

20 April 2017

Mr [REDACTED]
Operational Manager
Nelson Environment Centre Incorporated
(trading as Nelson Reuse and Recycling Centre)
PO Box 4011
Nelson South 7045

Dear Mr [REDACTED],

Fair Trading Act 1986: Warning

The Commerce Commission (Commission) has been investigating Nelson Environment Centre Incorporated, trading as Nelson Reuse and Recycling Centre (NRRC) under the Fair Trading Act 1986. We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission considers that the NRRC is likely to have breached section 31(5)(B) of the Fair Trading Act by offering for sale a chainsaw without a chain brake.

The investigation

The Commission went to the NRRC on 28 February 2017 to perform a product safety inspection. During our visit, we identified on the shop floor a chainsaw without a chain brake. We established that this chainsaw was available for purchase via a silent auction.

The Unsafe Goods Notice (Chainsaws without a Chain Brake) Indefinite Prohibition Notice 2012 declares that a chainsaw without a chain brake is an unsafe good. Section 31(5)(b) of the Fair Trading Act prohibits offering for supply, goods subject to an Indefinite Prohibition Notice.

The NRRC responded to the Commission's enquiries about the chainsaw by stating that:

- it was aware that chainsaws without a chain brake could not be offered for sale
- it holds a list of items which cannot be offered for sale, which includes chainsaws without a chain brake.

The NRCC agreed to:

- remove the chainsaw without a chain brake from sale
- secure the chainsaw in a way that ensured it would not be sold while the Commission completed its investigation
- take whatever steps the Commission directs to dispose of the chainsaw

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- provide additional information to its staff about which goods the NRRC is prohibited from selling.

The Commission's view

The Commission's view is that the NRRC's conduct is likely to have breached the Fair Trading Act. We have reached this view because the chainsaw was being offered for sale and did not have a chain brake.

We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies. If issues arise because of problems with inventory management and/or due to staff lacking knowledge of applicable laws, we suggest you consider ways to improve compliance. This may include providing additional training to staff or limiting the number of staff authorised to manage inventory.

While we will not be taking any further action against the NRRC 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 the NRRC.

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.

As our investigation is now complete, we request that the NRRC destroys the chainsaw in a way that ensures it cannot be reconstructed.

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. We enforce product safety standards and consumer information standards that are set by regulation under the Fair Trading Act and unsafe product notices that are declared by the Ministry of Consumer Affairs. It is a breach of the Act to offer or supply products that fail to comply with all requirements of a product safety standard or to import, supply or advertise goods declared to be unsafe.

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 Zeb Walker on 04 924 3635 or by email at zeb.walker@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Greg Allan
Team Leader – Competition Branch