

29 April 2020

[REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

Official Information Act #19.154 - Organic Marketing

1. We refer to your request received on 27 March 2020 for information about:
 - 1.1 how many complaints the Commerce Commission (Commission) has received under the Fair Trading Act 1986 (FTA) in the last two years;
 - 1.2 how many of the complaints at paragraph [1.1] above warranted further investigation;
 - 1.3 how many prosecutions (in relation to organic) are currently pending; and
 - 1.4 a copy of the explanation booklets that were produced when the FTA first came about or shortly thereafter.
2. On the same date, you clarified that "*all questions are limited to organic*" and paragraph [1.1.] is for how many complaints the Commission has received under the FTA in the last two years "*relating to organic*".
3. You stated that the purpose of your request is to prepare a submission on the Organic Products Bill and that you are aware of the Commission's 2018 submission to the organic discussion document.¹
4. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

5. We have decided to grant your request.

¹ https://comcom.govt.nz/_data/assets/pdf_file/0032/85892/Commerce-Commission-comments-on-MPIs-discussion-document-on-options-for-regulation-of-organics-15-June-2018.pdf

Number of complaints

6. Our complaints database contains a number of searchable fields, including the name of the complainant, the name of the trader complained about, details of the complaint and the date received.
7. We have searched our complaints database across all fields using the term “organic” for complaints received within the last two years.² We limited the results to complaints received under the FTA.³ This search returned 51 complaints. These complaints can be broken down as follows:
 - 7.1 organic claims - 24 complaints
 - 7.2 biodegradable claims - 5 complaints
 - 7.3 health or nutrition claims - 5 complaints
 - 7.4 payment or terms and conditions - 4 complaints
 - 7.5 product issues or customer service - 4 complaints
 - 7.6 Country of origin - 3 complaints
 - 7.7 contractual dispute - 2 complaints
 - 7.8 compliance with other standards (not organic) - 1 complaint
 - 7.9 environmentally friendly claims - 1 complaint
 - 7.10 natural claims - 1 complaint
 - 7.11 safety - 1 complaint
 - 7.12 pricing - 1 complaint
8. We note that our 2018 submission on the Ministry for Primary Industries (MPI) ‘discussion document on options for regulation of organics’ relates to section 12A of the FTA, which prohibits a trader from making an unsubstantiated representation.
9. We confirm that 21 of the 51 complaints were made under section 12A of the FTA (some in addition to other grounds).

Further investigation

10. To provide context to our response, we have outlined the Commission’s complaint screening process below.

² The period from 27 March 2018 - 27 March 2020.

³ Information about relevant legislation is added by the Commission.

11. When a consumer contacts the Commission with a complaint about a trader, this is logged in the Commission's complaint database.
12. The Commission receives thousands of complaints every year. Each complaint is initially assessed by the Enquiries Team on the basis of the information available at the time. When conducting this initial assessment, the Enquiries Team considers:
 - 12.1 the likelihood of a breach of the relevant legislation (the FTA, Credit Contracts and Consumer Finance 2003, and the Commerce Act 1986);
 - 12.2 the Commission's Enforcement Response Guidelines,⁴ and;
 - 12.3 the Commission's strategic priorities and resourcing constraints.
13. The Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
14. If a report is deemed to meet certain criteria, it is reviewed by a panel of managers and subject matter experts from within the Competition Branch. The panel decides which reports are to be prioritised for further consideration by the Branch.
15. This process enables us to identify reports that best reflect our current enforcement priorities.⁵ The outcomes of the process are not final and we may revisit any report at a later stage, should we wish to reconsider the issues it presents.
16. In response to [1.2] of your request, 22 of the 51 complaints went to the panel for further review. These 22 complaints were progressed as follows:
 - 16.1 three complaints were referred for investigation;
 - 16.1.1 two investigations are in the initial phase;
 - 16.1.2 the decision was made not to open an investigation into one matter, due to competing resources and priorities;
 - 16.2 five complaints were added to a demand, DMND0009657 about biodegradable / sustainable / green claims;⁶
 - 16.3 five complaints resulted in the Commission contacting the relevant traders to educate and provide information to assist their compliance with the law;

⁴ <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

⁵ <https://comcom.govt.nz/about-us/our-priorities>

⁶ A demand is the name the Commission gives a matter where we intend to complete further work. We place demands on a list and prioritise them based on our Enforcement Criteria and strategic priorities. We review our demand lists on a regular basis and sometimes demands are removed from the list, this is called a resource review. We may remove a demand from our list of pending work for several reasons (e.g. the trader has amended its conduct, the trader is no longer operating, and/or other matters have come to our attention that have de-prioritised previous demands).

16.4 nine complaints were closed with no further action.

Prosecutions

17. In response to [1.3] of your request, the Commission has no pending prosecutions in relation to organic claims.

FTA booklets

18. In response to [1.4] of your request, we do not hold an electronic copy of the guidance you have requested. During the COVID-19 lockdown period we are unable to access our offices to confirm whether hold a hardcopy version.
19. You can find FTA guidance on our website, including information about making accurate claims about characteristics such as 'free range' and 'organic'.⁷

Further information

20. Please note the Commission will be publishing this response to your request in the Official Information Act register on our website.⁸ Your personal details will be redacted from the published response.
21. Please do not hesitate to contact us at ويا@comcom.govt.nz if you have any questions about this request.

Yours sincerely

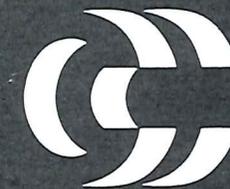
Mary Sheppard
OIA Coordinator

⁷ <https://comcom.govt.nz/business/dealing-with-typical-situations/making-accurate-claims>

⁸ <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>

FAIR TRADING ACT 1986

EXPLANATORY
BOOKLET



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FAIR TRADING ACT 1986

EXPLANATORY BOOKLET

Commerce Commission
Wellington

January 1987

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Foreword

The Fair Trading Act 1986 is important for both consumers and businesses in New Zealand. The law in New Zealand relating to misleading advertising, unfair practices and hazardous products was deficient in a number of respects and had fallen significantly behind the legal standards operating in other developed countries. The Government made an election pledge to rectify this situation and the Act is intended to fulfill that promise.

The Act offers advantages not only to consumers but also to traders. Traders have much to gain from knowing that their competitors will also be required to meet minimum standards of conduct and in knowing that they personally, by way of private action, can enforce those rights in the Courts. The exercise of such rights is likely to assist the effectiveness of the legislation and, in turn, to benefit consumers.

