**Submission to the Commerce Select Committee on the Consumer Law Reform Bill**

**Thorn Rentals NZ Limited (trading as dtr)**

**20th March 2012**

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Secretariat

Commerce Select Committee

Select Committee Office

Parliament Buildings

Wellington 6011

**Submission on the Consumer Law Reform Bill**

Dear Sir/Madam

This submission is from Thorn Rentals NZ Limited t/a dtr.

Dtr wish to appear before the committee to speak to our submission.

Our contact is: Mr. Alan Shilton ph 09 250 3360 or 027471 2470

email [alan.shilton@dtr.co.nz](mailto:alan.shilton@dtr.co.nz)

Mr Shilton will be overseas on annual leave from 21st April until 3rd June. He may be contacted during this time on [ashilton@xtra.co.nz](mailto:ashilton@xtra.co.nz).

Yours Faithfully

Mark Spring

Managing Director

Thorn Rentals trades as dtr, a retail, rental and finance company with 22 branches nationwide.

Thorn Rentals NZ Limited (DTR) submits the following concerns and suggestions with respect to the Consumer Law Reform Bill. The particular areas of concern relate to:-

1. Auctions and the definition of auctions under clause 65 of the Bill; and
2. The amendments to the Fair Trading Act relating to “uninvited direct sales” imposing, in the case of finance contracts, a separate and additional disclosure and “cooling off” obligations in addition to the requirements of the Consumer Credit Contract and Finance Act; and
3. The amendments to the Fair Trading Act relating to extended warranties imposing a obligation for disclosure and “cooling off” compliance in addition to requirements under the Consumer Credit Contracts and Finance Act.

Auctions

The Bill proposes that an auction be defined (clause 65(2)) to exclude “Trade Me” type auctions. The effect of this exclusion is that the exception under clause 40 of the Bill whereby the Consumer Guarantees Act guarantees of acceptable quality under section 6 of that Act, do not apply on the sale of second hand goods by auction, is not applicable to an internet type auction such as Trade Me.

DTR regularly disposes of second hand goods on Trade Me. Such second hand goods are goods which DTR has originally sold and maintained and also goods which have been repossessed by DTR under loan securities which goods were not originally sold by DTR or maintained by it.

DTR does not object to being required to comply with section 6 of the Consumer Guarantees Act with respect to its own second hand goods but is concerned that such statutory guarantee should apply in respect of repossessed goods. DTR will be obliged to comply with the statutory warranty in relation to acceptable quality under section 6 of the Consumer Guarantees Act when those goods are unknown to it in terms of history of use and maintenance.

There are few auction facilities available for the sale of second hand consumer goods. DTR’s experience is that Trade Me is the most efficient and effective means of disposing of second hand goods and certainly the most effective at achieving the best price. In the case of repossessed goods, this means

that the best price is obtained for the goods by sale on Trade Me which means that the customers debt to DTR is reduced to the greatest extent possible. Experience is then that any other sale whether by regular auction house or otherwise, does not achieve such good prices.

DTR is obliged under the Credit Repossessions Act to dispose of repossessed goods by public tender or auction. If an internet style auction is not an auction for the purposes of the Consumer Law Reform Bill, then DTR is not in compliance with the Credit Repossessions Act when it sells repossessed goods on Trade Me.

Two amendments are submitted:-

1. That internet style auctions be included in the definition of an auction under the Bill; and, in particular
2. That section 6 of the Consumer Guarantees Act not apply to the sale of repossessed goods at auction.

Uninvited direct sales

An ‘uninvited direct sale agreement’ has been defined under the proposed clause 36K of the Fair Trading Act to include an agreement for the supply of services to a consumer. This will include finance agreements.

DTR sells consumer goods and provides finance to its customers, should they wish, for the purposes of completing such purchases. In the case of an ‘uninvited direct sale agreement’ for the sale of consumer goods and for the provision of finance to complete such sale, DTR will be obligated, under the proposed section 36L of the Fair Trading Act to make disclosure with respect to the sale of the consumer good and with respect to the finance provided. Under the proposed section 36M, the consumer will be entitled to cancel an uninvited direct sale agreement, for each of the consumer good and for the finance within five working days of agreement.

In addition to providing disclosure of the finance agreement under the proposed amendments to the Fair Trading Act relating to uninvited direct sale agreements, DTR will be obligated to make disclosure of the finance agreement under the Consumer Credit Contract and Finance Act and to allow the consumer a cooling off period for three days.

Two forms of disclosure is both cumbersome and potentially confusing to a consumer. Two different cooling off periods raises similar issues.

DTR submits that disclosure for the purposes of the Consumer Credit Contract and Finance Act be sufficient for the purposes of an uninvited direct sale agreement and that the cooling off period under the uninvited direct sale agreement provisions proposed relating to finance for the Fair Trading Act be the same as for that required under the Consumer Credit Contract and Finance Act.

Cancellation under the proposed amendments to the Fair Trading Act under the proposed section 36M, may be in writing or oral. It is submitted that oral cancellation carries too greater risk of confusion and poor communication to the detriment of all concerned and is not a proposal which should be continued with. Cancellation notices should be in writing, certainly not oral.

Extended warranties

DTR currently provides as part of its finance contracts on the sale of consumer goods, the following:-

* 1. A repair service and upgrade agreement; and
  2. An Damage Liability Waiver (DLW) product

Both of which are covered by the definition of an extended warranty under the proposed clause 36S of the amendments to the Fair Trading Act.

DTR will be obligated under the proposed section 36T to make disclosure of the terms of the extended warranties for repair and DLW to allow five working days cancellation right to the consumer.

As matters stand, these “extended warranties” are already disclosed as part of the finance contract for the purposes of the Consumer Credit Contracts and Finance Act disclosure requirements with the consumer being allowed a three day cooling off period within which to cancel the finance contract, including the “extended warranties”.

DTR provides the existing “extended warranty agreements” for the purposes of assisting the customer in protecting and maintaining the consumer goods they have purchased for the duration of their finance contract. The repair service agreement is intended to ensure that the goods are safely delivered, installed and maintained for the period of the finance contract. This agreement also allows the consumer the rights to upgrade goods during the term of the contract without additional cost and to return the goods without penalty. The DLW product is not required if the consumer already has adequate household insurance.

Without the repair service agreement and the DLW requirement, DTR would not advance funds to a consumer.

DTR’s concerns are that there will be a duplication of disclosure and varying cooling off periods under the Consumer Credit Contract and Finance Act and under the Consumer Law Reform Bill proposals which will only create a duplication of paperwork and create potential confusion for all concerned.

If a consumer has a separate right to cancel an extended warranty, such as for DLW and repair service as described above, then DTR would be forced to require repayment of the loan in full so that cancellation under the extended warranty agreements provisions of the Consumer Law Reform Bill would have to take effect as cancellation of the loan agreement under the Consumer Credit Contract and Finance Act.

In addition, the proposed section 36U(3) allows cancellation to be completed orally. This is not acceptable as it will only lead to confusion and miscommunication to the detriment of all concerned.