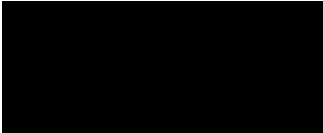


5 November 2019



By email only: 

Dear 

#### **Official Information Act #19.063 - Mr Rental & Elite Fitness**

1. We refer to your request received on 11 October 2019 for copies of the compliance advice letters (CAL) sent from the Commerce Commission (Commission) to Mr Rental NZ Limited and Elite Fitness Equipment Limited, referred to in a Commission statement about our review of unfair contract terms in the gym sector.<sup>1</sup>
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

#### **Our response**

3. We have decided to grant your request for a copy of the CAL sent to Elite Fitness Equipment Limited. A copy of the CAL dated 31 July 2013 is **attached**.
4. We are still consulting with Mr Rental NZ Limited about release of the CAL sent to it and will communicate our decision to you as soon as reasonably practicable, and in any case not later than 11 November 2019.
5. You can find further information about compliance advice letters and the Commission's other enforcement responses on our website.<sup>2</sup>
6. Please note the Commission will be publishing this response to your request on our website. Your personal details will be redacted from the published response.

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<sup>1</sup> <https://comcom.govt.nz/news-and-media/media-releases/2017/gyms-to-shape-up-after-commission-review-into-unfair-contract-terms>

<sup>2</sup> <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines>

7. Please do not hesitate to contact us at [uia@comcom.govt.nz](mailto:uia@comcom.govt.nz) if you have any questions about this request.

Yours sincerely

*Mary Sheppard*

Mary Sheppard  
OIA Coordinator

Released under Official Information Act 1982

31 July 2013

Gary Bourke – Director  
Elite Fitness Equipment Limited  
11 George Bourke Drive  
Mount Wellington  
AUCKLAND 1060

Dear Mr Bourke

### **Fair Trading Act 1986: Compliance advice**

The Commerce Commission has been investigating Elite Fitness Equipment Limited trading as Elite Fitness under the Fair Trading Act. We have now completed our investigation and are writing to you to provide advice to assist you to comply with the Fair Trading Act.

In summary, the Commission considers that representing goods as being for sale at a “Sale” price for a “Limited Time” when in fact those goods are continually available at the discounted price gives rise to a possible breach of the Fair Trading Act. In the Commission’s view, it is misleading for a business to continue to claim the price of goods is discounted when the price represented is the usual selling price.

We bring these matters to your attention to assist you in complying with your obligations under the Fair Trading Act. If you are unsure about your legal obligations, you should seek legal advice.

### **The investigation**

During our investigation, the Commission visited the Elite Fitness Store on Blenheim Road in Christchurch on three occasions throughout a six month period (January – July 2013). In the course of these store visits, Commission investigators gathered evidence of pricing representations for the WaterRower S4 Natural Rowing Machine. On each visit, Commission investigators recorded that the Rowing Machine was represented as being available for purchase at the “Sale” price of “\$2695” – discounted from the full retail price for the machine of “\$3,395”. The labelling for the product also indicated that the rowing machine was only available at the “Sale” price for a “Limited Time”. A photograph of the pricing representations on the Rowing Machine is **attached** to this letter as ‘A’.

During two of the store visits, Commission investigators asked Elite Fitness sales staff when the sale was due to end given that it was for a limited time. On both occasions, staff responded “It depends on the boss on the day, stock levels and the value of the US dollar”. No specific end date for the sale period was given.

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Main Office

#### **CHRISTCHURCH**

9 Radley Street  
Woolston  
P.O. Box 10-199  
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In addition to store visits, Commission staff monitored pricing representations for the S4 Natural Rowing Machine on the Elite Fitness website [www.elitefitness.co.nz](http://www.elitefitness.co.nz). These enquiries also showed the WaterRower S4 Natural Rowing Machine being advertised at the "Sale" price of "\$2695" throughout the investigation period. A screenshot of this representation as it appeared on the website is also **attached** to this letter as 'B'.

Section 13(g) of the Fair Trading Act states that:

13 False or misleading representations

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,—

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

On July 31 2013, a Commission investigator spoke with Nathan Clarke, Elite Fitness's Southern Regional Retail Manager, in relation to the pricing representations under investigation. Mr Clarke responded to the Commission's enquiries by stating that the Rowing Machine had reverted to the original retail price of \$3,395 throughout the investigation period. Mr Clarke could not be specific as to when that had occurred. He also noted that he would need to check with the National Sales Manager to confirm how many (if any) units of the Rowing Machine had been sold at the \$3,395 price during the investigation period.

