

THE FAIR TRADING ACT

PLACE OF ORIGIN REPRESENTATIONS

The Fair Trading Act does not require all products to be labelled with a place of origin. However, where a product is labelled, any claims made about its origin must not be misleading or deceptive.

When deciding to purchase goods, customers will often be influenced by the origin of those goods. They may prefer to buy New Zealand made products or believe that goods made in certain countries are preferable to others.

Whether a product is New Zealand made is a question of fact and degree. The relevant considerations will vary depending on the nature of the product and what consumers may understand about it. It is not possible to set out a precise formula which will prescribe exactly which products can be called 'New Zealand made'.

Relevant considerations include:

- For a clothing item, where is it actually changed from a fabric into a garment?
- For a food item, where is the essential character of the food created?
- For a manufactured product, is it substantially manufactured in New Zealand? Where was the critical componentry manufactured? Are any significant stages of manufacture carried out overseas?

WHAT THE LAW SAYS

Section 13(j) of the Fair Trading 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 place of origin of goods."

HOW MUCH IS ENOUGH?

The test as to whether a 'made in New Zealand' claim breaches the Act is based on whether such a claim is likely to be misleading to New Zealand consumers. A consumer's understanding of whether a product is made in New Zealand may differ from a technical description, a cost analysis or a tariff definition of a product's overseas content.

If the product is produced in New Zealand from virtually all New Zealand components then there is little risk in claiming that such a product is 'New Zealand made'. However, if important components are imported or if part of the manufacturing process is undertaken off shore, then a 'New Zealand made' claim risks breaching the Act. However, depending on the product or the nature of the manufacturing process some such products may be legitimately described as 'Made in New Zealand'.

Increasingly, given economic globalization, many products sold in New Zealand have ingredients or components which are made elsewhere. In many such instances it will be misleading to claim a single place of origin. In such cases, to avoid making misleading claims about where the product was made, explicit terms or phrases such as 'assembled', 'packaged' or 'blended' or 'designed or assembled in New Zealand from imported components' should be used.

EXAMPLE

A company promoted an office chair as being 'New Zealand made'. The chairs were assembled in New Zealand using components manufactured in Taiwan, China and Italy to the company's specifications. The imported components included the base, castors, gas lift, chair adjustment levers and seat and back assemblies. The only parts of the chair manufactured in New Zealand were some incidental parts and the foam and upholstery for the seat and back support.

The court held that the representation 'New Zealand made' was misleading in this case because the New Zealand input into the chairs was not sufficient to justify describing the chairs as 'New Zealand Made'.

The test as to whether a 'made in New Zealand' claim breaches the Act is based on whether such a claim is likely to be misleading to New Zealand consumers.

FOOD AND PLACE OF ORIGIN LABELLING

For most products the origin of the raw materials is unlikely to be important provided that these are sufficiently far removed from the finished product. In practice, the main exceptions to this rule are likely to involve food products. For many food items, the place of origin of the raw ingredients is likely to be important, unless it has undergone a significant manufacturing process in New Zealand and the resulting product is distinctly different from the raw ingredients. For example, orange juice which is made from imported concentrate which has water added and is bottled in New Zealand, could be labelled 'Bottled in New Zealand from imported concentrate'. It is the concentrate which gives the juice its essential character, not the water or the bottling. It would be likely to be misleading to describe such a product as 'New Zealand made'.

EXAMPLE

Local companies implied by statements on the labelling of their products that their ham and bacon were produced in New Zealand. However a significant amount of the pork used to make the products was imported. The Commission's view was that this labelling was misleading as the essential character of ham and bacon was provided by the pork, which was of overseas origin. The Commission issued formal warnings to these traders.

USE OF SYMBOLS AND PLACE OF ORIGIN LABELLING

Businesses must avoid misleading consumers about where goods are made. It is not just words that can be misleading. Symbols such as kiwis, flags or other national emblems can also convey false or misleading impressions as to place of origin. Where such symbols are used on a product that was manufactured overseas, the Commission's view is that sufficient information should be put as prominently as possible on the label to indicate that the product came from elsewhere.

CONTACT DETAILS AND PLACE OF ORIGIN LABELLING

The Commission encourages businesses to list their contact details on goods, but care needs to be taken to ensure that those details do not create a misleading impression about the origin of the product. The Commission's approach is that, where contact details may give the impression of a place of origin that is different from where a product gained its essential quality, sufficient information should be put as prominently as possible on the label to indicate that the product came from elsewhere.

EXAMPLE

A business falsely represented the place of origin of leather jackets by using a label that stated 'Christchurch NZ' and the name of the New Zealand manufacturer as well as a swing tag that included the name and New Zealand address of the company. The jackets were put together in Korea from New Zealand leather. The design and drawings of the patterns occurred in New Zealand as well as some minor finishing work. The court held that in substance the jackets were made in Korea and it was misleading to imply that the place of origin was New Zealand. The business was convicted and fined.

CORRECTING MISREPRESENTATIONS ABOUT PLACE OF ORIGIN

Where there are representations on imported garments that imply New Zealand origin (such as flags, symbols, logos, brand names or other New Zealand references), businesses should ensure that the origin label is immediately obvious to any prospective purchaser.

A qualifying statement 'Made in Hong Kong', which has been printed in black ink on a dark background or hidden on top of a motif may, for example, be insufficient to correct a misleading representation about the origin of the product.

OTHER RELEVANT LEGISLATION

The Consumer Information Standard (Country of Origin) Regulations set out specific rules which require all new clothing or footwear for sale in New Zealand to be labelled with information that clearly states the country where the items were made or produced.

Importers should also note that the Customs Act prohibits the importation of goods which are falsely described - and this includes labels which are deceptive about their place of origin.

The New Zealand Food Standards Authority (NZFSA) regulates the labeling of food via the Australia New Zealand Food Standards Code.

To check for updates to this fact sheet visit:
www.comcom.govt.nz/fair-trading

This fact sheet is part of a series looking at the Fair Trading Act. Other fact sheets can be downloaded from
www.comcom.govt.nz/fair-trading

CONTACT

Contact the Commerce Commission with information about false or misleading trading practices.

TELEPHONE

Our Contact Centre during office hours on 0800 943 600

WRITE

To us at Contact Centre,
PO Box 2351, Wellington 6140

EMAIL

Us at contact@comcom.govt.nz

This fact sheet is a guideline only, and reflects the Commerce Commission's view. The publication is not intended to be definitive, and should not be used instead of legal advice. It is a traders' responsibility to remain up to date with legislation.

The Commerce Commission enforces legislation that promotes competition in New Zealand markets and prohibits misleading and deceptive conduct by traders.

Only the courts can make an authoritative ruling on breaches of the Fair Trading Act. Courts may fine companies found guilty of breaching provisions of the Fair Trading Act up to \$200,000 and individuals up to \$60,000.