



Fair Trading (Infringement Offences) Regulations 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 7th day of July 2014

Present:

The Right Hon John Key presiding in Council

Pursuant to section 40H of the Fair Trading Act 1986, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Consumer Affairs, makes the following regulations.

Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Infringement fees	2
5 Infringement notices	2
6 Reminder notices	2
Schedule Forms	3

Regulations

1 Title

These regulations are the Fair Trading (Infringement Offences) Regulations 2014.

2 Commencement

These regulations come into force on 8 August 2014.

3 Interpretation

In these regulations, **Act** means the Fair Trading Act 1986.

4 Infringement fees

- (1) The infringement fee for an infringement offence against section 40(1) of the Act is \$1,500.
- (2) The infringement fee for an infringement offence against section 40(1B) of the Act is \$1,000.

5 Infringement notices

An infringement notice issued under section 40D(1) of the Act must be in form 1 set out in the Schedule.

6 Reminder notices

A reminder notice issued under section 40E(5) of the Act must be in form 2 set out in the Schedule.

Schedule

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Forms

Form 1

Infringement notice

Section 40D(1), Fair Trading Act 1986

(Front page)

Infringement Notice No:

To *[company's name, number, and registered address, or individual's full name and full address]*

Date of birth (if known):*

Gender (if known):*

Occupation (if known):*

Telephone number (if known):

*Omit if the notice is served on a company.

Enforcement authorityThe New Zealand Commerce Commission (the **Commerce Commission**)*[Specify the address for correspondence.]***Alleged infringement offence**You are alleged to have committed an infringement offence against section 40(1)/40(1B)* of the Fair Trading Act 1986 (**Act**) for—

- failing to comply with a suspension of supply notice issued under section 33D of the Act†
- contravening section 28 of the Act (consumer information standards)†
- failing to comply with section 28B(2) or (3) of the Act (disclosure of trader status on Internet)†
- contravening section 36C of the Act (layby disclosure requirements)†
- contravening section 36D of the Act (further layby disclosure requirements)†

Form 1—*continued*

- contravening section 36L of the Act (uninvited direct sale disclosure requirements)†
- contravening section 36U of the Act (extended warranty disclosure requirements)†.

*Select one.

†Select the paragraph that applies. (Delete all other paragraphs.)

Details of alleged infringement offence

Name or number of Commerce Commission employee who issued notice:

Nature of infringement:

Location (if applicable):

Date:

Approximate time (if applicable):

The fee for this infringement offence is: \$[*amount*]

Procedure for payment of infringement fee

The infringement fee is payable to the Commerce Commission within 28 days after [*date notice served*].

Payment is to be made by any of the following methods: [*specify payment methods and address(es) or place(s) at which fee may be paid*].

Please quote the infringement notice number shown above when making payment.

Payments by cheque must be made payable to the New Zealand Commerce Commission and marked “a/c payee”.

Important: Please read the summary of rights printed overleaf.

Form 1—*continued*

(Back page)

Summary of rights

Important information

- 1 If, after reading these notes, there is anything in the notes that you do not understand, you should consult a lawyer.
- 2 This notice sets out 1 alleged infringement offence. If you have received a notice for other alleged infringement offences, you may act in the same way in respect of all alleged offences or in different ways in respect of different alleged offences, as set out below.
- 3 You have the right to deny the alleged infringement offence and request a hearing, or to admit the offence and request a hearing for the court to consider submissions as to penalty or otherwise.
- 4 If you wish to deny the alleged infringement offence (and request a hearing), request the cancellation of this notice, request the transfer of this notice to another person, or have a court consider submissions as to penalty or otherwise, follow the directions in paragraph 7.

Payment of infringement fee

- 5 If you pay the infringement fee within 28 days after the date of service of this notice, no further action will be taken. Payment may be made as specified on the front page of this notice.
Note: Payment of the infringement fee is not a personal admission of guilt and will not result in the establishment of a criminal record.

Defences

- 6 You will have a complete defence against proceedings if you can show the infringement fee has been paid to the Commerce Commission by any of the methods and at any of the places for payment indicated on the front page of this notice within 28 days after you have been served with a reminder notice.

Form 1—*continued*

Note: Late payment, or payment made at any other place, will not constitute a defence to proceedings in respect of the alleged offence.

