

5 July 2017

Tyre HQ Limited  
c/o Watershed Chartered Accountants Limited  
Level 1 Caro House  
137 Alexandra Street  
Hamilton 3204

Attention [REDACTED]

Dear [REDACTED]

### **Fair Trading Act 1986: Warning**

The Commerce Commission has been investigating Tyre HQ Limited (**Tyre HQ**) under the Fair Trading Act 1986 (the **Act**). We have now completed our investigation and are writing to you to alert you to our concerns.

In summary, the Commission's investigation has established that Tyre HQ supplied and fitted ageing tyres to a consumer's vehicle. In the Commission's view, this consumer was misled and thought they were buying newly manufactured tyres when in fact the tyres were manufactured several years before the consumer purchased them. In the Commission's view, Tyre HQ's conduct is likely to have breached section 13(d) of the Act.

Section 13(d) of the Act prohibits traders from making a misleading representation that goods are new, or that they were manufactured at a particular time. In this case we consider that the circumstances gave rise to an implied representation that the tyres purchased were new or recently manufactured.

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 Act.

### **The investigation**

A consumer had complained to the Commission that Tyre HQ had sold two Dunlop ST20 tyres which had been fitted to her vehicle in July 2015, with another two tyres fitted in December 2015. When the tyres were later inspected by a mechanic, it was noticed that the manufacturer's code on the wall of the tyres revealed that they had been manufactured between 7 and 11 years ago. Tyre HQ responded to the Commission's enquiries by stating it had received 10 or 12 Dunlop and Bridgestone tyres from a tyre store that had closed down. These tyres were sold to Tyre HQ's customers.

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

In this case, the Commission's view is that Tyre HQ's conduct is likely to have breached section 13(d) of the Act.

We consider that customers would have had a reasonable expectation that, unless otherwise stated, any tyres purchased would have been recently manufactured and not aged stock. In fact the tyres were manufactured a long time prior to being sold and, in our opinion, could no longer be classed as new.

We also note that manufacturers typically offer a performance warranty on the tyres, which the consumer did not receive in this case. Dunlop tyres are sold with a five year warranty from the date of manufacture.

Tyre HQ should have been clear about these issues when it sold the tyres, so that consumers could have made an informed decision as to whether to purchase tyres of this age.

We recommend that you seek legal advice and encourage you to regularly review your compliance procedures and policies.

While we will not be taking any further action against Tyre HQ 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 Tyre HQ.

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 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 Act. The court can impose 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.

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 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.

You can also view the Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).

Thank you for your assistance with this investigation. Please contact me on 09 919 4441 or by email at [John.Lyall@comcom.govt.nz](mailto:John.Lyall@comcom.govt.nz) if you have any questions about this letter.

Yours faithfully



John Lyall  
Manager – Consumer  
Auckland

Cc. [REDACTED]