

1 September 2015

Amalgamated Holdings Ltd

C/- [REDACTED]
[REDACTED]
[REDACTED]

Dear Mr [REDACTED],

Fair Trading Act 1986: Warning

The Commerce Commission has been investigating Amalgamated Holdings Ltd (Event Cinemas) under the Fair Trading Act. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that during its promotion of the “Win \$1 million promotion” (the promotion) Event Cinemas offered prizes which it did not intend to provide as offered. In the Commission’s view, Event Cinemas’ conduct is likely to have breached section 17(a) of the Fair Trading Act.

The investigation

During our investigation, the Commission considered a complaint alleging that consumers entering the promotion were not entering a draw to win \$1 million as advertised, rather they were entering a draw, where the winners of that draw were provided an opportunity to play a game of chance where the odds of winning the \$1 million prize were 1 in 1000.

During our assessment of the promotional terms, we also noted and assessed the inclusion of the representation that “every finalist will win a year’s worth of movies”.

Section 17(a) of the Fair Trading Act states:

No person shall,—

(a) 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;

offer gifts, prizes, or other free items with the intention of not providing them or of not providing them as offered.

Event Cinemas responded to the Commission’s enquiries by providing information, through its solicitors, relating to the development and performance of the promotion. Event Cinemas advised that in its view, the promotion did not contain the potential to breach section 17 of the Fair Trading Act.

The Commission's view

In this case, the Commission's view is that Event Cinemas' conduct is likely to have breached the Fair Trading Act.

We have reached this view because consumers were not provided sufficient information, in an appropriate location, to understand that winning the headline prize of \$1 million would require not only succeeding in being selected as a winner of the draw they had entered, but also required the successful completion of a second tier game of chance (the Envelope Selection).

The intended prizes eligible entrants in the 5 draws would stand a chance to win from the random prize draw, were the entitlement to participate in the Envelope Selection and the associated travel to and accommodation in Sydney valued at AU\$ 2,700. This intended prize clearly differs from the offered prize of "Win \$1 Million - Buy Tickets Online and You Are In The Draw" or "Buy Tickets Online to Enter" and the representation is likely to have been a breach of section 17(a) of the Fair Trading Act.

In addition, Event Cinemas represented that "every finalist will win a year's worth of movies". Again, this was not a prize which Event Cinemas intended to offer. In reality, any finalist who won either the \$1 million grand prize or a \$10,000 major prize in the game of chance did not receive a year's worth of movies.

As Event Cinemas did not intend to provide every finalist with a year's worth of movies, this representation is likely to have been a breach of section 17(a) of the Fair Trading Act.

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

We advise and encourage your client to regularly review its compliance procedures and policies, in particular with regards to prize offerings made and the actual processes and prizes intended to be provided.

While we will not be taking any further action against Event Cinemas at this time, we will take this warning into account if this conduct continues or if you engage 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 Event Cinemas.

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

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

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

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

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.

You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact me on 04 924 3635 or by email at zeb.walker@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Zeb Walker
Investigator – Competition Branch

