

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2012-004-019312**

**COMMERCE COMMISSION**  
Informant

v

**H Aidong Chen  
Jinming Chen  
TOP SKY HOLDINGS LTD  
KIWI WOOL LTD**  
Defendants

Hearing: 28 March 2013

Appearances: J Dixon and L Mills for the Informant  
G Illingworth AC for the Defendants

Judgment: 28 March 2013

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**NOTES OF JUDGE N R DAWSON ON SENTENCING**

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[1] Today has been set down for sentencing, Kiwi Wool International Limited, Haidong Chen, Top Sky Holdings Limited and Jinming Chen.

[2] Top Sky Holdings Limited pleaded guilty to nine breaches of s 10 Fair Trading Act 1986 for offering for sale alpaca rugs with labels that represent that they are made in New Zealand when they were not, one breach of s 10 Fair Trading Act providing consumers with a golden alpaca brochure representing the alpaca rugs were made in New Zealand when they were not and two breaches of s 13(j) Fair Trading Act for representing orally they were alpaca rugs and made in New Zealand when they were not.

[3] With respect to that same company Mr Haidong Chen, a director of Top Sky, pleaded guilty to nine breaches of s 10 Fair Trading Act as a party to Top Sky's offending and one breach of s 10 Fair Trading Act as a party to Top Sky's offending for providing the golden alpaca brochures.

[4] Kiwi Wool pleaded guilty to 10 breaches of s 10 Fair Trading Act for offering for sale duvets labelled as containing exclusively or predominantly alpaca fibre when they did not and eight breaches of s 10 Fair Trading Act for offering for sale duvets labelled as containing merino wool when they did not.

[5] Mr Jinming Chen, a director of Kiwi Wool, has also pleaded guilty to 10 breaches of s 10 Fair Trading Act as a party to Kiwi Wool's offending for offering for sale duvets labelled as containing exclusively or predominantly alpaca fibre when they did not and eight breaches of s 10 Fair Trading Act as a party to Kiwi Wool's offending for offering for sale duvets labelled as containing merino wool when they did not.

[6] Mr Haidong Chen, a shareholder of Kiwi Wool Limited, pleaded guilty to 10 breaches of s 10 Fair Trading Act as a party to Kiwi Wool's offending for offering for sale duvets labelled as containing exclusively or predominantly alpaca fibre when they did not and eight breaches of s 10 Fair Trading Act as a party to Kiwi's Wool offending for offering for sale duvets labelled as containing merino wool when they did not.

[7] The essence of the offending is that the defendants misrepresented the country of origin of alpaca rugs that were made in Peru and not in New Zealand and that the composition of the alpaca, merino and Southdown duvets typically did not contain any of the kind of wool said to be in the duvets or on occasions when they did contain some of it they did not contain as much of the particular type of wool as was represented.

[8] The misrepresentations varied but generally included the misrepresentations on labels affixed to rugs and duvets, made verbally by sales staff and in brochures of points of sale and for one defendant contained false certifications and endorsements

by a non-existent organisation. The misrepresentations were continuing and extended over a 20 month period.

[9] During that period it is estimated that Top Sky's revenue was at least 3.8 million dollars and Kiwi Wool's revenue was over two million dollars.

[10] The maximum sentence is \$200,000 and for each count for a company and \$60,000 on each count for an individual person. None of the companies or the individuals being sentenced today have previous convictions.

[11] I have read the submissions, which are very extensive, from the Crown and also from the defence. I have also, in particular, read the victim impact statement of Tourism New Zealand.

[12] The sentencing factors I need to take into account are predominantly denouncing the conduct and also to consider imposing a sentence that will deter both these offenders and others from offending in a similar way. The gravity of the offending and the degree of culpability of the individuals concerned needs to be taken into account also.

[13] There are aggravating factors of the offending I need to take into account; the first is the extent of the harm of the offences, China is apparently a top priority market for tourism in New Zealand. Tourism New Zealand have invested heavily in China under the "100 percent pure" brand and illegal activities such as theirs could potentially harm Tourism New Zealand's efforts to grow this market in terms of visitor numbers to New Zealand and the economic value to New Zealand.

[14] The next aggravating factor is the very large turnover of revenue by each of the companies and there is very likely to have been considerable profits made from the offending.

