

16 July 2021

Aotearoa Nutrients Limited

Attention: [REDACTED]
[REDACTED]

By email only: [REDACTED]

CC: [REDACTED]

Dear [REDACTED]

Fair Trading Act 1986: Warning for conduct liable to mislead in relation to Aotearoa's Bluebell Goat Milk formula range

The Commerce Commission (**Commission**) has been investigating Aotearoa Nutrients Limited (**Aotearoa**) under the Fair Trading Act 1986 (**FT Act**). We have now completed our investigation and are writing to inform you about our views.

The Commission considers that Aotearoa is likely to have breached the FT Act in that, between July 2019 and May 2020, it made representations on its website and packaging which created the overall impression that the goat milk used in its Bluebell Goat Milk formula range was sourced from goats reared in New Zealand. These representations were liable to mislead consumers because the goat milk powder used in the formula range was in fact imported from overseas.

We are issuing you with this warning letter because in our view, Aotearoa's conduct is likely to have breached section 10 of the FT Act. A warning is not a finding of non-compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that at this time we will not be bringing legal action.¹

The investigation

The Commission received a complaint alleging that Aotearoa was making misleading representations about its Bluebell Goat Milk formula range being made in New Zealand and its ingredients being sourced from New Zealand.

During our investigation, we considered a range of representations made by Aotearoa in respect of its Bluebell Goat Milk formula range on its product packaging and on its website.

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

Based on information voluntarily provided by Aotearoa to the Commission in writing and at interview, the Commission established the following:

- A significant majority of the base ingredients used in the Bluebell Goat Milk formula range are imported from overseas. In particular, the goat whole milk powder is imported from Austria.
- The base ingredients undergo processing in New Zealand which includes wet mixing, homogenisation, heat treatment and drying.
- Aotearoa has made a variety of representations about the origin of the goat milk, a selection of which are set out in **Attachment A**. These representations have changed over time.
- Aotearoa intends for the reference to “New Zealand” in “*Bluebell New Zealand Goat Milk*” to convey qualities of a “premium” and “excellence of quality”.

How this conduct can break the Law

Section 10 of the FT Act prohibits conduct liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.

“Nature” and “characteristics” are broad terms and have been held by the Courts to include the country of origin of principal ingredients used in goods.

Aotearoa’s response

Aotearoa responded to the Commission’s enquiries by stating:

- It is entitled to represent the Bluebell Goat Milk formula range as “made in New Zealand” because the raw ingredients in the products are substantially transformed in New Zealand. The substantial transformation process is complex and specialised, involving wet-mixing, heat treating and drying the ingredients.
- All 40+ ingredients in the products are crucial to meet the required standard for infant formula in New Zealand.
- In early 2020, Aotearoa changed the wording on its packaging and website from “*Made in New Zealand*” to “*Made in New Zealand from local and imported ingredients*”.
- It did not consider that its representations created the overall impression that the goat milk was sourced from New Zealand, however, it was willing to make several changes to its website representations to resolve the Commission’s concerns, including:
 - Replacing “*We’re proud to make our range in beautiful New Zealand from local and imported ingredients and are committed to growing healthy*”

families through our formulas, milk drinks and caring support” with “We are proud to be a New Zealand Company and are committed to growing healthy families through our formulas, milk drinks and caring support”.

- Removing references to New Zealand between the Bluebell logo and the phrase “Goat Milk” on Aotearoa’s images on its website.
- Removing various references to “*made in New Zealand*” and “*New Zealand made*” on its website, as well as references to the products being made in its “*state-of-the-art facility in Waikato, New Zealand*”.
- Removing the statement “*Home to rolling green pastures, fresh air and clean water, we’re proud to make Bluebell in beautiful New Zealand from local and imported ingredients*”.

The Commission’s view

In this case, and having fully considered relevant information received, the Commission’s view is that it is likely that Aotearoa’s conduct breached the FT Act.

We have reached this view because:

- The representations on the packaging and website created the overall impression that the goat milk in the Bluebell Goat Milk formula range was sourced from goats reared in New Zealand. In particular:
 - The packaging stated “*Bluebell New Zealand Goat Milk*”. The proximity between “*New Zealand*” and “*Goat Milk*” created the impression that the goat milk is sourced from New Zealand goats.² This impression was strengthened by the “*Made in New Zealand*” statement together with the company name “*Aotearoa Nutrients*” and a New Zealand physical address. In our view, the “*New Zealand Made*” symbol and the FernMark symbol further reinforced this impression.
 - The website made numerous references to New Zealand landscapes and pastures, creating the impression that the goat milk was sourced from goats reared in these environments. For example:
 - “*This earth’s last pure land is blessed with fresh air, warm sunshine and vast green forest h ds [sic]. Leisurely grazing cows and goats can be seen on green pastures everywhere.*”
 - “*Home to rolling green pastures, fresh air and clean water, we’re proud to make Bluebell in beautiful New Zealand.*”
 - The website made an explicit representation about New Zealand being a rich source for goat milk: “*New Zealand is located between 34° -47° south*

² This also applies to the references to “*New Zealand*” between Bluebell’s logo and “*Goat Milk*” on its website.

latitude and 174° -62° east longitude. Its mineral-rich pastures make it the “golden area of milk source” in the southern hemispheres”.

- The website also included numerous images of pasture and mountain landscapes alongside representations that Aotearoa’s formulas and milk drinks were made in New Zealand.
- This impression was liable to mislead consumers because the goat milk powder used in the Bluebell Goat Milk formula range was imported from overseas, along with most of the other ingredients.

Current and future representations

As referenced above, Aotearoa has made a number of changes to the representations on its packaging and website, which have satisfied the Commission that a warning is appropriate in this case. However, the Commission recommends that Aotearoa considers its current and future representations in light of the views set out in this warning letter for its Goat Milk and Organic product ranges. In particular, we recommend that Aotearoa considers the overall impression created by representations on product packaging, including references to New Zealand being used in proximity to the Bluebell Logo and “Goat Milk”.

Warning

After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than by issuing legal proceedings.

This warning represents our opinion that the conduct in which Aotearoa has engaged is likely to have breached the FT Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.

We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Aotearoa.

This warning letter is public information and will be published on the case register 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 FT Act. The FT Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the FT Act

As indicated above only the courts can decide if there has actually been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT 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 recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.

We have published a series of fact sheets and other resources to help businesses comply with the FT Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. In particular, our fact sheet on origin claims can be found at: https://comcom.govt.nz/_data/assets/pdf_file/0038/89849/Place-of-origin-representations-Fact-sheet-July-2018.pdf. 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 FT Act and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact Nicholas Thomas on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely



Kirsten Mannix
Fair Trading Investigations and Compliance Manager

Attachment A

Example of packaging representations



Examples of website representations

Be Natural & Unique

Be Loving & Caring

Be Nourishing

Be Perfect

New Zealand is located between 34 °-47 ° south latitude and 174 °-62 ° east longitude. Its mineral-rich pastures make it the “golden area of milk source” in the southern hemispheres.

This earth's last pure land is blessed with fresh air, warm sunshine and vast green forest h ds. Leisurely grazing cows and goats can be seen on green pastures everywhere.

Choosing Bluebell is as easy as 1, 2, 3

1.

MADE IN NEW ZEALAND

Home to rolling green pastures, fresh air and clean water, we're proud to make Bluebell in beautiful New Zealand.



World class, New Zealand based.



We design and make our range at our state-of-the-art facility in Waikato, New Zealand. Our organic milk is certified by AsureQuality. Our nutritionists are dedicated to creating the best products and have included additional ingredients to support your baby's formative years.

