

8 May 2017

Inghams Enterprises (NZ) PTY Limited
C/- Bell Gully
Level 22
Vero Centre
48 Shortland Street
Auckland 1010

Dear Mr Brannan

Fair Trading Act 1986: Warning

The Commerce Commission has been investigating Inghams Enterprises (NZ) PTY Limited (Inghams) under the Fair Trading Act. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that Inghams has made misleading representations on product packaging about the size of chickens by including externals (i.e., stuffing and water) in the weight of chickens. In the Commission's view, Inghams' conduct is likely to have breached the Fair Trading Act.

The investigation

During our investigation, the Commission considered the information provided by Inghams which showed that externals were included in the weight of the chicken. The result of Inghams' practice was that a size 16 chicken, for example, inclusive of stuffing or marinade would have weighed around 1.6kg. Prior to the externals being added the weight of the chicken would have been less than 1.6kg.

Section 13(a) of the Fair Trading Act states that no person, in trade, shall make false or misleading representations that goods are of a particular quantity or composition. In addition, section 10 of the Fair Trading Act provides that no person in trade shall engage in conduct that is liable to mislead the public as to the nature ... characteristics, ... or quantity of goods.

Inghams responded to the Commission's enquiries by stating that it had suggested to the Poultry Industry of New Zealand¹ that it formulates a consistent industry position on how chicken's should be sized.

¹ Poultry Industry Association of New Zealand (PIANZ).

The Commission is aware that, as a consequence of our investigation, current labelling practices for fresh whole chickens have been reviewed by PIANZ and the approach to sizing has changed.

Inghams has indicated they will make changes to their packaging in accordance with the revised PIANZ approach. Inghams will ensure that the size of the chicken indicated on the packaging is the net weight of the chicken including marinade or stuffing (**net weight**).

The Commission's view

In this case, the Commission's view is that Inghams conduct is likely to have breached the Fair Trading Act. The packaging of Inghams fresh whole chickens prominently displays the size of the chicken. In our view consumers were likely to consider that this was a representation about the net weight of the chicken (excluding marinade or stuffing) when that was not the case.

While the actual net weight of the chicken was also displayed on the packaging, we do not consider it was sufficient to negate the overall impression that that the size of the chicken related to its net weight. The net weight was displayed in small font above the size of the chicken. As a result the consumer's attention would be likely to be drawn to the size representation, rather than the net weight of the chicken.

Consequently our view is that the size representations were likely to have been misleading and in breach of the Fair Trading Act.

We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.

While we will not be taking any further action against Inghams 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 Inghams.

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

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

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.

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

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.

You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact me on 09 9194441 or by email at john.lyall@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



John Lyall
Auckland Manager

Note: This letter was originally issued on 1 February 2017. It contained an error and was subsequently reissued. This is the reissued letter.