

5 April 2017

Save My Bacon Limited
DJCA Limited
Level 3
50 Victoria Street
Central
Christchurch 8013

ref: 12.3/15999

By post and by email to: [REDACTED]

Attention: [REDACTED]

Dear [REDACTED]

Credit Contracts and Consumer Finance Act 2003: Warning

As you know, the Commerce Commission (Commission) has been investigating the conduct of Save My Bacon Limited (Save My Bacon) under the Credit Contracts and Consumer Finance Act 2003 (CCCFA). We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that Save My Bacon is likely to have breached section 17 of the CCCFA by failing to disclose to borrowers key information applicable to consumer credit contracts as set out in Schedule 1 of the CCCFA.

After weighing up the factors set out in our Enforcement Response Guidelines¹, we have decided to conclude this investigation by issuing this warning letter.

The investigation

On 9 May 2016, the Commission obtained a copy of Save My Bacon's Loan Agreement and Disclosure Statement (**Disclosure Statement**) as part of Save My Bacon's response to the Commission's request for documents dated 7 March 2016.

We decided to investigate Save My Bacon after reviewing the Disclosure Statement because it appeared not to comply with the CCCFA requirements.

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

During our investigation, the Commission considered information provided by Save My Bacon and reviewed sample copies of contracts for Save My Bacon's consumer loans (**consumer credit contracts**).

The information that we gathered established to our satisfaction that:

- Save My Bacon only operates online, via its website: www.savemybacon.co.nz.
- Save My Bacon offers short-term loans for between 2 to 42 days.
- Save My Bacon caps its interest rate charges:
 - If the loan is for a term of less than or equal to 31 days, interest is capped at 60 days (or 45 days if the loan is in default or hardship).
 - If the loan is for a term of more than 31 days, interest is capped at 120 days (or 90 days if the loan is in default or hardship).
- Between 6 June 2015 and 12 May 2016 (**the relevant period**) Save My Bacon entered into [REDACTED] consumer credit contracts (relevant consumer credit contracts).
- The Disclosure Statement provided to customers when entering into the relevant consumer credit contracts did not include all of the key information applicable to the contracts as set out in Schedule 1 of the CCCFA.
- The missing key information was otherwise available at all times, during the relevant period, on various pages of Save My Bacon's website.
- Save My Bacon revised its Disclosure Statement, to include the missing key information, from 13 May 2016.

The Commission's view

In this case, the Commission's view is that Save My Bacon was likely to be in breach of section 17 of the CCCFA during the relevant period.

Section 17 of the CCCFA requires lenders to provide borrowers with disclosure of key information applicable to the loan before the loan is entered into. A list of potentially applicable key information is set out in Schedule 1 to the CCCFA.

The disclosure statements in the relevant consumer credit contracts which we reviewed did not comply with section 17 because they did not disclose the following:

- the borrower's right to apply for changes on the grounds of unforeseen hardship under section 55 (as required by Schedule 1(sa) of the CCCFA); and
- Save My Bacon's registration name and number under the register of financial services providers (as required by Schedule 1(ub) of the CCCFA).

Whilst the missing key information was otherwise available at all times on Save My Bacon's website, that information was not disclosed in accordance with section 32 of the CCCFA. Therefore the Commission considers that Save My Bacon's initial disclosure was non-compliant during the relevant period.

Warning

While we will not be taking any further action against Save My Bacon at this time, we will take this warning into account if such conduct were to continue or if you were to 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 Save My Bacon.

This 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 CCCFA. The CCCFA is designed to protect consumers when they are borrowing money and enable them to make informed choices about using credit.

Penalties for breaching the CCCFA

Only a Court can decide if there has actually been a breach of the CCCFA and a Court can impose penalties where it finds the law has been broken.

Lenders who breach the CCCFA may:

- be unable to enforce the contract or any right to recover property or any security interest;
- have to refund money or pay compensation;
- have to pay statutory damages;
- be convicted of a criminal offence and fined up to \$600,000 per offence for companies and \$200,000 for individuals;
- be issued with an infringement notices with a fine of \$1,000 for each infringement offence;
- have contracts changed by the court if the contracts are oppressive; and
- be banned from operating within the finance industry.

You should be aware that the decisions outlined in this letter do 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 CCCFA 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 CCCFA.

You can also view the CCCFA and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact Crystal Euden on 09 920 3495 or by email at crystal.euden@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



James McIvor
Acting Team Leader – Credit