This booklet presents the provisions of the Act in lay terms with examples of how they may be applied. It is hoped that the booklet will be of assistance to traders and consumers alike.

John Collinge

JOHN COLLINGE
Chairman
Commerce Commission

January 1987

1 INTRODUCTION

This booklet is intended as a general guide rather than a legal analysis. It should not be regarded as providing a definitive statement of the law.

In its 1984 Policy Document the Government pledged to "... initiate consumer law reform, in consultation with consumer organisations ..." and "... ensure the outlawing or inhibiting of misleading advertising, wasteful or deceptive packaging, and worthless guarantees and the enforcement of fair product safety and information provisions ..."

As a first step in fulfilling this policy objective the Government has enacted the Fair Trading Act 1986 which replaces the Consumer Information Act 1969, the Merchandise Marks Act 1954, the Wool Labelling Act 1949, and provisions of other statutes relating to misleading and deceptive conduct, unfair trading practices and consumer information.

RATIONALE OF THE ACT

The Act is the counterpart of the Commerce Act 1986 which promotes workable and effective competition in markets in New Zealand by controlling restrictive trade practices and anti-competitive mergers and takeovers. The Fair Trading Act is designed to enable consumers to take advantage of increased competition by ensuring that they receive the accurate information they need to make the rational choices which are a necessary prerequisite to competition in the marketplace. The provisions therefore offer not only a direct benefit to consumers in the protection they give, but also a general economic benefit to New Zealand as a whole in providing more informed consumers to be the arbiters of competitive rivalry.

The approach taken in the Fair Trading Act recognises that it is not only consumers who are affected by misleading or deceptive conduct, false trade descriptions and representations and unfair trading practices. Ethical traders are also detrimentally affected when their competitors engage in such conduct. Giving ethical traders remedies against competitors who engage in such conduct is also consistent with the promotion of the interests of consumers.

The Fair Trading Act 1986 is in keeping with New Zealand's obligations under the Agreement on Closer Economic Relations with Australia, to encourage and facilitate free trade between the two countries. Incompatible consumer protection measures can be an impediment to free trade. For this reason the Act is similar to appropriate provisions of the Australian Trade Practices Act 1974. The introduction of the Fair Trading Act 1986 is in line with moves by the State Governments of Victoria, South Australia, New South Wales and Western Australia to introduce similar measures. Of those States, Victoria has already enacted its own fair trading measures.

This booklet sets out the effects of the provisions of the Act. A brief summary is set out below.

SUMMARY OF THE ACT

The Act repeals the Merchandise Marks Act 1954, the Consumer Information Act 1969, and at a later date the Wool Labelling Act 1949 and the Safety of Children's Night Clothes Act 1977, and replaces them with a comprehensive set of measures covering the following inter-related spheres:

- (a) **Misleading or deceptive conduct:** a new statutory prohibition on misleading or deceptive conduct in trade. Contravention of this provision gives rise to civil remedies only.
- (b) **False Trade, Descriptions:** the prescriptive trade descriptions approach to false or misleading information, contained in the Merchandise Marks Act 1954 and the Consumer Information Act 1969, will continue to apply in revised form to representations about goods or services, and is extended by the Act to apply to representations relating to sales of land and promotion of employment opportunities. Contraventions of these provisions will attract both criminal and civil liability.
- (c) **Unfair Practices:** Prohibitions against certain unconscionable selling practices, namely, pyramid selling, third party trading stamp schemes and misleading statements about certain business activities, are contained in the Fair Trading Act. To these are added prohibitions on offering gifts and prizes with the intention of not providing them as offered, bait advertising, referral selling, demanding or accepting payment without intending or being able to supply as ordered. Contraventions of these provisions attract

both criminal and civil liability. The use of physical force, harassment or coercion in connection with the supply of goods, services or land is also prohibited. Contravention of this last provision attracts civil liability only.

- (d) **Consumer Information:** The Act consolidates and extends information requirement powers presently in the Consumer Information Act 1969 and the Merchandise Marks Act 1954 into a single information requirement power vested in the Minister of Consumer Affairs.
- (e) **Services and Product Safety Standards:** The Act provides for the creation of safety standards. Where goods are found to be unsafe, the Minister of Consumer Affairs is empowered to prohibit their supply and order the recall of any that have been supplied. These are last resort powers intended as a legal back-up to, rather than a substitute for, the work of the Product Safety Council which promotes voluntary recall procedures and compliance with safety standards.

Enforcement of the above provisions will be undertaken by the Commerce Commission. In addition there is provision for private actions in relation to contraventions of all provisions.

THE PROHIBITION

The Act provides,

"No person shall, in trade, engage in conduct that is misleading or deceptive or is likely to mislead or deceive."

The ambit of this statutory prohibition is very broad. It is not limited to dealings with consumers, nor is it limited by any of the more specific provisions in the Act. Contravention of this provision can give rise to the civil actions provided for in the Act i.e. injunctions, orders for damages, corrective advertising etc. A contravention of this provision is not a criminal offence.

'In trade'

'Trade' in the Act means "any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services or to the disposition or acquisition of any interest in



MISLEADING OR DECEPTIVE CONDUCT

(Section 9)

land.” ‘In trade’ means within and as part of any of these activities.

MISLEADING AND DECEPTIVE

Whether particular conduct is ‘misleading or deceptive or is likely to mislead or deceive’ will ultimately be a matter for the Court to decide. In cases decided in Australia on an identical provision the Courts have made the following observations:

“The most appropriate meaning for the word ‘deceive’ in the Oxford Dictionary is: ‘To cause to believe what is false, to mislead as to a matter of fact, to lead into error, to impose upon, delude, take in.’”

The most appropriate definition in that dictionary for the word ‘mislead’ is: ‘To lead astray in action or conduct; to lead into error; to cause to err.’”

“The advertiser must be assumed to know that the readers will include both the shrewd and the ingenuous, the educated and uneducated and the experienced and inexperienced in commercial transactions. [The advertiser] is not entitled to assume that the reader will be able to supply for himself or . . . herself omitted facts or to resolve ambiguities. An advertisement may be misleading even though it fails to deceive more wary readers.”

“The question of whether conduct falls within . . . [the prohibition] . . . is to be determined by its likely effect on the type of person who is likely to be exposed to it. Broadly speaking, it is fair to say that the relevant persons are those not particularly intelligent or well informed, but perhaps of somewhat less than average intelligence and background knowledge, although the test is not the effect on a person who is quite unusually stupid.”

