

3 May 2016

Stephen Morrissey
694 Great South Road
Penrose
Auckland 1061

Dear Mr Morrissey

Fair Trading Act 1986: Warning – Stephen Morrissey

1. The Commerce Commission (Commission) has been investigating Intagr8 Limited (Intagr8), its director (Murray Taylor) and its salespeople under the Fair Trading Act 1986 (Fair Trading Act). The investigation related to alleged false or misleading representations made in the process of selling Intagr8's business solution (bundled telephone service and financed equipment) to small businesses.
2. We have now completed our investigation and are writing to you to alert you to our concerns.
3. In summary, the Commission considers that it is likely that you, Stephen Morrissey, have made the following false or misleading representations:
 - 3.1 that customers would pay no more in the future, for Intagr8's business solution than what they had paid their existing telephony service providers; and
 - 3.2 that monthly calling credits provided by Intagr8 would offset the monthly rental cost of the equipment.
4. Further, it is likely customers were not adequately informed about the rental agreement with a finance company that required a monthly direct debit.
5. In the Commission's view, this conduct is likely to have breached sections 13(b) and (g) of the Fair Trading Act.

The investigation

6. During our investigation the Commission considered complaints that you made false and/or misleading representations, as outlined above.

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7. Sections 13(b), and (g) of the Fair Trading Act states:

13 No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services,—

(b) make a false or misleading representation that services are of a particular kind, standard, quality, or quantity, or that they are supplied by any particular person or by any person of a particular trade, qualification, or skill, or by a person who has other particular characteristics; or

(g) make a false or misleading representation with respect to the price of any goods or services;

8. The Commission's investigation established that it is likely that you did not adequately disclose to complainants:

8.1 that they were entering into a separate long term rental agreement with a finance company unrelated to Intagr8, and

8.2 that the rental payment would be a monthly direct debit payment separate from the invoice issued by Intagr8.

9. The Commission's investigation also established that that it is likely that you told customers that:

9.1 the cost of the agreement would not exceed their current monthly telephone bill, when in fact there were additional charges added, resulting in increases in monthly accounts following switching; and/or,

9.2 the calling credits received every month would be enough to offset the rental amount of equipment, when in fact the calling credit was an "up to" amount dependant on the type and volume of call activity. This resulted in some instances where complainants did not get the level of credits offered at the sales visit.

10. The nature of "eligible calls" that made up the calling credit was not fully explained during sales visits. Particularly, that credit could only be earned from eligible calls and might not be at the amount estimated, should telephone bills vary from month to month

The Commission's view

11. The Commission's view is that your conduct is likely to have breached the Fair Trading Act. While we have reached this view, in this instance, we have exercised our discretion to issue a warning rather than file court proceedings.

12. Although we will not be taking any further action at this time, we will take this warning into account for 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 or any other party.

13. We advise you to ensure that you do not make any false or misleading representations in the future. Further, we recommend that you seek legal advice and encourage you to regularly review the compliance procedures and policies of any business you may become involved in.
14. 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

15. 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 Fair Trading Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the Fair Trading Act

16. 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.
17. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
18. 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

19. 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.
20. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.
21. Please contact Gary Bailey on 04 924 3722 or by email at gary.bailey@comcom.govt.nz if you have any questions about this letter.

Yours sincerely


Stuart Wallace
Consumer Manager
Competition Branch