

19 July 2019

Shore Trading Limited
25 Meadowood Drive
Unsworth Heights
Auckland 0632

ref: 12.3/PRJ0043473

Attention: [REDACTED] Director
via email only: [REDACTED]

Dear [REDACTED]

Credit Contracts and Consumer Finance Act 2003 - Warning

1. The Commerce Commission has been investigating two businesses which traded as Greenbucks Finance (**Greenbucks**).¹ The investigation has been conducted under the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**).
2. We have now completed the investigation and we are sending this letter to warn Shore Trading Limited (**STL**) (trading as Greenbucks Finance) about matters that we consider raise concerns under the CCCFA.
3. In summary, the investigation has found that that STL, trading as Greenbucks (**STL/Greenbucks**), did not provide key information to borrowers about their loans before they entered into their loan contracts. This key information is set out in Schedule 1 of the CCCFA.
4. The Commission considers that by failing to give borrowers this information, STL is likely to have breached section 17 of the CCCFA.
5. The Commission has decided that it is appropriate to conclude our investigation by issuing STL with this warning rather than issuing legal proceedings or an infringement notice.

The investigation

6. The Commission opened an investigation into Greenbucks in August 2018 after receiving an inquiry about Greenbucks and a copy of a Greenbucks' loan contract.
7. The Commission reviewed the particular contract provided to us to check that it complied with the CCCFA. We also reviewed a blank copy of a Greenbucks' contract

¹ The investigated parties are the Greenbucks Finance head franchise, operated by Shore Trading Limited of Auckland and the other is the Greenbucks Finance franchise operated by [REDACTED]

that you provided to us, and the contract which was on the Greenbucks' website.²

8. Our review found that the contract does not include the following key pieces of information:
 - 8.1 an accurate statement of the debtor's cancellation rights (Schedule 1 clause (s))
 - 8.2 a statement of the debtor's right to apply for relief on the grounds of unforeseen hardship (Schedule 1 clause (sa));
 - 8.3 the frequency with which continuing disclosure statements will be provided (Schedule 1 clause (t));
 - 8.4 the name and contact details of STL/Greenbucks' dispute resolution scheme (Schedule 1 clause (ua));
 - 8.5 the registration number for STL/Greenbucks under the register of financial service providers (Schedule 1 clause (ub)); and
 - 8.6 the name under which STL/Greenbucks was registered on that register (Schedule 1 clause (uc)).
9. STL used a standard form of contract for its consumer loans, based on a template obtained from ██████████ STL also provided this contract to two Auckland based franchises to use.³

Credit Contracts and Consumer Finance Act 2003

Application of the CCCFA

10. The CCCFA protects consumers when they borrow money or buy goods on credit. It sets out the rules that must be followed by lenders when they provide loans to consumers in New Zealand.
11. STL/Greenbucks' loan agreements are consumer credit contracts under section 11 of the CCCFA.⁴

Disclosure

12. Under section 17 of the CCCFA, lenders must disclose to the borrower as much of the information set out in Schedule 1 to the CCCFA as is applicable to the contract.

² The wording in all three versions of the Greenbucks' contract was substantially the same so the comments in this letter apply to the three versions.

³ These entities are ██████████ (which did not appear the Companies' Register and an internet search also did not produce any results) and ██████████ which is no longer trading.

⁴ Under section 11 of the CCCFA, a credit contract will be a consumer credit contract if the loan is to a natural person, if the loan is primarily for domestic or household purposes, and if interest or fees are payable on the loan or if security is taken for the loan.

13. Disclosure must be made before the contract is entered into.

The Commission's view

14. In the Commission's view, STL/Greenbucks is likely to have breached section 17 of the CCCFA by failing to give borrowers the key information about the contract as required by the Act.
15. After weighing up the factors set out in our Enforcement Response Guidelines⁵, we have decided to conclude this investigation by issuing this warning.
16. If STL resumes consumer lending, we recommend that it seeks legal advice about its loan contract and about its compliance with the CCCFA.
17. Besides issuing this warning, the Commission will not be taking any further action against STL at this time in respect of the conduct identified in this investigation. We will, however, take this warning into account if STL engages in similar conduct in the future.
18. Please note that this warning letter is public information and it will be published on the Commission's 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

19. The Commission is responsible for enforcing and promoting compliance with a number of New Zealand laws, including the CCCFA. The CCCFA is designed to protect consumers when they are borrowing money and enable them to make informed choices about using credit.

Penalties for breaching the CCCFA

20. Only the courts can decide if there has actually been a breach of the CCCFA and impose penalties where it finds the law has been broken.
21. Lenders who are found to have breached the CCCFA may:
- 21.1 be unable to enforce the contract or any right to recover property or any security interest;
 - 21.2 have to refund money or pay compensation;
 - 21.3 have to pay statutory damages;
 - 21.4 be convicted of a criminal offence and fined up to \$600,000 per offence for

⁵ The Enforcement Response Guidelines are available at <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

companies and \$200,000 for individuals;

- 21.5 be issued with an Infringement notices with a fine of \$1,000 for each infringement offence;
 - 21.6 have contracts changed by the court if the contracts are oppressive; and
 - 21.7 be banned from operating within the finance industry.
22. Where a lender fails more than once to comply with the CCCFA, a court may make an order prohibiting or restricting any person (including a director or principal officer of a lender) from:
- 22.1 providing credit under a consumer credit contract;
 - 22.2 acting as a director or taking part directly or indirectly in the management or control of any company or business that provides credit under a consumer credit contract; or
 - 22.3 being an employee of, or acting as an agent of, a creditor in any capacity that allows the person to take any part in the negotiation of a contract which involves the provision of consumer credit by the creditor.
23. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking their own private action through the courts.

Further Information

- 24. The Commission's website contains fact sheets and other resources to help businesses comply with the CCCFA our website. We encourage you to visit our website at www.comcom.govt.nz to better understand your obligations when lending to consumer and the Commission's role in enforcing the CCCFA.
- 25. The CCCFA itself can be viewed at www.legislation.govt.nz.
- 26. Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely

[REDACTED]

Manager
 Competition and Consumer Branch
 Auckland