The following is a selection of examples of how this prohibition operates.

Fine print

Overall impressions created by particular advertising, statements or representations are important in assessing whether misleading or deceptive conduct has been engaged in. ‘Fine print’ qualifications will not necessarily correct a misleading impression created by other more prominent words in an advertisement. Similarly, ‘fine print’ terms and conditions will not overcome false or misleading representations made in pre-contractual negotiations.

Puffery

Imaginative advertising or the use of humour, cartoons, slogans etc. are not prohibited. Regardless of how the message is communicated, the message itself should not be ‘misleading or deceptive’ or ‘likely to mislead or deceive’. Exaggeration or puffery used to attract attention, but which is so self-evident that it is unlikely to mislead anyone, is not prohibited. However, representations and claims that take on a factual character, particularly in quality and price terms, may amount to a contravention unless they are capable of substantiation.

Superlatives and comparatives

Superlatives and comparatives that are self-evident exaggeration are unlikely to mislead anyone; but if used to suggest some factual characteristics of goods, services or land, they may in particular circumstances lead to deception where the claim is not capable of substantiation.

Comparative advertising

Comparative advertising can provide consumers with very useful information, provided always that comparisons are accurate. Consumers may be misled by ‘before and after’ advertisements where the comparison is distorted to deprecate the ‘before’ or enhance the ‘after’ situations, or by comparisons between the advertiser’s goods or services and those of a competitor that fail to compare ‘like with like’.

Comparisons, if they are not to contravene the prohibition, must not, even by non-disclosure of relevant information, create a false impression. However, an advertiser would not be bound to mention the areas where the competitive product has an advantage unless the omission of such a point would be likely to lead a consumer to a mistaken belief.

Tests and surveys

The use of tests and surveys to support a particular claim, which is misleading or deceptive, is prohibited. The following are examples of the use of surveys and tests which may contravene the prohibition on misleading or deceptive conduct:

- advertisements in which the claims made are said to be based on a statistical survey (e.g. ‘Nine out of ten housewives prefer . . .’) when in fact such a survey has not been undertaken or the results of the survey are distorted;

- claims that a product is 'tested' by an authority when only part of the product was tested, or another similar product was tested or the product failed the test. For example, a claim that an electrical appliance was 'tested and passed by ...' would be misleading if the test related only to the mechanical function of the appliance and not the safety of its electrical system (unless this was clear from the advertisement);
- tests showing that a particular performance result has been achieved by a product when that test is not representative of what can be achieved by the average user. For example, attractive petrol consumption figures may be achieved by specialist drivers in so-called 'economy runs' but to quote such figures without qualification may lead consumers to the mistaken belief that they are likely to achieve similar results;
- claims that are supported by tests or surveys which suggest that they are unbiased and were conducted by an independent agency may be misleading if, in fact, the tests were carried out by an organisation related to the advertiser (unless the results could be confirmed by independent analysis).

Non-disclosure

Not only what is said, but what is left unsaid, may be misleading or deceptive. Half truths and non-disclosure of material facts may breach the law. Particular cases will depend on their own facts, but generally, the important factor is the impression likely to be created in the mind of any person likely to be affected by the conduct.

Statements about the future

Statements about events that may happen in the future are subject to the same test as any other conduct in trade. If the effect of the statement is misleading or deceptive or likely to mislead or deceive, it may amount to a contravention of the prohibition. For example, the problem arises where a trader promises to perform services or to supply goods quite beyond either the trader's capacity or intention to do so. The effect of this conduct is to create in the mind of the consumer an impression that a certain state of affairs will exist whereas there is, to the knowledge of the trader, no chance of that happening or happening within a stated time. The result is that the consumer is enticed to deal with the trader under a mistaken belief in an ability to perform services or supply goods. Once committed to a transaction,

for example by way of a deposit, it is often difficult for the consumer to renegotiate with another supplier and still have the services performed or goods supplied within the desired time.

Misleading names

Misleading business or product names may fall within the prohibition. Notwithstanding a name being registered or otherwise permitted, its use will also be subject to the general test of whether that use is misleading or deceptive. The mere registration of the name for other purposes (e.g. for the purpose of incorporation) will not necessarily avoid a contravention. For example, a business would not be permitted to use a name which suggests that it has some sponsorship or approval it does not have (e.g. by using in its registered name wording such as 'by appointment to the Queen').

Country of Origin

Where the country of origin of particular goods is made a feature of advertising or product description any aspect of the promotion, packaging etc. of such goods which is misleading or deceptive as to the country of origin of the goods may infringe the provision. Where goods are composed of parts or material originating in more than one country, or where goods are manufactured or assembled in one country from parts or material originating from another, any description of the origin of the goods should not be such as to mislead consumers. For example, where a bicycle is assembled in New Zealand from imported parts, an appropriate description would be 'assembled in New Zealand' rather than made in New Zealand.

Even where there is no express claim about country of origin, consumers may be misled by illustrations, statements or other elements in advertisements and other promotional material which link that product with a country other than its true country of origin. For example, the use of the New Zealand flag in the promotion of a product manufactured outside New Zealand would be likely to mislead. In such a case, the disclosure of the country of origin in 'fine print' on the label would not necessarily correct the misleading impression. The need for a clear indication of country of origin will be particularly important where there is a price/quality difference implicit in the claim.

Words with special meanings

Reliance on special trade terms that have qualified meanings not generally understood by persons to whom the advertisement is aimed may fall within the prohibition. For example, veneered modern furniture may be described in the trade by reference only to the species of wood used in the veneer; however, consumers may understand such a description to mean that the furniture is wholly manufactured from solid timber of that species.

Symbols and abbreviations

Advertisements that use symbols or abbreviations that are not widely understood can result in consumers being misled. For example, the use of '\$1000 A.D.' referring to \$1000 'After Deposit' in a price advertisement could fall within the prohibition.

Age of goods

Indiscriminate use of words such as 'antique' in relation to goods which are offered for sale would be covered by the Act in circumstances where their use is misleading.

Length of time in business

Claims about the length of time a particular business has been operating may carry an implication about, for example, the standard of service available, the stability of the firm or the historic connections of the business. Misleading claims as to the length of time a firm has been in business have been held in Australia to fall within the prohibition on misleading or deceptive conduct.

Packaging and labelling

Both the packaging of goods and statements on packages are covered by the prohibition on misleading or deceptive conduct. For example, the size or shape of a package may give a misleading impression of the quantity of its contents. Similarly, bad design (e.g. print size, colour or layout) may conceal important information about goods.

