

29 April 2020

Bill Quinn
OrganicAg

By email only: bill@organicag.co.nz

Dear Mr Quinn,

Official Information Act #19.154 - Organic Marketing

1. We refer to your request received on 27 March 2020 for information about:
 - 1.1 how many complaints the Commerce Commission (Commission) has received under the Fair Trading Act 1986 (FTA) in the last two years;
 - 1.2 how many of the complaints at paragraph [1.1] above warranted further investigation;
 - 1.3 how many prosecutions (in relation to organic) are currently pending; and
 - 1.4 a copy of the explanation booklets that were produced when the FTA first came about or shortly thereafter.
2. On the same date, you clarified that “*all questions are limited to organic*” and paragraph [1.1.] is for how many complaints the Commission has received under the FTA in the last two years “*relating to organic*”.
3. You stated that the purpose of your request is to prepare a submission on the Organic Products Bill and that you are aware of the Commission’s 2018 submission to the organic discussion document.¹
4. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

5. We have decided to grant your request.

¹ https://comcom.govt.nz/_data/assets/pdf_file/0032/85892/Commerce-Commission-comments-on-MPIs-discussion-document-on-options-for-regulation-of-organics-15-June-2018.pdf

Number of complaints

6. Our complaints database contains a number of searchable fields, including the name of the complainant, the name of the trader complained about, details of the complaint and the date received.
7. We have searched our complaints database across all fields using the term “organic” for complaints received within the last two years.² We limited the results to complaints received under the FTA.³ This search returned 51 complaints. These complaints can be broken down as follows:
 - 7.1 organic claims - 24 complaints
 - 7.2 biodegradable claims - 5 complaints
 - 7.3 health or nutrition claims - 5 complaints
 - 7.4 payment or terms and conditions - 4 complaints
 - 7.5 product issues or customer service - 4 complaints
 - 7.6 Country of origin - 3 complaints
 - 7.7 contractual dispute - 2 complaints
 - 7.8 compliance with other standards (not organic) - 1 complaint
 - 7.9 environmentally friendly claims - 1 complaint
 - 7.10 natural claims - 1 complaint
 - 7.11 safety - 1 complaint
 - 7.12 pricing - 1 complaint
8. We note that our 2018 submission on the Ministry for Primary Industries (MPI) ‘discussion document on options for regulation of organics’ relates to section 12A of the FTA, which prohibits a trader from making an unsubstantiated representation.
9. We confirm that 21 of the 51 complaints were made under section 12A of the FTA (some in addition to other grounds).

Further investigation

10. To provide context to our response, we have outlined the Commission’s complaint screening process below.

² The period from 27 March 2018 - 27 March 2020.

³ Information about relevant legislation is added by the Commission.

11. When a consumer contacts the Commission with a complaint about a trader, this is logged in the Commission's complaint database.
12. The Commission receives thousands of complaints every year. Each complaint is initially assessed by the Enquiries Team on the basis of the information available at the time. When conducting this initial assessment, the Enquiries Team considers:
 - 12.1 the likelihood of a breach of the relevant legislation (the FTA, Credit Contracts and Consumer Finance 2003, and the Commerce Act 1986);
 - 12.2 the Commission's Enforcement Response Guidelines,⁴ and;
 - 12.3 the Commission's strategic priorities and resourcing constraints.
13. The Commission has the power to act on complaints but is not required to take action in relation to all possible breaches of the legislation that we enforce.
14. If a report is deemed to meet certain criteria, it is reviewed by a panel of managers and subject matter experts from within the Competition Branch. The panel decides which reports are to be prioritised for further consideration by the Branch.
15. This process enables us to identify reports that best reflect our current enforcement priorities.⁵ The outcomes of the process are not final and we may revisit any report at a later stage, should we wish to reconsider the issues it presents.
16. In response to [1.2] of your request, 22 of the 51 complaints went to the panel for further review. These 22 complaints were progressed as follows:
 - 16.1 three complaints were referred for investigation;
 - 16.1.1 two investigations are in the initial phase;
 - 16.1.2 the decision was made not to open an investigation into one matter, due to competing resources and priorities;
 - 16.2 five complaints were added to a demand, DMND0009657 about biodegradable / sustainable / green claims;⁶
 - 16.3 five complaints resulted in the Commission contacting the relevant traders to educate and provide information to assist their compliance with the law;

⁴ <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>

⁵ <https://comcom.govt.nz/about-us/our-priorities>

⁶ A demand is the name the Commission gives a matter where we intend to complete further work. We place demands on a list and prioritise them based on our Enforcement Criteria and strategic priorities. We review our demand lists on a regular basis and sometimes demands are removed from the list, this is called a resource review. We may remove a demand from our list of pending work for several reasons (e.g. the trader has amended its conduct, the trader is no longer operating, and/or other matters have come to our attention that have de-prioritised previous demands).

16.4 nine complaints were closed with no further action.

Prosecutions

17. In response to [1.3] of your request, the Commission has no pending prosecutions in relation to organic claims.

FTA booklets

18. In response to [1.4] of your request, we do not hold an electronic copy of the guidance you have requested. During the COVID-19 lockdown period we are unable to access our offices to confirm whether hold a hardcopy version.
19. You can find FTA guidance on our website, including information about making accurate claims about characteristics such as 'free range' and 'organic'.⁷

Further information

20. Please note the Commission will be publishing this response to your request in the Official Information Act register on our website.⁸ Your personal details will be redacted from the published response.
21. Please do not hesitate to contact us at ويا@comcom.govt.nz if you have any questions about this request.

Yours sincerely

Mary Sheppard
OIA Coordinator

⁷ <https://comcom.govt.nz/business/dealing-with-typical-situations/making-accurate-claims>

⁸ <https://comcom.govt.nz/about-us/requesting-official-information/oia-register>