#### **The Commission's view**

In this case, the Commission's view is that Elite Fitness's conduct gives rise to a possible breach of the Fair Trading Act. We have reached this view because the evidence gathered in the course of the investigation inferred that the price of \$2,695 for the Rowing Machine was, in fact, the usual selling price for the product not a sale price that was only available for a limited time. We note Mr Clarke's explanation that the price for the Rowing Machine did revert to the original price of \$3,395 during the investigation period and invite you to provide us with further information in this regard if you wish.

We recommend you seek legal advice on complying with the law and encourage you to regularly review your compliance procedures and policies.

#### **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 severe penalties where it finds the law has been broken. A company that

breaches the Fair Trading Act can be fined up to \$200,000 and an individual up to \$60,000 per offence.

You should be aware that our decision to issue this compliance advice 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](http://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](http://www.legislation.co.nz).

Thank you for your assistance with this investigation. Please contact me on 03 964 3463 or by email at [claire.legrice@comcom.govt.nz](mailto:claire.legrice@comcom.govt.nz) if you have any questions in relation to this letter.

Yours sincerely



Claire Le Grice  
Senior Investigator





# WaterRower S4 CLUB

WaterRower® originates from Rhode Island, USA. It still manufactures its high quality rowing machines in the early 1980's.

- Patent Water Flywheel
- 135cm Twin Rail
- Hand crafted solid Ash frame. Resourced from sustainable forest, Danish Oil Finish
- Polar™ HR compatible
- Light Commercial Quality
- Adjustable footpads
- Comfortable seat with smooth glide
- Performance Monitor- Time, Distance, Interval workouts
- 9 preset workouts- Stroke Rate, Heart Rate, distance, incline and pulse
- 250kg max user weight
- Manufactured in USA

2011 new seasons models

**\$3395**

**\$2695**

SALE PRICE FOR A LIMITED TIME

**elite**  
FITNESS

skored programs  
workout programs

**Finance Available**  
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Per Week

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**30 day** no obligation risk free trial



### WaterRower® S4 Natural Rowing Machine

\$3395.00 **SALE \$2695.00**

RATING: ★★★★★ (1 review)

[Add your review about this product](#)



WaterRower originates from Rhode Island, USA where it still manufactures its high quality rowing machines since the early 1980's.



Made in USA

**30 day** no obligation risk free trial

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The WaterRower® Natural has been designed for high end home use, Studios, Rehabilitation Clinics.



The WaterRower Natural is hand crafted in solid Ash Wood and has been chosen due to its marvellous engineering properties, primary amongst these is its ability to absorb sound and vibration enhancing the WaterRower's quietness and smoothness of use. Ash, like all woods used in WaterRower construction, is a premium hardwood with incredible longevity and dimensional stability. For reasons of ecology, all our woods are harvested from replenishable forests.



#### Patent Flywheel Design

The WaterRower's patented WaterFlywheel has been designed to emulate the exact dynamics as a boat moving through water, the objective of the exercise of rowing. The outcome is an exercise with uncanny similarity to the 'real thing'. In much the same way as an oarsperson levers the boat through the water with each stroke, the WaterRower user levers the Water around in the tank. An increase in speed will increase this resistance and require an increase in effort/intensity.



[Watch the NBC report on WaterRower®- click here](#)

View the WaterRower Catalogue below:



### PRODUCT FREIGHT PRICE

Akl Metro\*

North Island Metro\*

South Island Metro\*

Released under Official Information Act 1982

\$39

\$49

\$69

\*click to view metro areas

We manually check freight prices so we will email/call you to confirm you freight price before processing (non metro places may incur extra costs).

**Free pickup in these locations**

Mt. Wellington - Auckland

Porirua - Wellington

Sockburn - Christchurch

If you would like to pickup please let us know in the order instructions. All stock is processed out of Auckland so there may be delays for Wellington and Christchurch pickups.

Please visit our [Ordering FAQ](#) for more information

\$2695.00

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3:28 / 3:28



WaterRower was first designed in 1988, all WaterRowers are 100% made in Rhode Island USA, using 25 years of design expertise and many patented features these are the Rolls Royce of rowing machines.



11 November 2019

[REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

**Official Information Act #19.063 - Mr Rental & Elite Fitness**

1. Further to our letter of 5 November 2019, we have decided to release a copy of the compliance advice letter (CAL) sent to Mr Rental NZ Limited, under the Official Information Act 1982. A copy of the CAL dated 22 October 2013 is **attached**.
2. Please note the Commission will be publishing this response to your request on our website. Your personal details will be redacted from the published response.
3. Please do not hesitate to contact us at [uia@comcom.govt.nz](mailto:uia@comcom.govt.nz) if you have any questions about this request.