Special offers

Advertisements may be misleading or deceptive if, for example, they imply that an offer is only available for a limited period when in fact the offer is continuously available. Similarly, a newspaper classified column advertisement may be misleading if it implies that the advertised

goods are offered for private sale when in fact they are offered in the course of the advertiser's business.

Extras

Advertisements which state a price but which fail to disclose that additional charges may be applicable may fall within the prohibition. For example, advertisements may fall within the prohibition which fail to state that charges will be made for additional services when a purchaser might reasonably expect them to be included in the stated price, or which depict the goods for sale at a price that does not include the accessories displayed or does not include such accessories as are necessary for the goods to function. In order to avoid a contravention such advertisements should state clearly (not in 'fine print') that the price does not include the services or accessories, or should state, where known, the amount of the charges for the services or accessories.

Finance and credit terms

Advertisements which offer credit or finance but which fail to disclose the nature of such credit or finance, its source and its terms may be misleading or deceptive. Persons responding to such advertisements should not be led into the error of thinking that a certain type of transaction, for example, an unsecured personal loan, is available when it is not.

Statements or other representations about the availability of finance should, in order to avoid liability under the Act, be cast in terms that will not mislead the average member of the class of persons to whom they are directed. For example, a statement like 'low interest finance readily available' aimed at lower income home buyers would be misleading if the average member of that class of persons could not qualify for the low interest finance and is consistently 'sold-up' to higher interest finance. In such circumstances the addition of the words 'to approved purchasers' would not of itself correct the misleading nature of the advertisement. The existence of significant limitations and qualifying criteria on the availability of finance should be disclosed and, where practicable, described in more detail.

CONCLUSION

The prohibition on misleading or deceptive conduct or conduct likely to mislead or deceive is very wide in its ambit.



**FALSE
OR
MISLEADING
REPRESENT-
ATIONS**
(Sections 10 to 14, 22)

The foregoing examples do not purport to be an exhaustive description of its effect. Indeed no such description could ever be exhaustive because of the very general nature of the provision.

The aim of the provision is to set a new legal standard for trading conduct in New Zealand. That standard requires that consumers and others affected by conduct in trade have the factual information they need to make an informed choice as to what goods, services and land they purchase.

Because of the general nature of the provision a contravention will not attract the criminal sanctions provided by the Fair Trading Act for contraventions of its other provisions but a wide range of civil remedies will be available. These are discussed in detail later in this booklet.

In addition to the general prohibition on misleading or deceptive conduct, the Act prohibits particular types of false or misleading representations. These prohibitions are not limited to dealings with consumers but also include transactions between businesses.

Contraventions of these provisions may lead to a prosecution for a criminal offence and the imposition of a fine. There is provision also for injunctions, orders for corrective advertising and private actions for damages and other compensatory orders.

ATTRIBUTES OF GOODS AND SERVICES (Sections 10, 11 and 13)

Standard, quality, grade, origin and quantity

False representations about the standard, quality, grade or origin of goods or services are prohibited. This applies, for example, to representations that shoes are 'top quality' when in fact they are 'seconds' or shop-soiled. Similarly, false representations that goods comply with a particular Standards Association of New Zealand Standard would amount to a false or misleading representation. Breaches of these provisions in relation to the quantity of goods could include the packaging of goods in a deceptive manner, thereby giving a misleading impression of the contents, or false statements of contents on the package label. In relation to services, false or misleading representations about the extent or frequency of maintenance inspections under a service contract could constitute a contravention.

Composition and manufacturing process

The Act prohibits false representations about the composition of goods, for example, a representation that furniture is made of teak when it is actually made of teak veneer. It is a breach of the law to mislead the public about the manufacturing process used in creating goods, for example, to describe items as 'handmade' when they are, in fact, the product of an automated process.

Style or model

The Act prohibits false representations that goods are of a particular style or model. It is illegal, for example, to call furniture 'Danish Designed' if it was not designed in Denmark.

History or previous use

The Act prohibits false representations that goods have had a particular history or previous use. For example, a representation that a lawnmower had only been used privately if it had been used by a commercial lawn mowing firm may be false or misleading.

Performance characteristics and nature

The Act prohibits representations that goods or services have performance characteristics that they do not have. For example, a representation that a washing machine is fully automatic when it is not or that a motor vehicle or accessory achieves particular fuel consumption performance when that is not the case may be false or misleading.

Accessories

The Act prohibits any misinformation about accessories provided with goods or services. For example, to depict a gas barbecue with a gas cylinder in an advertisement without disclosing that the cylinder is an optional extra and is not included in the price quoted for the barbecue may contravene this provision. Such an advertisement may also constitute a false or misleading statement with respect to the price of the goods.

Uses and Benefits

Representations that goods or services have uses or benefits which they do not have are prohibited by the Act. For example, it may be false or misleading to market a vehicle insurance policy as 'comprehensive' when it does not

provide cover if the vehicle is driven by a person other than the owner. Similarly, to promote the sale and installation of a particular house cladding material in an area where the climatic conditions would severely affect its durability is likely to mislead the public about the quality of goods and services.

Price

Price is a fundamental element of competition and is an important basis of most consumer purchasing decisions. The Act prohibits false or misleading representations about the price of goods and services. Accordingly there must be no misinformation regarding price, and advertisements containing statements of price should indicate clearly the price at which a person responding to the advertisement may acquire the goods or services. The information should be sufficiently informative to enable persons, if they desire to do so, to make accurate comparisons between competing goods and services.

Price comparison claims

Price comparisons may be express or implied. Examples of express price comparisons are claims that a selling price is less than some other specific price such as manufacturer's recommended retail price, manufacturer's usual wholesale price, the supplier's own previous selling price or some other trader's price. Express comparisons are sometimes less specific and make no reference to a normal price, for example, '50 percent off'. On the other hand, claims such as 'clearance sale' or 'special purchase' normally carry the implication that the selling price is lower than the supplier's own previous selling price. In each of these examples there is something more than a mere expression of opinion about the bargain value of the offer.

As with any comparative advertising, price comparisons in advertising can provide consumers with useful information and may enhance competition, provided that the comparison is accurate. The overall effect of an advertisement will need to be considered in assessing whether there may be a contravention of the Fair Trading Act — in particular whether there is a real likelihood that the person to whom it is aimed would be led to believe mistakenly that the advertised price is significantly lower than competitors' prices, advertiser's previous prices or some other price which is mentioned.