Future action

- 7 You should write to the Commerce Commission at the address for correspondence specified on the front page of this notice if you wish to—
- (a) raise any matter relating to the alleged offence for consideration by the Commerce Commission (including a request for cancellation of this notice or transfer of the notice to another person); or
 - (b) deny liability for the offence and request a court hearing (paragraph 8); or
 - (c) admit liability for the offence, but wish to have a court consider written submissions as to penalty or otherwise (paragraph 9).

You must ensure that your request is received on or before the last day for payment. Any such letter should be (personally) signed.

- 8 If you deny liability for the offence and request a hearing, the Commerce Commission will serve you with a notice of hearing setting out the place and time at which the matter will be heard by the court (unless the Commerce Commission decides not to commence court proceedings).

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

- 9 If you admit liability for the offence but want the court to consider your submissions as to penalty or otherwise, you should in your letter—
- (a) request a hearing; and
 - (b) admit the offence; and
 - (c) set out the written submissions you wish the court to consider.

The Commerce Commission will then file your letter with the court (unless the Commerce Commission decides not to com-

Form 1—*continued*

mence court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

Consequences of taking no action

- 10 If you do not pay the infringement fee and do not request a hearing within 28 days after the service of this notice, you will be served with a reminder notice (unless the Commerce Commission decides otherwise).
- 11 If you do not pay the infringement fee and do not request a hearing within 28 days after being served with the reminder notice, you will become liable to pay costs in addition to the infringement fee (unless the Commerce Commission decides not to commence proceedings against you).

Queries/correspondence

- 12 When writing or making payment, please include—
 - (a) the date of the infringement; and
 - (b) the infringement notice number; and
 - (c) your address for replies.

Note: All queries and correspondence regarding this infringement offence must be directed to the Commerce Commission at the address for correspondence specified on the front page of this notice.

Further information

- 13 Further information about infringement offences and fees is contained in section 21 of the Summary Proceedings Act 1957 and section 375 of the Criminal Procedure Act 2011. If there is anything in this notice that you do not understand, you should contact a lawyer.

Form 2
Reminder notice in respect of infringement
offence

Section 40E(5), Fair Trading Act 1986

(Front page)

Reminder Notice No:

To *[company's name, number, and registered address, or individual's full name and full address]*

Date of birth (if known):*

Gender (if known):*

Occupation (if known):*

Telephone number (if known):

*Omit if the notice is served on a company.

Enforcement authority

The New Zealand Commerce Commission (the **Commerce Commission**)

[Specify the address for correspondence.]

Alleged infringement offence

You are alleged to have committed an infringement offence against section 40(1)/40(1B)* of the Fair Trading Act 1986 (**Act**) for—

- failing to comply with a suspension of supply notice issued under section 33D of the Act†
- contravening section 28 of the Act (consumer information standards)†
- failing to comply with section 28B(2) or (3) of the Act (disclosure of trader status on Internet)†
- contravening section 36C of the Act (layby disclosure requirements)†
- contravening section 36D of the Act (further layby disclosure requirements)†
- contravening section 36L of the Act (uninvited direct sale disclosure requirements)†

Form 2—*continued*

- contravening section 36U of the Act (extended warranty disclosure requirements)†.

*Select one.

†Select the paragraph that applies. (Delete all other paragraphs.)

Details of alleged infringement offence

Name or number of Commerce Commission employee who issued notice:

Infringement Notice No:

Nature of infringement:

Location (if applicable):

Date:

Approximate time (if applicable):

Service details

(To be provided for filing in court)

Infringement notice served by *[method of service]* on *[date of service]*.

Reminder notice served by *[method of service]* on *[date of service]*.

Address at which reminder notice served: *[full or electronic address]*.

Infringement fee

The fee for this infringement offence is: *[\$[amount]*

Amount of infringement fee unpaid: *[\$[amount]*

Total payable: *[\$[amount]*

Procedure for payment of infringement fee

The infringement fee is payable to the Commerce Commission within 28 days after *[date reminder notice served]*.

Payment is to be made by any of the following methods: *[specify payment methods and address(es) or place(s) at which fee may be paid]*.

Please quote the infringement notice number shown above when making payment.

Form 2—*continued*

Payments by cheque must be made payable to the New Zealand Commerce Commission and marked “a/c payee”.

