

9 August 2017

Mitre 10 (New Zealand) Limited  
Private Bag 102925  
North Shore Mail Centre  
Auckland

Attention: Mr Grant Fraser, General Counsel  
By Email: [Grant.Fraser@mitre10.co.nz](mailto:Grant.Fraser@mitre10.co.nz)

Dear Mr Fraser

### **Fair Trading Act 1986: Warning for “lowest prices” signage at Mitre 10 stores**

1. The Commerce Commission (**Commission**) has been investigating Mitre 10 (New Zealand) Limited (**Mitre 10**) under the Fair Trading Act 1986 (the **Act**). Our investigation is complete. We are writing to inform you that we have decided to resolve our investigation by issuing this warning letter and that this warning letter will be publicly available.<sup>1</sup>
2. We understand that the Mitre 10 and Mitre 10 Mega stores (the **stores**) are individually owned and operated but that Mitre 10 coordinates pricing and advertising activities for the stores. We consider that it is appropriate to address our concerns about in-store signage to Mitre 10, as the head office company and we expect Mitre 10 to ensure that this letter is drawn to the attention of all store operators and managers.
3. In summary, some Mitre 10 stores during 2016 displayed signage that made lowest price claims. The claims were not made throughout the chain of Mitre 10 stores, and were not made in other media. The Commission considers that these representations were likely to be misleading because it is unlikely that Mitre 10 had the lowest prices on all of the products offered for sale in those stores at the time the representations were being made.

#### **Mitre 10 was warned for similar conduct in 2011**

4. As you are aware, the Commission has previously investigated Mitre 10's use of “lowest prices” representations. In May 2011 that investigation resulted in Mitre 10 being issued with a warning letter from the Commission.

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<sup>1</sup> <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/> paragraphs 36 to 42

5. At that time, the lowest price representations were being widely used by Mitre 10 in television and newspaper advertising, mailers and store signage and were repeated in announcements made in-store.
6. Mitre 10 was warned that, based on the information gathered during our investigation, the Commission considered that the representations were liable to mislead the public about the price of Mitre 10's products.
7. Following our warning letter, Mitre 10 promptly confirmed to the Commission that it had:
  - 7.1 removed the tag-line "*Best Range. Lowest Prices. End of Story*" that featured prominently on the outside of a significant number of stores and inside the store;
  - 7.2 removed references to "lowest prices" from national advertising, radio, online and catalogues;
  - 7.3 designed new exterior store branding and instore advertising that focussed on "low prices"; and
  - 7.4 replaced the "lowest price guarantee" with a "15% price guarantee" and made a number of consequential changes.

#### **The current investigation**

8. Notwithstanding those changes, in October 2016, it was brought to the Commission's attention that signage in 42 stores included at least one of the following representations:
  - 8.1 "*BEST RANGE. LOWEST PRICES. END OF STORY*".
  - 8.2 "*Best range. Lowest prices. End of story*".
  - 8.3 "*To ensure the lowest price, the actual price may be lower than that advertised*".
  - 8.4 "*We frequently price check to bring you the lowest prices possible every day*".
9. Photos of the signage are included in **Attachment A**.
10. The Commission was disappointed to learn that the earlier remediation by Mitre 10 was not successful, and we outlined our concerns in a letter dated 19 December 2016, to which Mitre 10 provided responses. We made other and further enquiries, including conducting store visits to view signage.
11. The Commission's investigation has established that:

- 11.1 Mitre 10 has a very significant volume of signs across a nationwide network of stores (the stores). Stores are owned and operated as separate legal entities.
- 11.2 After our letter, Mitre 10's General Counsel contacted the stores identified in the Commission's 19 December letter as having problematic signage, requesting that the signage be removed as soon as possible. Store owners were asked to – and did, to your satisfaction, confirm all such signage had been removed.
- 11.3 Managers and operators of all stores were contacted by email and via a store e-newsletter and told of the need to replace or remove signage in stores referring to "lowest prices".
- 11.4 Mitre 10 Support Centre agreed to pay for printing and distributing replacement signage.
- 11.5 On 4 April 2017 Mitre 10 confirmed to the Commission that all stores had removed, replaced, and/or covered as appropriate the "lowest" prices representations.

#### **The Commission's view**

12. In this case, the Commission's view is that Mitre 10's conduct gave rise to a likely breach of the Act. We have reached this view because representations made on some in-store signage claiming that Mitre 10's prices were the "lowest" were likely to be misleading. It is unlikely that Mitre 10 had the lowest prices on all of the products offered for sale in the stores at the time the representations were being made.
13. The Commission has decided that a warning rather than prosecution is appropriate in this case because we are satisfied that:
  - 13.1 The representations were not part of a Mitre 10 advertising campaign but occurred (as below) through inadvertence;
  - 13.2 the conduct was confined to in-store advertising only;
  - 13.3 the representations were not made in all Mitre 10 stores, but were confined to the 42 stores that were the subject of the complaint;
  - 13.4 the representations arose from the use of legacy signage which through inadvertence (rather than deliberateness) remained in situ or was reused, having been earlier removed following the 2011 warning;
  - 13.5 the representations were not made in any print, radio, website or television advertising;

- 13.6 Mitre 10 moved promptly when we drew this issue to its attention, and has assured us that all representations have now been removed, replaced or covered; and
- 13.7 Mitre 10's dominant marketing campaign or messages did not make lowest prices claims.
14. Mitre 10 should not expect that any future conduct of this kind would receive a warning outcome, rather than prosecution. We accept that this breach arose as a series of local store 'slips' and contrary to Head Office expectations, but we look to you to ensure that no such error recurs.

#### **The Commission's role**

15. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the 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**

16. Only the courts can decide if there has actually been a breach of the Act. The court can impose severe penalties where it finds the law has been broken. A company that breaches the Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
17. You should be aware that our decision to issue this warning does not prevent any other person or entity from taking private action through the courts.

#### **Further information**

18. We have published a series of fact sheets and other resources to help businesses comply with the Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://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.
19. You can also view the Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
20. Thank you for your assistance with this investigation. Please contact me on 04 924 3770 or by email at [greg.allan@comcom.govt.nz](mailto:greg.allan@comcom.govt.nz) if you have any questions in relation to this letter.

Yours sincerely



Ritchie Hutton  
Head of Investigations

Attachment A





\* Conditions: Excludes trade and special quotes, stock liquidations and commercial quantities. To ensure the lowest price, the actual price may be lower than that advertised.