



Consumer Protection Act 2007

Compliance Notice (Section 75)

Company Secretary
eircom Limited
1 Heuston South Quarter
St. John's Road
Dublin 8

Competition and Consumer
Protection Commission
4 Harcourt Rd
Dublin 2

I, Aonghus O'Cuilinn, an authorised officer of the Competition and Consumer Protection Commission, duly authorised under Section 35 of the Competition and Consumer Protection Act 2014, hereby give you notice, pursuant to Section 75(2) of the Consumer Protection Act 2007, that I am of the opinion that you are engaging in a misleading commercial practice under Part 3 of the Consumer Protection Act 2007, such a misleading commercial practice being a prohibited act or practice as defined by Section 67(a) of the Consumer Protection Act 2007.

The contravention contained herein relates to the website, www.emobile.ie.

Statement of alleged contravention:

That you, eircom Limited, a trader, as of 16th April 2015, for the purposes of Section 43(2) of the Consumer Protection Act 2007, are engaging in a misleading commercial practice by misleading consumers in relation to the legal rights of a consumer, such being a matter set out in Section 43(3)(j) of the Consumer Protection Act 2007, and that such a misleading practice would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

My opinion

I am of the opinion that eircom Limited's www.emobile.ie website is misleading consumers in relation to the legal rights that a consumer may exercise in order to cancel distance contracts, such a practice being a prohibited commercial practice for the purposes of the Consumer Protection Act 2007.

The reasons for my opinion in this regard are based on the following:

1. Your company, eircom Limited (hereinafter 'eircom'), as a legal person can be described as a 'trader' for the purposes of the Consumer Protection Act 2007.
2. Your company, eircom, has a website which provides a facility for consumers to enter into distance contracts with eircom through eMobile, eMobile being part of the eircom Group. A 'distance contract' is described in Regulation 2(1) of the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (hereinafter 'the Regulations') as meaning 'a contract concluded between a trader and a consumer under an organised distance sales or service provision scheme without the simultaneous physical presence of the trader and the consumer, and with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded'.
3. I believe that the contracts eircom enters into with consumers through the website can be classified as 'distance contracts' to which Part 4 of the Regulations apply.
4. As this is a distance contract a right of cancellation applies pursuant to Part 4, Regulation 14. How a consumer exercises that right of cancellation is detailed in Regulation 17.
5. My inspection of your website www.emobile.ie revealed the following examples of misleading information:
 - a. **Paragraph 2.5 of the eMobile Terms and Conditions, available at www.emobile.ie, states the following;**

"If you are a consumer concluding a distance contract within the meaning of the EC (Protection of Consumers in Respect of Contracts made by means of Distance Communication) Regulations 2001 you shall, on written notice to us and subject to returning all Equipment to us, have the right to terminate the Services within seven Business Days of us accepting your Application, subject to you not having used the Services or the Equipment."

- b. **Paragraph 8 of the eMobile Terms and Conditions, Repairs and Refunds, under the heading Returns, states the following;**

“You are entitled to a full refund or exchange within 7 days of your phone/broadband device being dispatched to you. This is in accordance with the Distance Selling Regulation”

- c. **Paragraph 8.1 of the eMobile Terms and Conditions for Online Sales in the eMobile section of the Eircom website states the following;**

“eMobile will comply at all times with its obligations under the European Communities (Protection of Consumers in Respect of Contracts made by Means of Distance Communication) Regulations, 2001 (“the Distance Selling Regulations”). “

6. I believe that the Paragraphs 2.5. and 8 of the eMobile Terms and Conditions and 8.1 of the eMobile Terms and Conditions for Online Sales are misleading as to the legal rights of a consumer for the following reasons:

- a. The European Communities (Protection of Consumers in Respect of Contracts Made by Means of Distance Communication) Regulations 2001 (S.I. No. 207/2001) have been revoked since 13th June 2014 by Regulation 40(b).
- b. For distance contracts, the expiry of the cancellation period applies pursuant to Regulation 15. The information that you provide in relation to this cancellation period is not in accordance with Regulation 15 and is therefore, in my opinion, misleading.
- c. Information as to the conditions, time limit and procedures for exercising the right of cancellation is not in accordance with Regulation 17 and is therefore, in my opinion, misleading.
- d. Information concerning the return of goods in the event of a cancellation of a sales contract is not in accordance with Regulation 20 and is therefore, in my opinion, misleading.

