

11 May 2017

Dear Retailer

## **Misleading pricing: An open letter to New Zealand retailers**

The Commerce Commission is responsible for enforcing the Fair Trading Act 1986 which prohibits a range of misleading conduct in trade in New Zealand, including misleading pricing practices. We hope that this letter will assist you in complying with the law when making representations to consumers about the price of your goods or services.

We receive a significant number of complaints from consumers who have been misled by, or are concerned about, discount sales advertising and price promotions both in-store and online. We also see a variety of these practices in the market ourselves. Pricing concerns were the largest source of complaints to the Commission last year.

Sales promotions are an important marketing tool for retailers, and discounting strategies are commonplace in New Zealand. Consumers are attracted to discount sales and we know that discount sales can drive competition among retailers and value for consumers. However, when price claims are not accurate and discounts are exaggerated, consumers do not get the 'bargain' they believed they were getting. It is also unfair to other retailers who are offering genuine special prices and pricing their goods accurately.

Pricing, discounting and other advertising and promotional practices are a current area of focus for our compliance education and enforcement work. We are committed to improving trader compliance in this area through education and, where necessary, prosecuting traders for breaches of the Fair Trading Act.

You may be aware of our recent prosecution that resulted in the New Zealand retailer, Bike Barn, being [fined \\$800,000](#) for misleading discount sales and price promotions that breached the Fair Trading Act. This followed a \$390,000 fine in late 2016 for Trustpower for advertising which was misleading about pricing and applicable contract terms. In the past, the courts have sentenced a number of other retailers prosecuted by the Commerce Commission in relation to misleading pricing practices.

While the specifics of each case are different, we often see a range of concerning pricing practices including:

- **Exaggerated discounts:** giving consumers the misleading impression that they are getting significant discounts from usual selling prices when in fact the items have never sold, or do not normally sell, at the price which is being compared with the advertised discounted price.
- **'Was/Now' discounts:** giving consumers the misleading impression that items had been offered at a previous price, and are now being offered at a lower price when in

reality, the items have never sold, or do not normally sell at the price advertised as the previous price.

- **Continual promotional pricing:** continually selling products at an advertised promotional price giving consumers the misleading impression that the promotional price is less than the price they would usually pay. If a business continually sells a product at a promotional price then the promotional price becomes the usual selling price.
- **Fine print:** giving consumers the misleading impression that the advertised price is the total price they need to pay for the good or service when additional unavoidable charges must also be paid and they are contained in the fine print.
- **A sale is in its 'Final days' or items are at 'clearance prices':** creating a sense of urgency for consumers to act to get the discount, when in fact the items continue to be offered at the same price after the 'final days' or 'clearance sale' finishes.
- **Limited stock at discount prices:** using ranges which give consumers a misleading impression that a promotion is more attractive than it is. For example claiming goods are on sale "from \$9.99" or have "up to \$50 off", when only a small proportion of goods are on sale at \$9.99 or have \$50 off.

### What are the risks?

There can be serious consequences for a business that a court finds has broken the law. Companies can be fined up to \$600,000 for each breach and an individual up to \$200,000. Where a company is a repeat offender, directors and those involved in the management of the company can be banned from involvement in the management of any company for a period of up to 10 years.

### What you can do to stay within the law

It is essential not to mislead consumers when marketing goods and services to them. Any claims a business makes about price must be:

- **clear** – not confusing or misleading
- **accurate** – discounts not exaggerated or prices understated
- **unambiguous** – keep fine print to a minimum and make sure it does not confuse consumers.

We have produced a one page [document](#) 'Price Promotion Tips' that outlines the top things that you should think about when using price to promote goods or services. We encourage you to share this with your staff. You can also download this as a PDF from our website.

You can also find our more detailed fact sheets on [pricing](#) and [fine print](#) on our website. These fact sheets are updated from time to time and provide more detailed information and

practical tips. We encourage you to review our fact sheets and to consider how they might apply to your business.

You should regularly review your compliance procedures and policies. If you are unsure about how to comply with the law, we recommend that you seek independent legal advice.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'R. Hutton', is positioned above the typed name.

Ritchie Hutton  
Head of Investigations