Price reduction claims

The scope for deception is increased where a price reduction is claimed but the normal price is not disclosed. The following are examples of the type of advertising that can mislead consumers and may constitute an offence under the Act:

- advertisements offering illusory or insignificant price reductions. For example, advertisements stating the price of "\$9.99 — Reduced" may be misleading if the normal selling price is \$10.00;
- advertisements stating 'below cost' when the stated price is not below the price (after discounts, rebates or other allowances) paid by the advertiser to the supplier;
- advertisements claiming 'now at special low prices' when the prices for the goods or services have remained unchanged for a considerable period. It may, however, be acceptable to use this type of advertising when it is made clear that no price reduction has occurred but price increases have not yet been passed on, for example, 'still at pre-budget prices'. Similarly, where the comparison is with competitive products whose prices have increased recently while the advertiser's have not, for example, 'Eggs, now the lowest price in town', will be acceptable provided, in such a case, the price of eggs available from the advertiser is the lowest in the stated area;
- an advertisement implying price reductions by reference to an event — e.g. 'closing down sale', 'fire sale' or 'clearance sale' — when, in fact, the advertised goods are sold at the advertiser's normal selling price.

Availability of price reductions

The Act prohibits advertisements which make unqualified claims as to the savings or other benefits to be achieved by purchasers of the advertised goods or services where the savings claimed would not be achieved by all purchasers. For example, where savings are offered for cash sale only and not available to credit purchasers the advertisement should make this clear. Also, advertisements which make prominent and unqualified reference to discounts or savings in relation to a range of items may be misleading if the discount or saving applies to only one or some of the advertised items.

Undisclosed charges and inclusive prices

Advertisements which state a price may be misleading if they fail to disclose additional charges which a purchaser might reasonably expect to be included in the stated price, for example, delivery or installation charges for goods. Advertisements will therefore be required to state clearly any necessary additional charges which will be incurred by the purchaser and, where known, the amount of such charges.

Statements or representations of price which mislead as to what is included in the price may contravene the provisions of the Act. For example, a quoted price may be misleading if it does not include accessories depicted in the advertisement.

Price ranges

Statements or representations about price in relation to a range of goods or services should not give a misleading impression of the average price. For example, 'from \$59' would be likely to mislead if there is only one at that price and the next lowest price is, say, \$95. Similarly, the use of words like 'up to ...' (for example, when used in relation to claimed price savings or other benefits) can also mislead if the figure indicated is not representative of the savings or other benefits likely to be achieved.

Sponsorship, approval or affiliation

Advertisers make claims of sponsorship, approval or affiliation as a way of promoting their standing in the eyes of the consumer and, therefore, sales. In many cases such claims are a useful shorthand way of assuring consumers of the quality of the particular product or service or of the company involved.

For example, a claim that a particular product complies with an appropriate Standard formulated by the Standards Association of New Zealand is a claim that the product will meet certain standards of safety and functional design. Similarly, a claim that a brake repairer is approved by a motorists' association carries with it the implication that services provided by that business are likely to meet the standards expected by the motorist.

Endorsement by private individuals, whether they are prominent personalities, experts or people in the street, are also used to promote goods or services or the company involved.

In all such cases claims about sponsorship, approval or affiliation of goods, services or the companies or people who supply them must accord with the facts to ensure they are not false or misleading in terms of the Fair Trading Act.

Claims that goods are new

False representations that goods are new are prohibited by the Act. Whether or not a claim that goods are new is false in any particular case will depend on the meaning that should be attached to the word in the circumstances. The meaning of the word 'new' has been considered by the Courts in Australia from which the following principles have emerged:

- 'New' does not have a fixed and inflexible meaning.
- The meaning is a question of fact in each case.
- Depending on the context in which the word appears, it may mean 'not secondhand', 'not old', 'of recent origin' or 'not excessively used'.
- For goods to be new they do not have to be in 'mint condition' and the mere fact that goods are damaged, irrespective of the nature of quality of any repairs, does not mean that they have ceased to be new.
- In some cases an article may cease to be new even if it is used for a comparatively short period.

Claims about the need for goods or services

False or misleading statements about the need for any goods or services are prohibited by the Act. Examples of claims that may contravene the law include those to the effect that certain goods or services are needed in order to comply with local government bylaws when that is not the case; or that certain optional extras are necessary for goods to function properly when this is not so. Another example would be a false or misleading statement made in relation to the need for replacements or repairs. For example, "You'll never need replacements with this product" when replacements may be necessary to remedy the effects of normal wear or, conversely, a claim can be contrasted with advertisements stating a 'need' as a self-evident expression of the advertiser's opinion (You need X deodorant) where consumers are normally able to judge for themselves. When the opinion that people 'need' the item in question is expressed in the context of an endorsement or testimonial by a person likely to be accepted as having special qualifications or experience to support the opinion, adver-

tisers would not be permitted to overstate that 'need' for the item. Thus an advertisement stating that a nutritionist has endorsed the need for vitamin supplement would have to be true in an unqualified sense if it were not to risk breaching this provision.

Agreement to acquire goods or services

The Act prohibits false representations that a particular person has agreed to acquire goods or services.

Warranties, rights and remedies

False or misleading statements concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy are prohibited in the Act. This will apply to all conditions, warranties, guarantees, rights or remedies whether agreed between the parties to a contract, offered by a manufacturer, importer or distributor, or provided by law.

LAND AND INTERESTS IN LAND (Section 14)

The Act contains several specific prohibitions on false representations and other misleading or deceptive conduct in connection with the sale or grant of an interest in land. The Act defines an interest in land as a legal or equitable estate, a right of occupancy of the land or buildings, or some other right, power or privilege in relation to the land. The following are examples of the requirements in relation to land imposed by the Act.

Nature of the interest in land

Advertisements for land shares or other property-sharing schemes are required to state clearly the nature of the interest or title that is being offered. If a potential purchaser is not able to secure exclusive title to an individual block or unit but is offered:

- a tenancy in common with others in one large undivided area of land; or
- other types of interests which are restricted in some way, for example, a shareholding in a company which owns land;

advertising and promotional literature should set out the position clearly. Schemes which envisage the allocation of exclusive occupancy of individual blocks or units by arrangements among purchasers should not be promoted in such a manner as to encourage the assumption that

participants will obtain individual titles or that the scheme is the usual type of 'subdivision'. In the absence of further explanations, the use of, for example, the term 'legal title' could in such circumstances be misleading. Promotional literature will have to disclose any conditions applicable to, and procedures for, exercising the rights of occupancy and enjoyment of the property and facilities. For example, where such rights are determined by an owners' association or company, that should be made clear to potential purchasers.

