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Impact Roofing and Plumbing Ltd
Crowe Horwath,
44 York Place,
Dunedin Central,
Dunedin, 9016

Impact Roofing and Plumbing Ltd
10B Strathallan Street
Dunedin 9054

Attention: The Directors

Dear Sirs

Fair Trading Act 1986: Warning

The Commerce Commission has been investigating Impact Roofing and Plumbing Limited (Impact Roofing) under the Fair Trading Act. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that Impact Roofing has made misleading representations to consumers that they would receive New Zealand Steel's Colorsteel® steel roofing product, but this was not delivered. In the Commission's view, Impact Roofing's conduct is likely to have breached the Fair Trading Act.

If this behaviour is continuing at the present time, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the Fair Trading Act.

The investigation

During our investigation, the Commission considered whether customers of Impact Roofing had been supplied with an alternate roofing product to that which was quoted or agreed to with customers.

Quotations provided by Impact Roofing stated the roofing product being installed was "Colorsteel". A number of Impact Roofing's customers believed they were receiving New Zealand Steel's Colorsteel® as per the quotation. Although the quotations stated "Colorsteel" they actually received another brand of roofing.

When questioned by the Commission during interview, Impact Roofing acknowledged that they had installed another brand of roofing on some customers' roofs, rather than Colorsteel®. This was also confirmed when the Commission compared the quotes given to customers with evidence of the actual roofing product installed by Impact Roofing.

Impact Roofing advised the Commission that "*Coloursteel, Colour Steel or Coloured Steel are generic names in the industry for painted metal cladding. In the mind of Impact it could encompass either the PCC product or the NZ Steel product. Colorsteel is the proprietary name of the NZ Steel product*".

The Law

Section 13(a) of the Fair Trading Act states that:

No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services.. -

- (a) *make a false or misleading representation that goods are of a particular kind, standard, quality, grade, quantity, composition, style or model.* Section 10 of the Fair Trading Act prohibits traders from engaging in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods.

The Commission's view

In this case, the Commission's view is that Impact Roofing's conduct is likely to have breached the Fair Trading Act. We have reached this view because consumers did not receive the Colorsteel roofing product which they had been promised in their quotes..

We have exercised our discretion on this occasion to issue a warning to you in respect of this conduct rather than taking legal proceedings. In that regard we note that, in the particular case investigated, your company did not profit financially by supplying the customer a cheaper product.

The Commission recommends that you seek legal advice and encourage you to regularly review your compliance procedures and policies.

We think that it is problematic to assert that 'Coloursteel' or similar descriptions are generic names, because of the distinct possibility that these representations may lead consumers to believe they are getting the Colorsteel product produced by NZ Steel. There is a legal onus on traders to ensure that consumers are not misled as to the product they are purchasing. It is important to be careful when making representations to consumers and to be precise about the description of the product being quoted.

While we will not be taking any further action against Impact Roofing at this time, we will take this warning into account if this conduct continues or if you 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 Impact Roofing.

This warning letter is public information. We may 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 Fair Trading Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

Penalties for breaching the Fair Trading Act

Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading 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 have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act 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 Act.

You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact me on 09 9194441 or by email at John.Lyall@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



John Lyall
Manager
Auckland - Consumer