



# Brookfields LAWYERS

13 April 2005

**BY COURIER**

Power Plate New Zealand Limited  
Level 6, 5-7 Kingdon Street  
Newmarket  
**AUCKLAND**

**ATTENTION:** Krystyna Wardas

Brookfields House  
19 Victoria Street West  
Auckland, New Zealand  
PO Box 240, Auckland 1  
Telephone: +64 9 378 8350  
Facsimile: +64 9 378 3774  
Legal Counsel: DX 024124  
Email: [info@brookfields.co.nz](mailto:info@brookfields.co.nz)  
<http://www.brookfields.co.nz>

Partner: Ewa Leong Litt/ Rod Smith  
Direct dial: +64 9 378 2140/ +64 9 378 2138  
Email: [ewa@brookfields.co.nz](mailto:ewa@brookfields.co.nz) / [smith@brookfields.co.nz](mailto:smith@brookfields.co.nz)

## MISLEADING ADVERTISING UNDER THE FAIR TRADING ACT 1986 BY POWER PLATE NEW ZEALAND LIMITED ("POWER PLATE")

We act for Vibra-Train Limited and Vibration Training Limited.

We understand that you are currently the exclusive New Zealand distributor for Power Plate machines in New Zealand.

It has recently come to our client's attention that the "Next Generation" (plastic and fibreglass) model of Power Plate Machines (the "Power Plate Machines") you are distributing do not meet the standards of which you advertise them as being able to perform to. In particular, you are advertising the Power Plate Machines. In your advertising materials and in your studios, as being able to operate at 50Hz per second.

Our client has commissioned independent testing of the Power Plate Machines and has found that they only perform at a maximum rate of 38Hz per second. We have attached a copy of the test results for your information.

Our client considers such advertising amounts to misleading and deceptive conduct in trade under section 10 of the Fair Trading Act 1986, which states that:

*"No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for a purpose, or quantity of goods"*

The Power Plate Machines do not provide the performance you have advertised. As a result (and as you are aware), our client has removed all Power Plate Machines from its studios.

The Commerce Commission has been advised of your conduct. They have recommended to our client that it initially pursue this matter privately, although they will be maintaining a watching

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brief over your company's activities and if it is made aware of any detriment caused to our client or any users of the Power Plate Machines as result of the sale or use of the Power Plate Machines the Commission will step in.

Our client's concern is that the vibration technology industry in New Zealand is still sufficiently small that it is reasonably foreseeable that your misleading conduct is likely to irrevocably damage the industry as a whole, and therefore not only our client and its licensees but your business as well.

Accordingly, our client requests that you confirm in writing that you have or will immediately cause to be withdrawn from circulation all your products, packaging, advertising, marketing and promotional material in relation to Power Plate Machines which refer to the false operating standards of same and replace such materials with new products, packaging, advertising, marketing and promotional material which acknowledges the true and correct performance characteristics of the Power Plate Machines.

If we do not receive the above confirmation from you by 5pm on Wednesday 20 April 2005 we are instructed to seek any and all relief which is available to our client, including taking action under the Fair Trading Act 1986. The maximum penalties for a breach of the Fair Trading Act 1986 are \$60,000 for an individual and \$200,000 for a body corporate. Our client reserves its rights in that regard.

We look forward to hearing from you.

Yours faithfully  
**BROOKFIELDS**

**Ewe Leong Lim**  
Partner - Commercial

Direct dial: +64 9 979 2140  
email: lim@brookfields.co.nz

**Rod Smith**  
Partner - Litigation

Direct dial: +64 9 979 2139  
email: smith@brookfields.co.nz

End

Copy to: Commerce Commission  
P O Box 2351  
**WELLINGTON**  
Attention: Melissa Hofmann

This is the exhibit marked "B" referred to in the affidavit of **LLOYD SHAW** of Auckland sworn this 16<sup>th</sup> day of February 2006 before me:

A solicitor of the High Court of New Zealand

**Helen Chung**  
Solicitor