Location of the land

Advertisements that purport to be factually informative as to the location of the land or the distance of the property from shops, schools, transport, etc. or contain subjective assessments of those matters will contravene the provisions of the Act if they are misleading or deceptive.

Characteristics of the land

Although self-evident exaggerations and statements of opinion about land would not normally contravene the Act, factual statements about the characteristics of land would have to be capable of being substantiated. For example, a statement such as 'Can never be built out' is a question of fact which should be capable of substantiation. Other representations which might require substantiation include:

- suitability for particular types or levels of farming;
- suitability for residential developments;
- profitability of a business associated with the land;
- annual or other climatic variations affecting the land;
- drainage, water supply and other topographical features; and
- a particular previous use of the land.

Land use

The Act requires that representations that land is suitable for a particular activity, for example, the erection of home units, should be based on more substantial information than simply the opinion of the advertiser. Representations about the use of land should have regard to all existing legal restrictions which may affect the land, including town and country planning requirements, restrictive covenants, easements and other orders affecting the land. Any

restrictions on the use of buildings on the land are also within the scope of this provision, for example, a restriction on the use of a building for other than residential purposes.

EMPLOYMENT AND BUSINESS OPPORTUNITIES (Sections 12 and 22)

Employment opportunities

The publication of advertisements seeking a person or persons for employment that contain a false or misleading statement about a material particular are specifically prohibited in the Act. Examples of material particulars covered by the provision are:

- whether a vacancy in fact exists;
- whether the advertiser has the authority of the employer to advertise; and
- pay and other conditions of employment.

Business opportunities

Statements which are false or misleading in a material particular concerning the profitability, risk or any other material aspect of any business activity that is represented as one that can, or can to a considerable extent, be carried on at or from a person's place of residence (e.g. contract packing at home) are prohibited under the Act. False or misleading statements about the profitability, risk or any other material aspect of business activities where persons are invited to invest moneys and perform work associated with the investment are prohibited. These businesses need not be home-based and may include franchise operations, sales agencies and other agreements where the opportunity to engage in the business is conditional on the person hiring and buying equipment such as a demonstrator kit, a truck or a sewing machine from the advertiser.

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UNFAIR PRACTICES

(Sections 14, 17 to 21, 23 and 24)

A number of specific sales techniques that are themselves misleading or unfair are prohibited and the Act makes it a criminal offence to engage in them. Generally the unfairness or misleading nature of these techniques is fairly obvious. The prohibitions are described here in general terms sufficient to identify prohibited conduct.

GIFTS OR PRIZES (Section 17)

Offering of 'free' gifts or prizes in connection with the supply of goods or services are prohibited by the Act if the trader making the offer does not intend to supply the gifts or prizes, or intends to supply gifts or prizes different from those offered. The Act does not prohibit the use of gifts and prizes as a promotional method, but requires that advertisers ensure that persons responding to offers are not misled or deceived as to their true nature.

The application of this provision in a case where a trader does not intend to supply the gifts or prizes at all is clear. However, where there is an intention to supply gifts or prizes other than as offered the prohibited conduct would include:

- offers which do not adequately inform persons of the applicable terms, conditions or limitations, for example, if people responding to advertisements are obliged to incur additional expenses when claiming a gift or prize and this requirement is not specified;
- offers where the cost of the 'free' gift or prize has been included in the selling price of the advertised goods, for example, where a 'free' three-year updating service accompanies the purchase of a set of encyclopedias, but the cost is in fact equivalent to or more than the total cost of the books and service;
- gifts or prizes which are materially different from those offered, for example, prizes of 'up to \$10,000' where the prize is actually a ticket in a \$10,000 lottery or where a 'cash' prize is actually a store credit.

BAIT ADVERTISING — AVAILABILITY OF SPECIALS

(Section 19)

Special provisions in the Act dealing with bait advertising recognise the heightened prospect of consumer response to

bargain offers. Price is a central element in competition and bargain offers must be real if they are not to result in consumer deception and unfair competition. The Act deals with this subject in two ways:

- It prohibits the advertising of goods or services at a specified price where the advertiser does not intend to offer those goods or services for a reasonable period and in reasonable quantities.
- It imposes an obligation on advertisers of goods or services at a specified price to supply those goods or services at that price for a reasonable period and in reasonable quantities.

What is 'reasonable'?

The terms 'a reasonable period' and 'reasonable quantities' referred to above are not defined in the Act and their meaning will vary from case to case depending on the types of goods and services being offered and the way they are normally marketed. The nature of the advertisement itself may give some indication of what a reasonable period might be. For example, the advertisement might mention a specific period during which the offer shall remain open. However, qualifications such as 'while stocks last' may not necessarily alter the nature and effect of an extensive advertising campaign and thus discharge the obligation to have the goods or services on offer at the advertised price for a reasonable period. Where available stocks are limited, for example, during clearance sales, the limitation should be expressed in the advertisement itself, as also should any limits per customer.

The obligations of the advertiser

The advertiser's obligation under this provision is to offer goods or services at the advertised price for a reasonable period and in reasonable quantities. However, in imposing this obligation, the Act goes on to provide for special defences to a possible contravention. The special defences give an indication of the type of action called for when goods are advertised but, through some oversight or other factor that was within the control of the advertiser, are not available. The special defences fall into two categories:

- a 'rain check' whereby the goods will, within a reasonable time, be supplied to particular consumers at the advertised price; or

- equivalent goods are offered to consumers at the advertised price.

In either case the advertiser might arrange for another company to supply the goods.

Failure to adopt the above course in cases where non-availability is due to something within the control of the advertiser may result in criminal and civil liability.

Where non-availability arises through causes beyond the control of the advertiser further defences are available in relation to criminal liability. In essence these defences are:

- that the advertiser reasonably relied on information supplied by someone else;
- that the non-availability arose because of a reasonable mistake; or
- that the non-availability was due to an act or default of someone else, to an accident or to some other cause quite beyond the advertiser's control and the advertiser took reasonable precautions to avoid that situation.

The Act provides, therefore, that, when advertising goods or services at a specified price, particularly in widely distributed promotional material, there is a positive obligation upon advertisers to ensure that adequate controls are instituted to guard against misstatements in promotional material, and to ensure, as far as possible, the availability of the advertised goods or services at the advertised price.

