

21 August 2018

Smart Layby Limited
Plaza Level
41 Shortland Street
Auckland, 1010

Attention: [REDACTED]

Dear [REDACTED]

Fair Trading Act 1986: Warning

1. The Commerce Commission (Commission) has been investigating Smart Layby Limited (Smart Layby) under the Fair Trading Act 1986 (FTA). We have now completed our investigation and are writing to inform you of our concerns.
2. The Commission considers Smart Layby was likely to mislead customers about the price of products by using the words "Big Savings!" next to an Android Smart Watch in its August 2017 product brochure. Customers would not make big savings purchasing the Android Smart Watch from Smart Layby at the advertised price.
3. As a consequence, Smart Layby is likely to have breached sections 10 and/or 13(g) of the FTA.
4. After weighing up the factors set out in our Enforcement Response Guidelines, we have decided to conclude this investigation by issuing this warning.¹
5. If this behaviour is continuing at the present time, we recommend that you take immediate action to address our concerns and seek legal advice about complying with FTA. We recommend that you remove any mention of "big savings" or similar wording from your brochures unless the claims of price savings can be justified.

The law

6. Section 10 of the FTA prohibits a person, in trade, from engaging in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.

¹ The Enforcement Response Guidelines are available at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

7. Section 13(g) of the FTA prohibits a person, in trade, in connection with the supply or possible supply of goods or services, from making a false or misleading representation with respect to the price of any goods or services.

The investigation

8. The Commission opened an investigation into Smart Layby in December 2017 following receipt of complaints about the company, among which was a complaint from a customer who alleged that they had been charged over-inflated prices for goods.
9. Smart Layby co-operated with the Commission's investigation and voluntarily supplied information and documents. Smart Layby's directors also attended a voluntary interview with the Commission.
10. As a result of the Commission's investigation, it was established that:
 - 10.1 Smart Layby is a mobile trader selling consumer electronics door-to-door.
 - 10.2 Customers pay for goods by instalments using a contract that is a layby sale agreement under the FTA.
 - 10.3 Smart Layby began trading in April 2017.
 - 10.4 Smart Layby's sales agents use product brochures as part of the sales process.
 - 10.5 Smart Layby used two brochures: one from April 2017 and one from August 2017 (together **Product Brochures**).
 - 10.6 Page 4 of the Product Brochures used by Smart Layby is attached at **Attachment A** (page 4 of each brochure was identical).
 - 10.7 Smart Layby advertised five products at page 4 of the Product Brochures, among which were the following:
 - 10.7.1 a Virtual Reality Box for \$299 at the top right hand side of the page;
 - 10.7.2 an Android Smart Watch for \$499 towards the bottom middle of the page; and
 - 10.5.3 the words "Big Savings!" were in the middle at the bottom of page 4 of the Product Brochure.

- 10.8 The Virtual Reality Box and Android Smart Watch were available elsewhere at much cheaper retail prices:
- 10.8.1 the Android Smart Watch, advertised at \$499 in the Product Brochure, was available for USD \$14.99 (plus shipping) online at www.amazon.com (US) on 14 December 2017; and
- 10.8.2 the Virtual Reality Box advertised, at \$299 in the Product Brochure, was available for \$36.90 in store at a mainstream New Zealand retailer during December 2017.
11. Smart Layby responded to the Commission's concerns that Smart Layby's prices did not constitute "Big Savings!" by suggesting:
- 11.1 The "Big Savings!" claim referred only to the items immediately around the words. This would include the Android Smart Watch but not the Virtual Reality Box (which was at the top of the page).
- 11.2 The reference to "Big Savings!" referred to price savings compared to other mobile traders.
12. Smart Layby advised the Commission that it ceased making new sales on 20 November 2017 and that it resumed making inbound telephone (but not door to door) sales to existing customers on 15 February 2018.

The Commission's view

13. We consider that Smart Layby's conduct is likely to have breached sections 10 and/or 13(g) of the FTA.
14. We have reached this view because in our view the customers were likely to have considered that Smart Layby's representation of "Big Savings!" meant that they would save money by purchasing the Android Smart Watch at the advertised price. This was misleading because:
- 14.1 Smart Layby had not reduced the price of the Android Smart Watch.
- 14.2 The Android Smart Watch was advertised at a significantly higher price than what it was sold for elsewhere. The Android Smart Watch was advertised by Smart Layby at a price approximately 10 times more expensive than advertised elsewhere by a mainstream retailer.
15. In addition, it is likely that some consumers will have understood that the "Big Savings!" representation applied to all of the products on page 4 of the Product Brochures. This is because the claim is not clearly linked to any single item, and it does not appear on any other pages of the brochures. If consumers understood that the "Big Savings!" representation applied to all of the products on page 4, then Smart Layby will also have made a misrepresentation in respect of the price of the

Virtual Reality Box. This is because Smart Layby's advertised price for the Virtual Reality Box was approximately 8 times the price at which the item was available at a mainstream retail store and therefore no "Big Savings!" were to be had.

Next steps

16. We recommend that Smart Layby seeks legal advice and takes all steps necessary to ensure that it complies with its obligations under the FTA. We also encourage Smart Layby to regularly review its compliance procedures and policies.
17. While we will not be taking any further action against Smart Layby at this time, we will take this warning into account if this conduct continues or if Smart Layby engages 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 Smart Layby.
18. 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

19. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the FTA. The FTA prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the FTA

20. Only the courts can decide if there has actually been a breach of the FTA and impose penalties where the law has been broken. A company that breaches the FTA can be fined up to \$600,000 and an individual up to \$200,000 per breach.
21. 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

22. We have published a series of fact sheets and other resources to help businesses comply with the FTA 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 FTA.
23. You can also view the FTA and other legislation at www.legislation.govt.nz.

24. Thank you for your assistance with this investigation. Please contact [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely



John Lyall
Auckland Consumer Manager
Competition and Consumer Branch

SMART LAYBY Ltd

ULTRABOOK

Ultra thin 14" Laptop



Virtual Reality Box
(for 3.5" - 6.0" Smartphone)

Android Smart Watch

2 In 1 Selfie Stick + Powerbank

Action Camera

BIG SAVINGS!

Refer to www.smartlayby.co.nz for product details

Price tags: \$1599, \$1399, \$299, \$499, \$299

Icons: Windows 7, 14", 16GB, Quad Core, Dual Core, Android, Bluetooth, Wi-Fi, Email, Facebook, Calendar, HD 1080P