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By email only: [REDACTED]

Dear [REDACTED]

Fair Trading Act 1986: Warning

1. The Commerce Commission has been investigating New Zealand Home Services Limited (NZHS) 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.
2. In summary, the Commission considers that NZHS has made unsubstantiated representations on its website and in its sales presentation materials. In the Commission's view, NZHS's conduct is likely to have breached section 12A of the Act.

The investigation

3. During the investigation, we requested that NZHS substantiate certain representations it had made by providing us with the grounds / information that it had relied on in making the representations. The representations were made on NZHS' website (www.nzhomeservices.co.nz) and on a 'flip chart' document used during sales presentations.
4. The representations related to NZHS' promotion of solar panel systems and were as follows:
 - 4.1 Representations about the increase in electricity prices:
 - 4.1.1 "Like everything, the cost of power is always increasing – in this case, between 2.5 to 7% each year" (website).
 - 4.1.2 "Lifetime savings include the rate of electricity increasing 2.5 to 5% each year" (website).
 - 4.1.3 "...electric rates which have grown between 2.5% and 7% per year over the past two decades" (flip chart).

- 4.1.4 “Over the past 20 years, electricity prices have risen between 2.5% and 7% every year” (flip chart).
- 4.1.5 “Historical trends suggest electricity prices will rise 2.5 to 5% every year” (website and flip chart).
- 4.2 Representations about the increase in property value:
 - 4.2.1 “Studies show that homes with solar panel systems have property values 3 to 4% above similar homes in the same area” (website);
 - 4.2.2 “Installing a solar system increases the average property value by 3 to 4% and houses that have a solar system installed usually sell twice as fast than other properties on the market” (website);
 - 4.2.3 “Early studies have found that buildings and homes equipped with clean energy systems have higher property values, selling twice as fast and at a premium of 3 to 4% over similar homes in the same neighborhood” (sic.) (flip chart);
 - 4.2.4 “Early studies focused on established solar markets are showing increases in value in some communities that exceed 4%” (flip chart);
- 4.3 Representations about the return on investment for solar panel systems:
 - 4.3.1 “In many ways, your solar power system is a financial product – one that is capable of generating annual returns ranging anywhere from 10% to more than 30%” (website);
 - 4.3.2 “Most solar systems will pay for themselves within the first five years, and over the 25-year guaranteed performance warranty that comes with most systems, you are in for some serious savings!” (website);
 - 4.3.3 “In many ways, your solar power system is a financial product – one that is capable of generating annual returns ranging anywhere from 10% to more than 30%” (flip chart);

(together, the Representations).

The Commission’s view

- 5. In this case, the Commission’s view is that NZHS’s conduct is likely to have breached section 12A of the Act.
- 6. Section 12A states that a person must not, in trade, make an unsubstantiated representation. A representation is unsubstantiated if the person making the representation does not, when the representation is made, have reasonable grounds

for the representation, irrespective of whether the representation is false or misleading.

7. We consider that none of the information provided by NZHS established reasonable grounds for making the Representations, and that as a result, the Representations were unsubstantiated. We set out our reasons for this below.

The electricity price increase representations

8. These representations were presented as factual statements and consumers would expect them to be substantiated. They were clearly intended to influence a consumer's decision to purchase an NZHS solar panel system because of the potential money saving implications. The representations suggested that the electricity price increases were consistently rising nationwide. However, the information NZHS relied on in support of the representations showed that there had only been electricity price increases in certain regions and at certain times. When the information was considered in its entirety, it did not support the specific annual increases alleged.
9. Further, the information provided by NZHS was of varying degrees of reliability. The information included blog posts, newspaper articles and information from competitors' websites, and it was unclear where some of the data on electricity price rises had originated. We would expect the source of the data to be clear and reputable if it is to be relied on as reasonable grounds for making such specific representations.

The property value increase representations

10. These representations were presented as factual statements and were clearly intended to influence a consumer's decision to purchase an NZHS solar panel system because of the added value it would bring to a property.
11. Given the context in which the representations were made, we believe typical consumers would interpret these representations as applying to the New Zealand property market. However, most of the information provided to us in support of these representations was based on observations from overseas. We do not consider that property valuation evidence from overseas is directly applicable to property values in New Zealand.
12. We also note that the information provided from a New Zealand source suggested that any increase in property value from solar products is not yet recognised by the New Zealand public.¹

¹ Vicki Holder "Major renovations: which will add the most value?" (21 August 2015) Westpac New Zealand <<https://www.westpac.co.nz/rednews/property/major-renovations-which-will-add-the-most-value/>>

The return on investment representations

13. These representations were again presented as factual statements and were intended to influence a consumer's decision to purchase an NZHS solar panel system because of the expected return on investment.
14. There were several issues with the information NZHS provided in support of these representations. Firstly, as the return on investment is subject to a number of variables (such as the amount of sun the panels receive, and the amount of power consumed), it is difficult to state with any accuracy the percentage a customer can expect to receive on their return. Secondly, notwithstanding the number of variables, the highest return on investment calculation given in the information provided by NZHS was 11% per annum.² Not only is this at the bottom of the promoted range of a return of 10% to 30%, but it also does not support the claim that a solar system will pay for itself within five years.

Substantiation required at the time the representation is made

15. Finally, we note that some of the supporting information provided by NZHS was created or compiled after the Representations were made. Section 12A of the Act requires that a trader be able to substantiate a representation *at the time it is made*.
16. It is important that NZHS ensures that any information it relies on in making representations remains up to date and accurate, in order to substantiate any representations made on a continuing basis or in the future.

NZHS's response

17. NZHS has responded to the Commission's concerns by removing the Representations on its website and in the flip chart presentation.
18. We recommend that NZHS seeks legal advice and suggest it reviews its compliance procedures and policies regularly.

Enforcement outcome

19. While we will not be taking any further action against NZHS at this time, we will take this warning into account if NZHS engages 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 NZHS.
20. 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.

² "Investing in a solar power system" My Solar Quotes <<https://www.mysolarquotes.co.nz/about-solar-power/residential/solar-investment/>>

The Commission's role

21. 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 Act

22. 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.
23. 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

24. 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. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
25. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.
26. Thank you for your assistance with this investigation. Please contact James McIvor on 64 9 920 3486 or by email at james.mcivor@comcom.govt.nz if you have any questions about this letter.

Yours sincerely


Stuart Wallace
Consumer Manager