THIRD PARTY TRADING STAMP SCHEMES (Section 18)

The Act prohibits third party trading stamp schemes. Such schemes have been prohibited in New Zealand since 1931. A typical scheme would involve a company ('the trading stamp company') which prints stamps which it sells to traders in bulk. The traders issue the stamps free to customers in quantities related to the value or quantities of goods purchased. The customers save them up and have regard to a list issued by the trading stamp company of available goods priced at so many stamps each. When a customer has collected sufficient stamps they are exchanged for an article on the list.

The main objections to the use of trading stamps by trading stamp companies are:

- that the customer of a trader participating in a trading stamp scheme is misled by the inducements held out into believing that he or she is getting something for nothing, whereas in fact the cost is built into the purchase price paid;
- that trading stamp companies provide no useful service to the community in return for the profits they make;
- that the system offers special temptations to fraud by ephemeral trading stamp companies;
- that such trading stamps put up the price of goods;
- because different traders might offer stamps issued by different trading stamp companies; a customer who has started collecting one sort of stamp would be restricted to traders offering those stamps. This effect is anti-competitive; and
- many stamps are never redeemed but all have to be paid for by consumers.

REFERRAL SELLING (Section 20)

Referral selling is the technique whereby a consumer is induced to buy goods or services at a set price on the basis that, after the sale, the consumer will receive a rebate, commission or other benefit in return for giving the supplier the names of prospective customers or otherwise assisting the supplier in selling its goods or services. Referral selling is prohibited where any benefit flowing to the consumer depends on an event occurring after the sale.

The important distinction between legitimate selling practices and those which will be prohibited depends upon the time at which the benefit is received by the customer. The practice is not prohibited if the benefit is given at the time of the customer's purchase. The prohibited practice is confined to those cases where the benefit to the consumer is dependent upon subsequent sales or introductions (or any other event) and is not given at the time of the original sale. The prohibition only applies to inducements to sign up for the goods or services. If the contract is completed (and there has been no prior representation that a rebate, commission or other benefit will apply) the supplier may, without contravening the provision, offer a rebate to the

original purchaser for others that sign up after inspecting the goods or services.

PAYMENT WITHOUT SUPPLY (Section 21)

The Act prohibits the demanding or accepting of payment or other consideration for goods or services if the person does not intend to supply the goods or services; or intends to supply goods or services materially different from those which are the subject of the demand or acceptance; or does not have reasonable grounds to believe that he or she will be able to supply the goods or services within a specified or reasonable time.

HARASSMENT AND COERCION (Sections 14 and 23)

The use of physical force, undue harassment or coercion in connection with the supply of goods, services or land or the payment for goods, services or land is prohibited in the Bill. The coercion, undue harassment or physical force need not be directed at the consumer who is the prospective customer or who owes money.

PYRAMID SELLING (Section 24)

Pyramid selling is a trading scheme in which a promoter offers to sell to a participant both the right to sell a particular product or service and the right to introduce others into the scheme in the same way. It is an unfair form of trading because those at the top of the pyramid obtain their money not from selling the goods or services involved but from selling positions in the pyramid to others. Typically, the price of the goods or the right to provide the services associated with the scheme is high, and because the scheme works on the basis of participants recouping their outlay by introducing new participants, the market for the goods or services is soon saturated.

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CONSUMER INFORMATION STANDARDS (PART II)

The Act provides for the creation of consumer information standards. The supply of goods that do not comply with a prescribed standard will be a contravention under the Act.

The purpose of information standards is to assist informed consumer decision-making by ensuring that pertinent information about consumer goods is provided to consumers. A consumer information standard may consist of such requirements as to:

- the disclosure of information relating to the kind, grade, quantity, performance, composition, contents, design, construction, use, price, finish, packaging, promotion, or supply of the goods or services; and
- the form and manner in which that information is to be disclosed on or in relation to, the supply or promotion of the goods or services.

There is provision for the adoption of Standards Association of New Zealand standard specifications or other similar standards as consumer information standards.

Requirements that particular information be disclosed in relation to goods or services involves the imposition of costs associated with providing the information. Such costs are ultimately borne by the consumer of the goods or services as they are built into the price paid. It will therefore be necessary to subject any proposal to impose a consumer information standard to close scrutiny to ensure that the benefits to the consumer accruing from the requirement are sufficient to justify the associated costs.

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PRODUCT SAFETY AND SAFETY OF SERVICES (PARTS III and IV)

PRODUCT SAFETY STANDARDS (Sections 29 and 30)

The Act provides for the creation, by Order in Council, of product safety standards. The supply of goods which do not comply with a product safety standard applying to those goods will be a contravention of the Act.

Product safety standards may relate to:

- the performance, composition, contents, manufacture, processing, design, construction, finish or packaging of the goods;
- the testing of the goods during or after manufacture or processing; or
- the form and content of markings, warnings, or instructions to accompany the goods.

There is provision for the adoption of Standards Association of New Zealand or other similar standards as product safety standards.

UNSAFE GOODS (Section 31)

The Act gives the Minister of Consumer Affairs the power to declare goods to be unsafe goods by notice in the Gazette. Such a notice stays in force for an initial period of 18 months and has the effect of prohibiting the supply of goods to which it applies. At the expiry of 18 months a further order may be made prohibiting the supply of the goods indefinitely or for a specified period.

PRODUCT RECALL (Section 32)

Where goods do not comply with a prescribed standard or are likely to cause injury, or are goods in respect of which an unsafe goods order is in force, the Minister of Consumer Affairs is empowered under the Act to order that goods be recalled. Such an order can only be made when the supplier has not taken satisfactory action to recall the goods. In such circumstances, the Minister can also require a supplier to disclose to the public information about the goods, or repair or replace the goods.

SAFETY OF SERVICES (Sections 34, 35 and 36)

The Act provides for the creation by Order in Council of safety standards in respect of services for the purpose of preventing or reducing the risk of injury to any person. An Order in Council may also be made in respect of a standard specification set by the Standards Council pursuant to the Standards Act 1965, or by other regulatory bodies.

It is an offence to supply or advertise services for which a safety standard has been prescribed, if those services do not comply with the standards.

The services for which safety standards may be made are limited to:

- the maintenance, repair, treatment, processing, installation, assembly, cleaning alteration or transportation of goods; or
- the construction, maintenance, repair, cleaning or alteration of any building, or other fixture on land, or the development of land.

IMPORTATION OF GOODS (Section 33)

The Act prohibits the importation of goods, the supply of which would contravene the product safety provisions.

