Media Release

Issued 1 February 2012

Release No. 73

Chrisco fined $175,000 for misleading customers about cancellations

Christmas hamper company Chrisco Hampers Limited was fined $175,000 in the Manukau District Court today after pleading guilty to breaching the Fair Trading Act by misleading customers about their cancellation rights under the Layby Sales Act.

Chrisco is a well-known company that supplies food hampers and other products on layby to its customers for Christmas, with payments spread over the year. The Layby Sales Act sets out customers' rights for these types of purchases. The Act gives customers the right to cancel at any time until the last payment and governs what a seller can charge a customer when they cancel.

Between 2008 and 2010, Chrisco operated a cancellation policy where customers were charged 20% of payments already made if they cancelled up to 90 days prior to the final payment date. If they cancelled within 90 days of the final payment date, that fee was increased to 50% of payments already made.

Following an investigation by the Commission, Chrisco pleaded guilty to 10 charges under the Fair Trading Act. The breaches related to customers being mislead about what they could be charged if they cancelled at a particular time, how they could cancel, and in some instances, at what point in time they could cancel.

"Chrisco's cancellation policy meant that the company recovered more than it should have under the Layby Sales Act, so customers were overcharged. As the fee was worked out as a percentage of payments already made, some customers ended up being charged hundreds of dollars. In a few cases the fee was as much as $800," said Graham Gill, Commerce Commission Competition Manager.

As a result of the Commission's investigation, Chrisco reviewed and amended its cancellation policy to be 20% of payments made with a cap of $250. It also retrospectively refunded approximately 750 customers a total of $141,735 using the amended cancellation policy.

"We are pleased that customers who were overcharged have been refunded. However, it is difficult to measure the extent of harm caused by Chrisco's conduct. In addition to those customers who cancelled and were charged fees, there were customers who may have been put off cancelling when faced with the prospect of a large fee," said Mr Gill.

"During the investigation Chrisco advised us that it did not have a formal compliance programme in relation to the Fair Trading Act. This was despite the Commission raising concerns with the company about various practices including its cancellation policies. Customers expect that large companies will have proper and lawful practices in place," said Mr Gill.

Chrisco also pleaded guilty to charges relating to its Toys and Gifts Catalogue and its 'Headstart Plan'. The Toys and Gifts catalogue stated that customers could not cancel their contract after a certain date. This clearly breached the Layby Sales Act which allows cancellation at any time up to the last payment.

Chrisco's 'Headstart plan' automatically enrols customers into a new Chrisco plan when they have finished making payments for their previous plan, unless the customer ticks a box to opt out of the scheme. Chrisco marketed the plan as fully refundable up to the time an order was actually made. However, it wasn't clear to customers that if they didn't make their order by a certain time, Chrisco would choose a plan for them. Once that happened, cancellation fees would apply.

Background

The Commission does not enforce the Layby Sales Act, although false or misleading representations about consumer rights (such as the right of cancellation which is granted by the Layby Sales Act) can be breaches of the Fair Trading Act, which the Commission does enforce.

The Layby Sales Act entitles customers to cancel at any time up to the last payment. This does not need to be in writing. When orders are cancelled, sellers are entitled to recover their reasonable selling costs as well as the difference in retail value of the product (which might occur, for example, if the product was now out of season and on sale).

Fair Trading Act 1986

Under the Fair Trading Act, it is an offence to make a false or misleading representation. Section 13 (i) of the Act states:

> No person shall, in trade, in connection with the supply or possible supply of goods or services or with the promotion by any means of the supply or use of goods or services,—
>
> Make a false or misleading representation concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy.

Businesses found guilty of breaching the Fair Trading Act may be fined up to $200,000 for each charge. Where more than one charge is laid, the court may impose a fine greater than $200,000. Only the courts can decide if a representation has breached the Fair Trading Act.

Media contact:	Allanah Kalafatelis, Communications Manager
	Phone work (04) 924 3708, mobile 021 225 4417
	Victoria Rogers, Senior Communications Adviser
	Phone work (04) 924 3709, mobile 021 225 4454

Commission media releases can be viewed at www.comcom.govt.nz/mediareleases