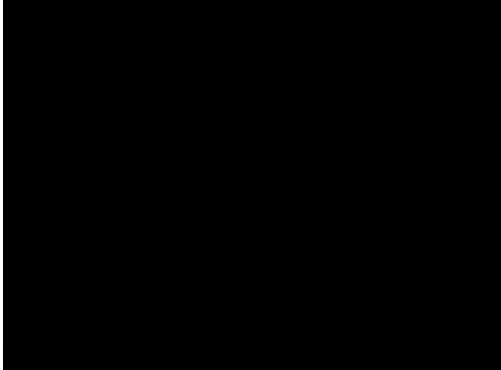


19 November 2018



Official Information Act #18.098 – J-Frame Investigation

1. We refer to your letter of 24 October 2018 concerning the Commerce Commission (the Commission)'s investigation into Juken New Zealand Limited (Juken).
2. As a starting point, we think it would be useful to outline the remit of the Commission and the remit of the Ministry of Business Innovation and Employment (MBIE).

Our Role

3. The Commission is an independent Crown Entity with a remit set out in statute. The Commission is responsible for enforcing and promoting compliance with laws that promote competition in New Zealand, including the Fair Trading Act 1986 (the Act). The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.
4. Any person can pursue a private Court action utilising the Act if they are able to substantiate a claim. Whilst the Commission has the power to bring proceedings in the event that there appears to be a possible breach of the Act, only the courts can decide if there has actually been a breach.

MBIE

5. MBIE is the agency responsible for investigating faulty building products and building methods that do not comply with the performance or safety requirements of the Building Code.
6. Further information about the process a complainant should follow in notifying MBIE about a faulty building product appears at this webpage:
<https://www.building.govt.nz/building-code-compliance/warnings-and-bans-on-building-products/>.

Our Investigations

7. The Commission has previously investigated whether Juken's labelling of the J-Frame product may have breached the Act.
8. The Commission has also investigated an allegation that J-Frame samples were specially treated for the purpose of SCION and AsureQuality testing, with the samples tested not representative of J-Frame sold in the market.
9. J-Frame is a product that has received CodeMark approval. The CodeMark Scheme Rules¹ set out the evaluation methodology that a CodeMark certification body will utilise in assessing a product.²
10. The Commission's investigation has not extended to ascertaining whether the evaluation methodology utilised by the certifying body, AsureQuality, was appropriate. Our investigation has also not assessed the durability and performance characteristics of Juken's J-Frame product or determined whether the product is fit for purpose.
11. To the extent that you have a complaint about whether CodeMark should have been granted, please address your complaint to AsureQuality, the Joint Accreditation System of Australia and New Zealand (JAS-ANZ), or MBIE.

Official Information Act Request

12. In your letter, you ask for the following information about our investigation into Juken. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Paragraph 4

13. Whether the Commission carried out its own testing of J-Frame samples collected from the market place, and if so:
 - 13.1 which retail stores and/or building sites and in what geographic locations were the samples collected from;
 - 13.2 how many and which testing laboratories were the samples sent to for testing;
 - 13.3 what tests were carried out; were they colourimetric tests or titration tests or both; and
 - 13.4 what were the results from the laboratory tests that were carried out by the Commission.

¹ Version 2009.1, 27 March 2009

² See Appendix 1: 2.2.1

Paragraph 9

14. Whether an email from a M BIE representative advising members of the NZS3640 Committee not to co-operate with the Commission's investigation unduly hindered the investigation.

Paragraph 10

15. Whether the Commission has received advice subsequent to the compliance advice letter that the J-Frame product is now correctly labelled and complies with NZS 3640 and AS/NZS 1604.4 and the Act.

Paragraph 11

16. Whether the Commission has rescinded the previous advisory letter to Juken regarding labelling of J-Frame.

Our response*Paragraph 4*

17. The Commission did not carry out its own testing of J-Frame samples.

Paragraph 9

18. The Commission does not believe that the email sent to the NZS3640 Committee unduly interfered with its investigation. The Commission has authority under section 47G of the Act to require any person to supply information which we consider is necessary or desirable.

Paragraph 10

19. The Commission has not received advice that the J-Frame product is now correctly labelled and complies with NZS 3640 and AS/NZS 1604.4 and the Act. The Commission anticipates informing parties the outcome of its investigation into the current J-Frame labelling shortly.

Paragraph 11

20. The Commission has not rescinded the previous advisory letter to Juken regarding the labelling of J-Frame.

Further information

21. 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. You can also view the Act and other legislation at www.legislation.co.nz.
22. Please note the Commission may publish this response to your request on its website. Personal details will be redacted from the published response.

23. If you have any questions in regards to this request, please do not hesitate to contact us at uia@comcom.govt.nz

Yours sincerely

Hilda Wadham
Acting OIA Coordinator