

**IN THE DISTRICT COURT  
AT ROTORUA**

**CRI-2012-063-004546  
CRI-2012-063-004462  
CRI-2012-063-004468  
& ors**

**COMMERCE COMMISSION  
Informant**

v

**HYEON COMPANY LIMITED and HAN YOUNG CHAE  
PREMIUM ALPACA NEW ZEALAND LIMITED, YUN DUK JUNG  
and BO SUN YOO  
DUVET 2000 LIMITED, HAN YOUNG CHAE  
and HYEON COMPANY LIMITED  
JM WOOL LIMITED and JONG MYUNG LEE  
Defendants**

Hearing: 6 August 2013

Appearances: A McClintock & L Mills for the Informant  
W Lawson for the Defendants

Judgment: 10 September 2013

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**RESERVE JUDGMENT OF JUDGE I B THOMAS**

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[1] The defendants are four companies and four individuals who have pleaded guilty to a large number of charges brought principally in respect to s 10 of the Fair Trading Act and with two charges in respect to s 13 of the Fair Trading Act. The companies are Hyeon Co. Ltd with director Han Young Chae, Premium Alpaca NZ Ltd and Yun Duk Jung and Bo Sun Yoo, Duvet 2000 Ltd with Han Young Chae and Hyeon Co Ltd admitting charges as parties to their offending and JM Wool Ltd and Jong Myung Lee. The charges are pursuant to s 10 that is to say misleading conduct

relation to goods, namely that “being in trade they engaged in conduct that was liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for purpose or quantity of goods”. The two charges in respect to s 13 are in respect to “false or misleading statements made whilst in trade and in respect to the supply of goods namely in relation to the composition of particular items”. The offending period is from 1 January 2010 to 25 August 2011.

[2] All proceedings arise from a Commerce Commission investigation into misrepresentations targeted at Asian tourists shopping for what they were told were New Zealand made Alpaca rugs, Alpaca duvets, Merino duvets and Southdown wool duvets. The defendant companies are either importers or suppliers of rugs to retailers that cater to the tourist market or the retailers of rugs and manufacturers of duvets themselves. The defendant individuals are officers or directors of the defendant companies and are charged as parties.

[3] The essence of the Commission’s allegations which the defendants admit is that the defendants misrepresented:

- (a) The country of origin of the Alpaca rugs; they were made in Peru, not New Zealand; and
- (b) The composition of the Alpaca, Merino and Southdown duvets; typically they did not contain any of the type of wools said to be in the duvets or on the occasions when they did contain some of it they did not contain as much of the particular type of wool as was represented.

[4] The misrepresentations varied from defendant to defendant but generally included misrepresentations:

- (a) On labels affixed to the rugs and duvets;
- (b) Made verbally by sales staff;
- (c) In brochures at point of sale.

[5] The misrepresentations were continuing and extensive over a 20 month period and resulted in revenue in the millions of dollars for many of the defendants. In terms of both the deliberate nature of the conduct and the scale of the offending the informant's view was that this case was among the most serious of its type being prosecuted by the Commission.

### **Background**

[6] Tourist groups visiting New Zealand from China, South Korea and Taiwan, among other places, are often conducted around the country by In-bound Tour Operators (ITO). Some of the ITOs are licensed by Tourism New Zealand but many including the one that brought tourists to the retailers involved in this case were not. ITOs purchase the right to conduct the tours from operators in the originating countries. ITOs then organised the travel and sightseeing of the tour groups whilst in New Zealand including paying expenses such as hotel and tour bus costs. ITOs recover their costs and make their profit from kick-backs they receive from businesses to whom they direct the patronage of their tour customers. With respect to the retailers at issue in this case the "commission" they paid for the privilege of hosting the captured market of these tourists was 55 to 70% of the price of the goods sold to the tourists.

[7] In general terms the importers imported Alpaca rugs from Peru, they serviced them in terms of making them presentable, cleaning and the like, and then placed labels on them indicating that they were New Zealand Alpaca rugs. Those rugs were sold to the retailers who then sold them to the tourists brought in by the ITOs. In respect to the duvets these were manufactured and sold with labels stating they were 100% pure Alpaca wool when in fact the Alpaca wool content was only 20% and 100% New Zealand Merino lamb wool when the wool content was not Merino. In addition one other company referred to there being Southdown wool duvets when in fact the wool content was not Southdown.

