, 135 Albert Street
Auckland 1143

Attention: Mary-Anne Borrowdale, General Counsel Competition
Email: mary-anne.borrowdale@comcom.govt.nz

19.2 if addressed to NZWDVL and/or Mrs Yoo by hand delivery or email to their legal counsel at the following address:

NZWDVL and Mrs Yoo
C/- Lance Lawson
Level 1
1172 Haupapa Street
Rotorua

Email: law@lancelawson


Attention: Bill Lawson

H. J. Yoo
UP

EXECUTION

SIGNED by and on behalf of

THE COMMERCE COMMISSION



Dr Mark Berry
Chairman

SIGNED by and on behalf of

New Zealand Wild Deer Velvet Limited



Hee Ja Yoo