CONTRAVENTIONS

Contravention of the general prohibition on misleading or deceptive conduct and the prohibition on the use of physical force, harassment or coercion gives rise only to civil liability for which the following remedies can be granted:

- injunctions restraining the conduct (Section 41);
- orders to disclose information or publish corrective advertisements (Section 42);
- other orders to compensate persons who suffer loss or damage as a result of the conduct (Section 43).

Prosecutions

Contravention of the specific prohibitions on false representations, unfair practices and supplying goods which do not comply with a consumer information standard or the supply of which is prohibited under the products safety provisions (i.e. any of the prohibitions except the general prohibition on misleading or deceptive conduct), are criminal offences. Penalties of up to \$100,000 for companies and \$30,000 for individuals may be imposed by the Court in prosecution proceedings (Section 40). Contravention of these specific provisions can also give rise to the civil proceedings set out above.

The News Media (Section 15)

Publishers and broadcasters are given a special exemption under the Act from the prohibitions on misleading and deceptive conduct and false representations contained in sections 9 to 14 inclusive. The exemption, however, does not include advertisements but is limited, for example, to the publication or broadcasting of information or matters, such as articles, editorial comment, stock exchange figures, forecasts, or reports of public meetings.

Advertisement is defined in the Act as 'any form of communication made to the public or a section of the public for the purpose of promoting the supply of goods or services or the sale or granting of an interest in land'. The publication by a newspaper of an article as to how its reporters are always first with the news, for example, would be an advertisement and if such a claim is not capable of substantiation, then it would amount to a contravention of the Fair Trading Act 1986.

Accidents and mistakes (Section 44)

The provisions of the Act can be contravened even when there is no intention to do so. Only a few provisions require that intention be shown. These are:

- the aspect of the prohibition on bait advertising relating to advertising at a specified price without intending to supply at that price;
- the prohibitions relating to the offering of free gifts or prizes;
- the prohibition on demanding or accepting payment without intending to supply as ordered.

The strict liability to comply with the Act will only be excused in prosecution proceedings where a defendant can show:

- that the contravention was due to a reasonable mistake; or
- that the contravention was due to reasonable reliance on information supplied by another person; or
- that the contravention was due to the act or default of another person, to an accident or some other cause beyond the defendant's control and that the defendant took reasonable precautions and exercised due diligence to avoid the contravention.



These defences will not, however, defeat civil actions.

Additional defences are available (in both prosecution proceedings and civil actions) to persons whose business it is to publish or arrange for the publication of advertisements and also to persons who have acquired goods for the purposes of supply from a person carrying on business in New Zealand in circumstances where he or she did not know or could not reasonably have found out that a consumer information standard had been prescribed for those goods.

Corporate Responsibility (Section 45)

The conduct of a company is judged from the conduct of directors, servants and agents who act on its behalf within their actual or apparent authority. The Act reinforces this by making it clear that:

- where it is necessary to establish the intention of a body corporate, it is sufficient to show that a director, servant or agent of the body corporate, acting within their actual or apparent authority, had that intention; and
- any conduct engaged in on behalf of a body corporate shall be deemed to have been engaged in also by the body corporate.

THE ROLE OF THE COMMERCE COMMISSION

Information Dissemination

The Act provides that the Commerce Commission will have the function, in addition to its functions under the Commerce Act, of encouraging compliance with the Fair Trading Act by disseminating information about the provisions of the Act (Section 6) and, where it is considered necessary, taking action under the enforcement provisions of the Act against traders who contravene the Act.

Investigatory Powers (Section 47)

The Act gives an officer of the Commission the power to enter and search premises and inspect documents and goods on those premises. This power may only be exercised where a judicial officer has issued a warrant to do so having been satisfied that there is reasonable ground for believing that it is necessary.

Obstructing an officer of the Commission exercising this power is a criminal offence punishable by a fine not exceeding \$12,000 in the case of a body corporate and \$4,000 in the case of any other person.

Court Action by The Commission

Proceedings that may be brought by the Commission include prosecutions, applications for injunctions to restrain conduct in breach of the Act and orders for affirmative disclosure or corrective advertising. Prosecutions are heard in the District Court. All other proceedings initiated by the Commission are brought in the High Court. Only prosecutions are criminal proceedings, other proceedings are civil actions.

Injunctions (Section 41)

An injunction is a Court order requiring a party to an action to do, or to refrain from doing, particular things.

The Act provides that the High Court may grant an injunction, on the application of the Commission or any other person, to restrain conduct in contravention of the Act, or to require any person to do any act or thing.

Affirmative Disclosure and Corrective Advertising (Section 42)

On the application of the Commission the High Court is empowered by the Act to make an order requiring specified information to be disclosed, or an order requiring the publication of specified advertisements. In both cases the cost of making the affirmative disclosure or publishing the corrective advertising is to be borne by the person or company against whom the order is made.

PRIVATE REMEDIES

Private Actions

A contravention of the Act may result in persons other than the Commission commencing proceedings. Applications for affirmative disclosure or corrective advertising may only be brought by the Commission. However, any person will be able to apply to the Court for an injunction to stop misleading or deceptive conduct that is in breach of the Act. In any proceedings the Court will be able to make orders for compensation and award damages. District Courts and Small Claims Tribunals will have jurisdiction to make such orders depending on the value of the claim.

Private Prosecutions

Private prosecutions will be possible. Thus, even if conduct is not made known to the Commission, or if the Commission decides against taking action, others may bring the matter before the Court.

Contact Points

COMMERCE COMMISSION

Location	Wellington 8th Floor 163 The Terrace Wellington	Auckland 4th Floor Government Life Building 99 Queen Street Auckland
Postal Address	P.O. Box 10273 Wellington	P.O. Box 2434 Auckland
Telephone	(04) 721976 (04) 734391	(09) 372168 (09) 372169
Location	Christchurch Level 3 SIMU Building 29-35 Latimer Square Christchurch	Dunedin 6th Floor National Mutual Building The Octagon Dunedin
Postal Address	P.O. Box 13186 Christchurch	Private Bag Moray Place Dunedin
Telephone	(03) 66259	(024) 740157

MINISTRY OF CONSUMER AFFAIRS

Location	7th Floor Bowen State Building Bowen Street Wellington
Postal Address	C/- Department of Trade and Industry Private Bag Wellington
Telephone	(04) 734040

SMALL CLAIMS TRIBUNALS

Details of the nearest Small Claims Tribunal may be obtained from the Registrar of the local District Court.

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