[8] The general process for the tours of these customers was that the ITO took the tourists to the Rotorua Agridome where tourists saw and interacted with live Alpacas as part of the farm tour. The ITOs then took their groups onto individual

retail premises where they received a welcome and an introduction speech from the host. Tourists are then shown the duvet manufacture process and taken to a showroom decorated with Alpaca rugs and woollen duvets. Sales staff further promoted the products and their quality by oral representations and the use of promotional material. Most showrooms had Eftpos or Credit card facilities. Tourists could either take their purchases with them or arrangements could be made to ship the goods to their home country. The reality is that what the tourists were buying of course were entirely false to the labels that they represented in that they were not New Zealand made but Peruvian made and it was not New Zealand Alpaca wool but Peru Alpaca wool and it was not Merino wool or Southdown wool.

[9] In a general way the suspicion could be raised that the ITO in fact was the instigator of a scheme which saw the fraud perpetrated in terms of the New Zealand labels and the use of non-New Zealand materials when the representation was that they were New Zealand materials, so that the groups of tourists were really led like lambs to be fleeced from the softening up process starting in the Agridome and proceeding to the retail outlet which was only unlocked for sales to them where they paid more than they should have for products which were not true to label. The ITOs were not of course charged with any charges and although one has suspicions about their involvement in such a wide scale fraud given the turnover of many millions of dollars over the various companies it is not something that of course can be taken into account in assessing penalty for the individual companies, either retailers, importers, or the directors as parties.

[10] The Commission made an investigation from 2011 as a result of complaints made by tourists which led to the charges laid and admitted by the defendants.

[11] I will turn to deal with the various aggravating factors relied upon by the Commission and also consider the defence response at that time before coming to a view on those aggravating factors. There is no doubt that the general principles and purposes are appropriate as well and the Commission relies upon accountability, deterrence, and also the need to impose a penalty near the maximum for the offending. The penalties for the companies' charges have a maximum of \$200,000 and for the individuals \$60,000. Obviously given the large number of offences that

each faces a potential starting point in the millions of dollars. Once I have dealt with the aggravating factors then I will deal with each company and individual separately noting Mr Lawson's complaint at the hearing that there appeared to be generalisation and a broad brush approach and the importance he placed on stressing the individual cases and their differences.

[12] The Commerce Commission relied on an assessment of the factors to be taken into account when imposing penalties which was stated by Justice Greig in *Commerce Commission v LD Nathan & Co. Ltd* [1992] NZLR 160. Those factors are:

(a) The objectives of the Act. The Act is designed to facilitate fair competition. The submission is made that traders who conduct business fairly and lawfully should not be disadvantaged by those who do not with the view that the defendant's conduct undermined fair competition and unfairly disadvantaged other traders. The defence submits there is no evidence about quality for example of the rugs and therefore there is nothing upon which a court could determine that the principal offenders are not playing a level playing field. It seems to me that the fair trading aspect must be a neutral factor.

(b) The importance of any untrue statement made. Here the Commission relies upon the premium that attaches to New Zealand made products in the tourist shopping tour market. The same could be said for duvet products purportedly containing Alpaca, Merino or Southdown wool. The Commission's evidence suggested that the rugs which the defendants were selling were four to five times more expensive than the equivalent rugs sold by other retailers in Rotorua. It follows that the untrue representations about the origins of the Alpaca products and contents of duvets were very important in the eyes of the target market. The Commission submits therefore the defendants were aware of that and used it to their advantage. On the contrary the defendant submits that whilst the labelling was misleading the labelling had minimum importance. The retailers buying the rugs were a specific set of retailers and involved with a specific set of customers. The suggestion is

made that the rugs would have been purchased even if the labelling had not been misleading as the rugs were of very high quality. There is of course no evidence at all of that and there is no reason to suspect that they were any better than the rugs sold locally at a quarter of the price. In the court's view the untrue statements were very important in achieving sales at a high level and also at a higher price than was merited.

(c) The degree of wilfulness or carelessness involved in making such a statement. The Commission's view is that they were deliberate and systematic with differences of wilfulness between defendants. Again the defence takes the contrary view on the basis that the submission is made they were neither deliberate nor intentional conduct. No doubt there are different levels here with the respective defendants which will be considered in due course but nonetheless it is clear to the court that there was a degree of wilfulness and carelessness involved in making such untruthful statements and misrepresentations.