Important: Please read the summary of rights printed overleaf.

(Back page)

Summary of rights

Important information

- 1 If, after reading these notes, there is anything in the notes that you do not understand, you should consult a lawyer.
- 2 This notice relates to 1 alleged infringement offence. If you have received infringement notices for other alleged infringement offences, you may act in the same way in respect of all alleged offences or in different ways in respect of different alleged offences, as set out below.
- 3 You have the right to deny the offence and request a hearing, or to admit the offence and request a hearing for the court to consider submissions as to penalty or otherwise.
- 4 If you wish to deny the alleged offence (and request a hearing), request the cancellation of this notice, request the transfer of this notice to another person, or have a court consider submissions as to penalty or otherwise, follow the directions in paragraph 9.

Final due date

- 5 The due date for payment of the infringement fee was [*date*]. By that date, payment had not been received, or had not been received in full, and you had not requested a hearing.
- 6 The final due date is now [*date*], which is 28 days after the day on which this notice was served on you.

Payment of infringement fee

- 7 If you pay the infringement fee within 28 days after the date of service of this notice, no further action will be taken against you. Payments may be made as indicated on the front page

Form 2—*continued*

of this reminder notice and must be received on or before the final due date.

Note: Payment of the infringement fee is not a personal admission of guilt and will not result in the establishment of a criminal record.

Defences

- 8 You will have a complete defence against proceedings if you can show the infringement fee has been paid to the Commerce Commission by any of the methods, or at any of the places for payment, indicated on the front page of this notice within 28 days after you have been served with this reminder notice.

Note: Late payment, or payment made at any other place, will not constitute a defence to proceedings in respect of the alleged offence.

Future action

- 9 You should write to the Commerce Commission at the address for correspondence specified on the front page of this notice if you wish to—
- (a) raise any matter relating to the alleged offence for consideration by the Commerce Commission (including a request for cancellation of this notice or transfer of the notice to another person); or
 - (b) deny liability for the offence and request a court hearing (paragraph 10); or
 - (c) admit liability for the offence, but wish to have a court consider written submissions as to penalty or otherwise (paragraph 11).

You must ensure that your request is received on or before the last day for payment. Any such letter should be (personally) signed.

- 10 If you deny liability for the offence and request a hearing, the Commerce Commission will serve you with a notice of hearing setting out the place and time at which the matter will be

Form 2—*continued*

heard by the court (unless the Commerce Commission decides not to commence court proceedings).

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

- 11 If you admit liability for the offence but want the court to consider your submissions as to penalty or otherwise, you should in your letter—
- (a) request a hearing; and
 - (b) admit the offence; and
 - (c) set out the written submissions you wish the court to consider.

The Commerce Commission will then file your letter with the court (unless the Commerce Commission decides not to commence court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

Consequences of taking no action

- 12 If you do not pay the infringement fee and do not request a hearing within 28 days after the service of this notice, you will become liable to pay costs in addition to the infringement fee (unless the Commerce Commission decides not to commence proceedings against you).

Queries/correspondence

- 13 When writing or making payment, please include—
- (a) the date of the infringement; and
 - (b) the infringement notice number; and
 - (c) your address for replies.

Note: All queries and correspondence regarding this infringement offence must be directed to the Commerce Commission at the address for correspondence specified on the front page of this notice.

Form 2—*continued***Further information**

- 14 Further information about infringement offences and fees is contained in section 21 of the Summary Proceedings Act 1957 and section 375 of the Criminal Procedure Act 2011. If there is anything in this notice that you do not understand, you should contact a lawyer.

Martin Bell,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 8 August 2014, prescribe infringement fees for infringement offences prescribed in the Fair Trading Act 1986.

The regulations also prescribe the form of infringement notices and reminder notices for those infringement offences.

Regulatory impact statement

The Ministry of Consumer Affairs produced a regulatory impact statement in February 2011 to help inform the decisions taken by the Government relating to the contents of this legislative instrument.

A copy of this regulatory impact statement can be found at <http://www.consumeraffairs.govt.nz/pdf-library/legislation-policy-pdfs/CLR-EGI-RIS-February-2011.pdf>

**Fair Trading (Infringement Offences)
Regulations 2014**

2014/229

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 10 July 2014.

These regulations are administered by the Ministry of Business, Innovation, and
Employment.