Compliance direction and requirements

1. eircom Limited, a trader, trading as eMobile, is hereby directed to cease engaging in the prohibited commercial practice as outlined in this Compliance Notice.
 2. eircom Limited, a trader, trading as eMobile, is hereby required to amend eMobile's terms and conditions so that they accurately set out the legal rights that consumers can avail of under the European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 (S.I. No. 484 of 2013).
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1. You must comply with this compliance direction and requirements by **20th May 2015**.
 2. You may appeal this Compliance Notice to the District Court in the district court district in which the notice is served **within 14 days after its service**.
 3. The form and manner of such an appeal is that to be found in the District Court Rules, Schedule D, Form No: 100.1. This is available from the registrar at your local District Court office.
 4. In the event that you decide to appeal the Compliance Notice, you must, at the same time, notify the Competition and Consumer Protection Commission at the above address. You must also notify the Competition and Consumer Protection Commission of the grounds for the appeal.
 5. If an appeal is not made in accordance with Section 75 of the Consumer Protection Act 2007 and within 14 days after service of the Compliance Notice, this notice will be treated as not disputed, you will be deemed to have accepted the notice and have agreed to comply with the compliance direction and requirements and any failure or refusal to so comply is an offence and, on summary conviction, you will be liable to the fine and penalties set out in Part 5, Chapter 4 of the Consumer Protection Act 2007.

Signature: Aonghus O'Cuilinn

Aonghus O'Cuilinn

Authorised Officer

Competition and Consumer Protection Commission

Date: 29 April 2015

This information is intended for information purposes only and does not constitute part of the Compliance Notice.

Compliance Notice Notes

Consumer Protection Act 2007 (CPA)

1.	Section 75(6) CPA requires a person, when lodging an appeal, to, at the same time, notify the Competition and Consumer Protection Commission of the appeal and the grounds for the appeal. The Commission is entitled to appear, be heard and adduce evidence on the hearing of the appeal.
2.	If on appeal the compliance notice is not cancelled, the notice takes effect on the later of the following: <ul style="list-style-type: none"> a) the day after the day on which the notice is confirmed or varied on appeal, b) if the appeal is withdrawn by the appellant the day after the day it is withdrawn, c) the day specified in the notice.
3.	If there is no appeal under Section 75(5) CPA, the compliance notice takes effect on the later of the following: <ul style="list-style-type: none"> a) 14 days after the notice is served. b) the day specified in the notice.
4.	An Authorised Officer may: <ul style="list-style-type: none"> a) withdraw a compliance notice at any time, or b) if no appeal is made or pending under Section 75(5) CPA, extend the date by which the recipient is to comply with the compliance direction and requirements.
5.	Withdrawal of a compliance notice does not prevent the service of another compliance direction or requirement specified in a compliance notice, whether it relates to the same matter or a different matter.
6.	Under Section 75(13) CPA, if a compliance notice takes effect, the Commission is required to publish the compliance notice, or cause it to be published in any form or manner it considers appropriate.
7.	Section 86 CPA requires the Commission to maintain a "Consumer Protection List" of names and addresses together with a description of their trade, business or profession in respect of any enforcement actions taken by the Commission. This includes persons against whom compliance notices have taken effect.
8.	Any person who, without a reasonable excuse, fails to comply with a direction or

	<p>requirement specified in a compliance notice commits an offence and, on summary conviction, is liable to the fines and penalties set out in Section 79 CPA.</p>
9.	<p>Section 79(1) CPA provides that a person guilty of an offence under the Consumer Protection Act 2007 is liable on summary conviction to the following fines and penalties:</p> <ul style="list-style-type: none"> a) a fine not exceeding €3000 or up to 6 months imprisonment or both, b) on any subsequent summary conviction a fine not exceeding €5000, or imprisonment for a term not exceeding 12 months or both. <p>If, after being convicted for an offence, a person continues to contravene the requirement or prohibition to which the offence relates, the person is guilty of a further offence on each day the contravention continues and for each such offence is liable on summary conviction to a fine not exceeding €500.</p>
10.	<p>According to section 75(14) the issuing of this notice does not prevent the commencement of proceedings for an offence.</p>