(c) The extent to which the statements in question depart from the truth. The statements as to the origins of the Alpaca products depart entirely from the truth and the statements as to wool content of duvets depart to a significant extent from the truth. The 100% pure Alpaca wool duvets contained only 20% Alpaca wool and 100% New Zealand Merino lamb wool duvets did not in fact contain Merino wool nor did the duvets represented to contain Southdown wool contain any Southdown wool. The defendants simply say that the labelling was not a marked departure from the truth in respect to the rugs for the importers because of the amount of work carried out on the rugs before sale. That is not accepted by the court. This was a major fraud by any description when importing and changing the description of the origin, and in selling items whose composition was markedly different to unsuspecting captured customers.

(e) The degree of their dissemination. They were disseminated in Auckland and Rotorua both major tourist destinations and then through customer word of mouth through Asia. For its part the submission for the

defence was made that the dissemination was limited. This was on the basis that the tourists were part of specific tour groups and that the general population of New Zealand and vast majority of tourists would not have had access to these rugs to purchase given that the shops were open for these particular tours. The defence says that it is the ITOs who are primarily responsible for disseminating the misinformation of kiwi products. Be that as it may nonetheless it is clear that as a result of complaints the investigation was commenced in 2011 by the Commerce Commission which led to these charges revealing fraud on a very large scale. The dissemination cannot be underestimated in my view.

(f) Prejudice to consumers. The informant submits there was significant prejudice because of course the organised shopping groups visiting the defendants' shops supplied by other defendants paid up to four times more than the actual value of Alpaca rugs and overpaid for inferior duvets. Again the defence submits that because of the limitation of the market the harm is limited whilst conceding that the consumers are purchasing products they understand to be made in New Zealand when they are not. The submission was made that the reality of the industry is that if the rugs were labelled correctly the tourist consumer would still be unable to shop elsewhere as the tourist were only taken to the outlet that paid commission. That is putting it about-face in my view. If they had been labelled correctly they should have paid a quarter of the price and they had no opportunity of going elsewhere. There is significant prejudice to consumers in my view.

(g) Whether any and if so what efforts have been made to correct the statements. The informant's view is that they did not make efforts to correct any false statements and it was not until complaints were made and the search warrant executed by the Commission that the conduct was stopped. Without those complaints it is likely the conduct would have continued with the resulting harm to the consumers. The defendant effectively relies on the efforts made by the defendants once having been made aware of the true situation to correct it. This will be considered individually.

[13] There is another factor and that is the indication from the Commission about the substantial revenues and/or profits made as a result of this fraudulent trading and there are submissions made by the defence about a lack of profit in respect of some of the defendants which should be reflected in a lower penalty. Undoubtedly the figures estimated by the informant are gross figures but nonetheless reflect significant revenue for a number of the people involved all of which is based on gross misrepresentations. The amount of profit therefore is of limited importance. The defendant acknowledges there should be a deterrent penalty but nonetheless makes individual submissions in respect of each of the separate defendants. Indeed the submission is made that a significant deterrent is not warranted and further that financial benefits of trading within a niche market made it a limited benefit.

[14] In general therefore it seems to me the informant has established the aggravating factors to the degree that has been indicated. I am satisfied that the penalties that should be imposed must be closer to the maximum rather than the lower figure suggested by the defence counsel for the accumulation of those aggravating factors always bearing in mind the totality principal.

[15] There has been a general discussion about mitigating factors and certainly there has been great co-operation from the defendants together with early guilty pleas. In the *Top Sky* decision there was an allowance of 30% for discount for those factors. In each case Mr Lawson seeks a higher discount and that will be considered in each case. Generally speaking however 30% appears to be a fair discount in all of the circumstances subject to any final determination for individuals.

[16] Part of the materials provided by the informant amounted to a victim impact statement from Tourism New Zealand. This was a five and a half page statement which indicated the nature of ITOs and their organisation of tours with a number of remarks about why such organised activities can seriously undermine New Zealand's good reputation as a holiday destination when they are unsatisfactory. It refers to a number of complaints received and feedback from visitors, and these concerns leading obviously to the investigation by the Commerce Commission. Their particular concerns were of course items being sold as made in New Zealand when they were not, various certificates pertaining to the official credentials when they



were not authorised to do so and in particular the over-charging on the rugs and other items. Further there were complaints about quality received. New Zealand Tourism's view was that the Chinese national visitor market is important to New Zealand and spoke of the number of tourists and the potential for damage if such schemes continued. The ultimate comment was that once the Commerce Commission investigations discovered the breaches then Tourism New Zealand was concerned that this would reflect negatively on New Zealand's reputation in China as the desirable destination.