Yours sincerely

*Mary Sheppard*

Mary Sheppard  
OIA Coordinator

22 October 2013

Mr Rental NZ Limited  
c/o Grant Peck

Sent via email: [grant.peck@mrrental.com.au](mailto:grant.peck@mrrental.com.au)

Dear Grant

### Credit Contracts and Consumer Finance Act 2003: Compliance advice

1. The Commerce Commission has been investigating Mr Rental NZ Limited (Mr Rental) under the Credit Contracts and Consumer Finance Act 2003 (CCCF Act). We have now completed our investigation and are writing to you to provide advice to help you comply with the CCCF Act.
2. In summary, the Commission has concerns that in some circumstances, a Mr Rental contract may be a lease of goods that is treated as a consumer credit contract under CCCF Act and if this occurs you will need to comply with the disclosure provisions of section 17 of the CCCF Act.
3. We are bringing these matters to your attention to help you meet your obligations under the CCCF Act. If you are unsure about your obligations, you should seek legal advice.

#### The investigation

4. During our investigation, the Commission considered whether the Mr Rental contract was a consumer credit contract.

#### Consumer credit contract

5. Under section 16 of the CCCF Act, a lease entered into by Mr Rentals will be treated as a consumer credit contract if the lessee is a natural person who enters into the lease primarily for personal domestic or household purposes and either or both of the following apply:
  - 5.1 the amount payable by the lessee under the lease is substantially equivalent to, or in excess of, the cash price of the goods (whether or not the lessee has an option to purchase the goods);
  - 5.2 the lessee has an option to purchase the goods for no additional amount, for a nominal amount, or for an amount substantially below a reasonable estimate of the fair market value of the goods at the end of the lease.

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6. The Mr Rental lease must comply with schedule 1 of the CCCF Act if it is deemed a consumer credit contract.
7. The Commission believes that most of Mr Rental's contracts will be to natural persons for personal domestic and household purposes. In addition the Commission considers that there may be circumstances where the amount payable under the lease is substantially equivalent to or in excess of the cash price of the goods for the following reasons.
  - 7.1 Mr Rentals leases goods that are not new which will affect their cash price.
  - 7.2 Mr Rentals charges a week's rental notwithstanding that the lease is terminated at the earliest opportunity.
  - 7.3 Mr Rentals charges a "calculation period fee" when the lease is terminated at the earliest opportunity based on the rental that would have been charged for the actual term of the lease.
8. There may be situations where the total of the week's rental together with the "calculation period fee" will be substantially equivalent or in excess of the cash price of the good particularly where the goods are not new.

#### **The Commission's view**

9. The Commission's view is that Mr Rental needs to be wary of when these circumstances exist, when they do, Mr Rentals must comply with the disclosure provisions of section 17 of the CCCF Act.
10. You should also note that Consumer Law Reform Bill proposes to introduce provisions relating to unfair contract terms. You may wish to consider the impact of this for your "calculation period fees" and particularly how you disclose those fees.
11. We recommend that you seek legal advice on complying with the law and encourage you to regularly review your compliance procedures and policies.

#### **The Commission's role**

12. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the CCCF Act. The Act is designed to protect consumers when they are borrowing money and enable them to make informed choices about using credit.

#### **Penalties for breaching the CCCF Act**

13. Only the courts can decide if there has actually been a breach of the CCCF Act. The court can impose penalties where it finds the law has been broken. Lenders who breach the CCCF Act may:
  - 13.1 be unable to enforce the contract or any right to recover property or any security interest

- 13.2 have to refund money or pay compensation
  - 13.3 have to pay statutory damages
  - 13.4 be convicted of a criminal offence and fined up to \$30,000 per offence
  - 13.5 have contracts changed by the court if the contracts are oppressive
  - 13.6 be banned from operating within the finance industry.
14. You should be aware that our decision to issue this compliance advice letter does not prevent any other person or entity from taking private action through the courts.

**Further information**

15. We have published a series of fact sheets and other resources to help businesses comply with the CCCF Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the CCCF Act.
16. You can also view the CCCF Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
17. Thank you for your assistance with this investigation. Please contact me on 09 9203493 or by email at [richard.morgan@comcom.govt.nz](mailto:richard.morgan@comcom.govt.nz) if you have any questions about this letter.

Yours sincerely



Richard Morgan  
Senior Investigator  
Competition Branch - Auckland