[15] The objectives of the Fair Trading Act are to facilitate fair competition and the defendants' conduct has undermined fair competition in this market and has unfairly disadvantaged other traders in the same market.

[16] With respect to the importance of the untrue statements that are made it is clear that a significant premium is attached as to New Zealand made products and the tourist shopping market. New Zealand made rugs were sold at much higher prices than other rugs. The untrue representations about the origins of the alpaca products and the contents of the alpaca and merino duvets were very important in the eyes of the target market.

[17] There was a large degree of wilfulness and carelessness involved in the misrepresented statements and that they were deliberate and systematic. The statements also departed from the truth by a very significant extent. The statements as to the wool content of the duvets also depart from the truth to a significant extent, in that 100 percent pure alpaca wool duvets contained only 20 percent alpaca wool and 100 percent New Zealand merino lamb or duvets did not in fact contain merino wool, nor the duvets represented to contain the Southdown wool contain any Southdown wool.

[18] These false representations were also disseminated in major tourist designations in New Zealand and then by word of mouth to Asia. There was a significant prejudice to consumers' travelling with organised shopping groups who visited the defendants' shops and paid up to four times more than the actual value of the imported alpaca rugs and also overpaid for inferior duvets.

[19] The defendants did not make any effort to correct the false statements and I note that Tourism New Zealand received complaints resulting in the Commission executing search warrants on the defendants and without consumer complaints it would appear likely that the defendants' conduct would have continued.

[20] In mitigation all defendants entered guilty pleas at an early stage and are therefore entitled to a 25 percent discount on sentences imposed. Neither of the companies and neither of the Mr Chens, who appear as defendants today, have any previous convictions but I do have to take into account that it was a prolonged period of offending. I am of the view an additional five percent could be applied as a discount.

[21] The defendants behaved in a way where it was clearly intended that they duped their customers through misrepresentations they knew to be false with the intention of profiting from those false misrepresentations.

[22] Top Sky Holdings is guilty of two types of offending, first relating to the origin of the products and secondly relating to the composition of products. Kiwi Wool is guilty only of offences relating to the composition of products and therefore has a lower level of culpability compared to Top Sky Holdings Limited.

[23] I note that with respect to Top Sky Holdings Limited, Mr Haidong Chen, is not a shareholder and therefore it is appropriate to fine him personally, as well as the company, to acknowledge his personal culpability. With respect to Kiwi Wool Limited both Mr Haidong Chen and Jinming Chen are shareholders and therefore the total liability for fines against that company will be divided between the company and the two Mr Chens.

[24] I am doing that because in my view it is appropriate to impose a fine personally against both Mr Chens in addition to the company to recognise their personal culpability. The combined fine for Kiwi Wool Limited and each of the Mr Chens for the Kiwi Wool offending is divided between them so there is not a double penalty being imposed upon that particular company and shareholders.

[25] The starting points I have come to in sentencing today is based on the overall culpability of each of the defendants and each of the defendant companies and that will then be divided across the counts to make up the total that should be imposed.

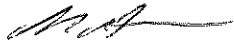
[26] With respect to Top Sky Holdings Limited a total fine of \$200,000 would be the appropriate starting point and taking into account the guilty plea and not having previous convictions a 30 percent discount would be appropriate reducing it by \$60,000, making it a total of \$140,000 for the 12 counts. Therefore, on each count the company will be fined \$11,666.

[27] With respect to Kiwi Wool, taking into account the totality of the offending relating to that company, a starting point of \$120,000 would be appropriate. It is

entitled to the same 30 percent discount reducing the fine to \$84,000 and when that is spread across the 18 counts it comes to \$4660 per count.

[28] With respect to Mr Haidong Chen he has offended with respect to the trading of both companies and therefore he must expect a higher fine than Jinming Chen. For Mr Haidong Chen I am of the view that a starting point for all of his offending, covering both companies, be a total of \$35,000, he also is entitled to a combined discount of 30 percent reducing the fine to \$24,500. When that is spread across the 10 counts it works out at \$2450 per count.

[29] For Mr Jinming Chen the starting point, which is appropriate for him would be \$15,000. He is entitled to the same combined discount of 30 percent reducing the fine to \$10,500 divided amongst the 18 counts comes to \$580 per count.



N R Dawson  
District Court Judge