[17] I then turn briefly to consider the decision of Judge Dawson in the *Top Sky* sentencing remarks which was delivered on the 28<sup>th</sup> March this year, the companies there involved being in the same category as those being sentenced today. His Honour was of the view that the offending was at the higher levels given the acceptance of the aggravating features previously referred to in this decision and submitted by the informant as His Honour put it "the defendants behaved in way which was clearly intended that they dupe their customers through misrepresentations they knew to be false with the intention of profiting from those false representations". His Honour therefore started at the higher end of the scale of fines although at the lower end of the informant's range. His view was that the party directors should be dealt with individually with fines as well.

[18] I turn then to consider the individual defendants.

### **Hyeon Company Limited and Han Young Chae**

[19] Hyeon pleaded guilty to 10 breaches of s 10 of the Fair Trading Act for affixing labels to Alpaca rugs that represented they were made in New Zealand when they were not. It faces 10 breaches of s 10 as a party to offending by Duvet 2000 Ltd for offering for sale Alpaca rugs with the labels that represented they were made in New Zealand when they were not, and 10 breaches of s 10 of the Fair Trading Act as a party to offending by Wild Nature Ltd for offering for sale Alpaca rugs with labels that represented they were made in New Zealand when they were not.

[20] The director Han Young Chae is charged with 10 breaches of s 10 as a party to offending by Hyeon for affixing labels to Alpaca rugs that represented they were made in New Zealand when they were not. The charges in respect to Duvet 2000 relate to offering for sale to organised tourist shopping groups Peruvian Alpaca rugs bearing labels that represented the rugs were made in New Zealand when they were not. The charges were over the period 1 January 2010 to 25 August 2011.

[21] Hyeon is based in Rotorua, it imports Alpaca rugs and supplies them to retailers including Duvet 2000 and JM Wool. As indicated Mr Chae was the sole director of Hyeon and also director of Duvet 2000. Hyeon imported over 3,500 Alpaca rugs into New Zealand between June 2010 and July 2011 with the declared value of \$800,000. Sales invoices between January 2010 and August 2011 show sales amounting to \$2,136,935 and a revenue from 5 January 2010 to 22 August 2011 approximately 3.4 million dollars. The Alpaca rugs retained for between \$4,000 and \$6,000 a rug and at times as high as \$8,000. These prices were demanded on the premise that tourists would pay a premium for product perceived to be made in New Zealand. By comparison Peruvian Alpaca rugs sold by other retailers in the Rotorua area sell for between \$1,000 and \$1,600. The importer services the rugs which arrive in New Zealand from Peru by cleaning and ensuring they are up to an acceptable standard and then re-labelling with the New Zealand label to indicate that they were made in New Zealand.

[22] Mr Chae was interviewed in September 2011 and admitted that the company had imported rugs from Peru since 2000 and confirmed that the rugs were serviced with tear repair, brushing the placement of bad wool areas, dusting, cleaning and treatment for sheen of wool. In addition the labels 'Made in Peru' were removed and backings on all rugs as well as labels that stated 'Alpaca New Zealand 100% baby Alpaca proudly made in New Zealand by Alpaca New Zealand'. Those were sold on to retailers who sold them to tourists as a "made in New Zealand" product. Hyeon imported rugs in its own right as well as on behalf of other traders including Duvet 2000. All rugs went to Hyeon's factory and underwent the same servicing process for which the retailers were charged a base fee of \$200. All rugs were falsely labelled as to country of origin. Mr Chae said that he thought the servicing carried out on the rugs was sufficient to mean those rugs were made in New Zealand.

[23] The informant's view was that whilst there was an absence of proper financial records they established that this was a very substantial business all of which was premised on the fact that these rugs were only desirable to the retailers because of the false labelling.

