

31 August 2018

[REDACTED]
NZ Senior Corporate Counsel
Slingshot Communications Limited

AUCKLAND
Level 13, 55 Shortland Street
PO Box 105-222, Auckland 1143
New Zealand
Tel: +64 4 924 3600

www.comcom.govt.nz

By email only: [REDACTED]

Dear [REDACTED],

Fair Trading Act 1986: Warning

1. The Commerce Commission (Commission) has been investigating Slingshot Communications Limited (Slingshot) under the Fair Trading Act 1986 (the Act). We have now completed our investigation and are writing to you to alert you to our conclusions.
2. In summary, the Commission considers that Slingshot made a false or misleading representation to a consumer about the need for consumers to combine their landline and broadband services from a single provider. Specifically, Slingshot stated that it was due to a decision by the Commission that consumers were not allowed to have landline and broadband services from two different providers. In the Commission's view, Slingshot's conduct is likely to have breached section 13(h) of the Act because there is no such Commission decision, making Slingshot's representation to the consumer false.
3. A warning is not a finding of non-compliance; only the Courts can decide whether a breach of the law has occurred.¹
4. 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 the Act.

The investigation

5. During our investigation, the Commission considered a complaint stating that during a telephone call to Slingshot, a consumer was told that they could not have landline and broadband services from two separate providers because of a decision made by the Commerce Commission.
6. The complaint was supported by a recording of the telephone call between the consumer and Slingshot.
7. Slingshot responded to the Commission's enquiries by stating that its representative made an error when speaking to the consumer. Slingshot explained that it is its own

¹ Commission's published *Enforcement Response Guidelines* at [41].

business decision to not offer consumers the ability to have landline and broadband services from different providers, rather than because of any decision made by the Commission.

The law

8. Section 13(h) of the Act states:

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, make a false or misleading representation concerning the need for any goods or services.

The Commission's view

9. In this case, the Commission's view is that Slingshot's conduct is likely to have breached the Act.
10. We have reached this view because the Commission has not made any decisions as a regulator which restricts consumers from having landline and broadband services from different providers. Accordingly, Slingshot's representation to a consumer of the need to have broadband and phone services from the same provider, because of a Commission decision, was false. Further, having issued Slingshot with compliance advice about a similar representation in March 2015, we are concerned that this conduct has continued.
11. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.
12. While we will not be taking any further action against Slingshot 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 Slingshot.
13. This warning letter is public information and will be published on our website. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.

The Commission's role

14. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the 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

15. Only the courts can decide if there has actually been a breach of the Act. The court can impose penalties where it finds the law has been broken. A company that

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

16. 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

17. We have published a series of fact sheets and other resources to help businesses comply with the 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.
18. You can also view the Act and other legislation at www.legislation.co.nz.
19. Thank you for your assistance with this investigation. Please contact Zeb Walker on 04 924 3635 or by email at zeb.walker@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Kirsten Mannix
Wellington Consumer Manager