[24] The Commission said that Hyeon's conduct as one of the two main rug importers should be aggravated by its extensive distribution of rugs given that it imported and sold nearly 10,000 rugs. This was more than a fellow defendant Premium Alpaca, in fact three times, and its representations were more serious than Premium Alpaca's. Accordingly the Commission submitted that the appropriate starting point for Hyeon was between \$150,000 and \$170,000. Mr Lawson for the defendant had a different view. I have dealt with his general criticisms of the features relied upon by the Commission and indicated my view on that. The first point that he makes really is that the first defendant believed it could legitimately label the rugs as made in New Zealand due to the work it carried out on the imported rugs. It is hard to accept quite frankly and really none of those comments affect my consideration of the seriousness of the situation in respect to Hyeon. The submission is made that the starting point is between \$40,000 and \$50,000, a considerable difference from the informant's view. In addition a greater discount than 30% is sought for what it submits was the extremely good co-operation with the authorities, and lack of knowledge that it was breaching the Act. The indication was that it was willing to accept responsibility and change its behaviour accordingly. Labels have been changed and the defendant has liaised closely with the informant to ensure no further misrepresentation could occur. None of that persuades me that a discount of greater than 30% is appropriate.

[25] The other matters raised of course were the financial circumstances of the defendant. The indication is that the defendant ceased trading on the 23<sup>rd</sup> June 2012. So far as the totality to principle is concerned the court must not impose a level of fine out of proportion to the gravity of the overall offending. On this basis the overall criminality must be considered rather than the number of charges because it is a continuing course of conduct. In addition the submission is made that the party charges in respect to the director Mr Chae are linked to the principal offence of the labelling. In those circumstances the submission is made that the defendant Han

Young Chae should be convicted and discharged. I note the company has ceased trading but in the absence of any other financial information I do not see the need to reduce any penalty imposed.

[26] In the circumstances I take a different view from defence counsel as to the gravity of this offending and I fix the starting point for Hyeon at \$150,000 giving them a credit of 30% as indicated which amounts to \$45,000. Hyeon is convicted and fined \$105,000 on information 02301 and convicted and discharged on the remaining informations.

[27] In respect to the director, Han Young Chae, I am satisfied that there is sufficient personal liability here which is over and above the liability of the company and on that basis there should be an individual penalty imposed, particularly because the labels contained the most serious misrepresentations as to country of origin. In the circumstances I again take the lower limit of \$35,000 suggested by the informant with a credit again of 30% to Mr Chae, a deduction of \$10,500, leaving a fine of \$24,500. On that basis Mr Chae is convicted and fined \$24,500 on information 02183 and convicted and discharged on the remaining informations in relation to Hyeon.

### **Premium Alpaca New Zealand Limited, Yun Duk Jung and Bon Sun Yoo**

[28] The company and each director have pleaded guilty to charges of 10 breaches of s 10 for affixing labels to Alpaca rugs that represented they were made in New Zealand when they were not, with the directors being charged as party to those label affixing offences.

[29] This is a similar situation in terms of the facts as to Hyeon except the numbers are smaller. Again the company imported rugs, they serviced them and sold them to retailers with a label on it which said 'Premium Alpaca New Zealand naturally fine and soft 100% baby Alpaca fur rug'. They imported 3,214 rugs between June 2010 and July 2011 the majority of which being a medium or large size at a cost of around \$400 to import the rugs and a further \$200 to service it, the alleged profit was approximately \$90,000. The directors confirm that they serviced

the rugs, changed the labels and sold most of their rugs to JM Wool and Wild Nature which were then predominantly on-sold to tourists. Mr Yoo was in charge of importation and marketing and Mr Jung was in charge of the servicing of the rugs. Again their profitable business depended upon the market for falsely labelled New Zealand made Alpaca rugs. Their involvement is less serious to that of Hyeon's given the numbers involved and the representation is not as serious.

[30] The informant submitted the appropriate starting point was for the company between \$100,000 and \$120,000 with starting points for the directors between \$15,000 and \$20,000. Mr Lawson for the defendant made much of the fact that the label reflected the company name which in fact was Premium Alpaca New Zealand Limited and indeed provided a label to indicate that. However this is a strict liability offence which the company and directors have admitted. Mr Lawson made much of the small nature of this business and the involvement of the two directors as relatively small businessmen. Again he sought a greater discount for the co-operation but again I see no reason to depart from the 30% addition. The indication is that the financial position of the defendants is not great with a small amount of money in its bank account and the two directors being young and inexperienced with limited liquid and property assets.

[31] So Mr Lawson submitted for the company that a starting point of between \$30,000 and \$35,000 would apply. In respect to the directors again the submission is made that the directors should not receive a penalty and that the company should be the sole recipient of punishment. There is a submission that the directors have no realisation of their obligations under the Act or that the labels could be misleading, although the suggestion is made that they relabelled the rugs with their company name. Of course that is not correct because there is nowhere the indication that it is a limited company being referred to. A suggestion is made that they have been naive. Again in my view this is serious offending and part of a fraudulent course of conduct which must be condemned. In my view the starting point must be on the high range and I fix that at \$80,000 for the company. I do give a 30% discount which is \$24,000 and on that basis the company is convicted and fined \$56,000 on information 02102 and convicted and discharged on its remaining informations.

[32] In respect to the two directors I accept there is some merit in the argument of totality of offending and a double accounting but nonetheless there must be some recognition of the individual responsibility that these men had to face in terms of this offending and on that basis I fix a starting point of \$10,000 in respect of each of them, each with a 30% discount which is \$3,300, making a total fine of \$6,700 in respect of each of them. On that basis Mr Yoo is convicted and fined \$6,700 on information 02142 and convicted and discharged on the remaining informations. Mr Jung is convicted and fined \$6,700 on information 02122 and convicted and discharged on the remaining informations.

### **Duvet (2000) Ltd**

[33] This company operated a tourist shop in Rotorua selling Alpaca rugs and duvets to tourists. The rugs were purchased from Hyeon so that they knew that they were imported. Their staff unfortunately made a number of comments to shoppers which included “this ... is definitely a special product of New Zealand”, “there is a snow Alpaca, it is a New Zealand specialty” and “no snow Alpaca and domestic china, they don’t have in other countries only in New Zealand”. This according to the informant indicates how important the value was of the product being New Zealand made. It was reflected of course in the price difference referred to before between falsely labelled rugs and Peruvian rugs. Peruvian rugs selling for between \$1,000 and \$1,600 and the defendant selling the falsely labelled rugs for \$4,000 to \$6,000. It is plain that given that 4,000 rugs were imported, that revenues of at least \$16 million have been achieved.

[34] In addition Duvet 2000 also manufactured and sold duvets that were falsely labelled as to their contents. They sold duvets which were labelled as 100% pure Alpaca wool when in fact the Alpaca wool content was only 20% and also duvets labelled 100% New Zealand Merino lamb wool when in fact there was no Merino wool in it. The suggestion by representatives was that they did not know about that. The informant regards that explanation as not credible given that the company purchased the wool that it put into the duvets that it manufactured. It had to know it was purchasing a regular bonded wool product instead. Again the informant says that given the numbers sold which could have been as much as 20,000 odd duvets

again a very high revenue was achieved. There would have been discounts, free gifts and the like but nonetheless from both the rugs and duvets this was a very significant business. On behalf of this company Mr Lawson again relied on the suggestion that because Hyeon which sold the rugs to Duvet had the belief that what it did brought the product under a New Zealand label, Duvet had the similar honestly held belief. That is not accepted. Similarly with the duvets it is hard to accept that the principal defendant did not realise the quantities of products in the duvets given they purchased the wool. So in the court's view this was serious dishonest offending at a high level.

[35] In respect to mitigating circumstances again the defendant relies upon their co-operation with the investigation and their co-operation in terms of these prosecutions. They had made changes to labels, have accepted responsibility and changed their behaviour. There is no financial information but a reminder that the fine must not be oppressive. Again the submission is made that the number of charges are misleading and that because of continuous offending the level of fine should not be out of proportion to the gravity of the overall offending. The submission is made that in respect to the rugs there should be a starting point of between \$40,000 and \$45,000 and in respect to the duvets on an analysis of the authorities a starting point of between \$70,000 and \$80,000.

[36] By way of contrast the Commission's submissions were that the fines for the origin offending of the rugs should incur a starting point of between \$150,000 and \$170,000 and in respect to the composition of the duvet offending should be between \$180,000 and \$200,000. In other words the range of \$300,000 to \$330,000. This compares with the \$110,000 to \$125,000 suggested by Mr Lawson.

[37] In my view there was significant revenue for both the Alpaca rugs and the falsely labelled duvets. In my view the starting point must be at the higher end of the range of fines imposed against others but perhaps at the lower end of the range suggested by the informant. On that basis I fix the starting point at \$300,000 for all of the offending including duvets and rugs. Although again Mr Lawson has made the submission for a greater discount than 30% I do not see any good reason to

depart from that. On that basis Duvet 2000 Ltd is convicted and fined \$200,000 on information 02203 and convicted and discharged on the remaining charges.

### **J M Wool Ltd and Jong Myung Lee**

[38] J M Wool is another Rotorua based retailer of rugs and duvets. Mr Lee is the director of J M Wool. He is also the sole director of the main ITO that this is the showrooms of J M Wool.

[39] In respect to the rugs J M Wool purchased from both Premium Alpaca and Hyeon Company after they had been labelled at New Zealand made. Mr Lee admitted he knew the rugs were imported from Peru as he controlled the day to day activity at J M Wool and made the buying and selling decisions. A booklet found that the company also represented that its Alpaca rugs were made in New Zealand. The Commission had no information about how many rugs were purchased or sold, but again it was likely to have been a revenue in the millions of dollars.

[40] In addition J M Wool also manufactured and sold duvets that were falsely labelled as to their contents. He sold duvets with labels stating they were "100% pure Alpaca wool" when the content was only 20%. In addition 100% Merino lamb wool duvets did not contain any Merino and Southdown wool duvets which did not contain any Southdown wool. In addition a promotional booklet also represented the duvets contained Merino wool. Mr Lee accepted he knew that the duvets were not labelled correctly as to wool content, that the Alpaca wool content was 20%, and that there was no Merino or Southdown wool in the duvet wool fibre. The estimation of the Commission is that he could have made approximately 14,000 odd duvets which would have given him profits of around two million dollars. There are no specific figures of course. The Commission regards J M Wool's offending as serious as indeed also the offending of Mr Lee. Mr Lawson relies upon his general submissions in respect of this company but given the actual knowledge of Mr Lee they cannot take him very far. In addition the information is offered that the trading deficit in the March 2011 year was a deficit of in excess of \$300,000. Again the defendant relies upon the actions taken once the investigation commenced and the efforts made not to breach the Act. The submission is made that in respect to the



duvets this was careless behaviour but given the acknowledgement of knowledge on the part of Mr Lee that is again hard to accept. On the basis of his submissions the defence refers to authorities and says the starting point should be between \$30,000 and \$35,000 in respect to the labelling of the Alpaca rugs. In respect to the duvets a starting point of between \$85,000 to \$95,000. Again the submission is made that the director should not receive a penalty. However it is clear Mr Lee was making money coming and going given that he was a director of the ITO that was making the major profit out of the sales by taking the high commission of between 50 and 70%. His criminality is certainly something that should be met with a penalty. So far as deduction for the guilty plea and co-operation again there is nothing that persuades me to move from the 30% discount which is available to them.

[41] In the circumstances my view of this offending is that it is serious dishonesty. Again it must be reflected in the penalty and I take a starting point of \$260,000 for all of the offending of J M Wool Ltd. Giving a credit of 30% this comes to a fine of \$182,000 which is imposed on charge 02382 with a conviction and discharge on each of the other charges.

[42] In respect to Mr Lee the suggestion of the Commission is that a fine of between \$30,000 and \$40,000 should be imposed. As indicated Mr Lawson submitted either conviction and discharge or a starting point of between \$10,000 and \$15,000. Again given my assessment of his criminality it is appropriate to take a starting point of \$30,000 and with a 30% discount Mr Lee is convicted and fined \$21,000 on charge 3500001 and convicted and discharged on each of the other charges.

### **Summary**

1. Hyeon Company Limited

Convicted and fined \$105,000 on 02301

Convicted and discharged on all other informations.

2. Han Young Chae

Convicted and fined \$24,500 on 02183

Convicted and discharged on all other informations.

3. Premium Alpaca New Zealand Limited

Convicted and fined \$56,000 on 02102

Convicted and discharged on all other informations.

4. Yun Duk Jung

Convicted and fined \$6,700 on 02122

Convicted and discharged on all other informations.

5. Bon Sun Yoo

Convicted and fined \$6,700 on 02142

Convicted and discharged on all other informations.

6. Duvet 2000 Limited

Convicted and fined \$200,000 on 02203

Convicted and discharged on all other informations.

7. J M Wool Limited

Convicted and fined \$182,000 on 02382

Convicted and discharged on all other informations.

8. Jong Myung Lee

Convicted and fined \$21,000 n 3500001

Convicted and discharged on all other informations.

A handwritten signature in cursive script, appearing to read "I B Thomas".

I B Thomas

District Court Judge