



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Consumer Protection Act 2007 Compliance Notice (Section 75)

D.S. Cars Limited
No 2 Fox and Geese
Naas Road
Dublin 12

Competition and Consumer Protection Commission
Bloom House
Railway Street
Dublin 1

I, Evelyn Galvin, 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 engaged 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 information provided on the website, www.chartonmotorcompany.com, operated by D.S. Cars Limited, and the provision of false information relating to the usage or prior history of motor vehicles.

Statement of alleged contravention

That you, D.S. Cars Limited, trading as Charton Motor Company, a trader for the purposes of the Consumer Protection Act 2007, on 13 March 2017 and 14 March 2017 engaged in a misleading commercial practice by providing false information in relation to the main characteristics of a motor vehicle, in particular the usage or prior history of a motor vehicle being offered by you for sale, and that such a practice would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

S.42(1) of the Consumer Protection Act 2007 provides that a trader shall not engage in a misleading commercial practice. S.43(1) of the Consumer Protection Act 2007 provides that a commercial practice is misleading if it includes the provision of false information relating to the main characteristics of a product, including the usage or prior history (as identified by S.43(3)(b)(vii)), and would be likely to cause a consumer to make a transactional decision that the average consumer would not otherwise make. S.47 of the Consumer Protection Act 2007 provides that it is an offence to engage in a misleading commercial practice as described by S.43(1) of the Consumer Protection Act 2007.

My Opinion

I am of the opinion that D.S. Cars Limited provided false information relating to the prior usage or history of motor vehicles by providing an incorrect mileage in advertisements on its website, www.chartonmotorcompany.ie, such a practice being a misleading 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. You, D.S. Cars Limited, as a legal person can be described as a 'trader' for the purposes of the Consumer Protection Act 2007.
2. You, D.S. Cars Limited, operate a website, www.chartonmotorcompany.ie, where you offer motor vehicles for sale.
3. Following my inspection of your website on 13 March 2017 and 14 March 2017, you, D.S. Cars Limited, provided the following information on your website relating to the following motor vehicles which were offered for sale :
 - a. Model: Audi A3; registration number: 08D56925; mileage: 51,000 miles/82,074 kilometres.
 - b. Model: BMW 640; registration number: WV63KBO; mileage: 35,000 miles/56,326 kilometres.
 - c. Model: Mini Cooper; registration number: 07D90118; mileage: 79,000 miles/127,135 kilometres.
 - d. Model: Honda Civic; registration number: 08LH5771; mileage: 103,000 miles/165,758 kilometres.
 - e. Model: Ford Focus; registration number: 08MN2095; mileage: 69,000 miles/111,042 kilometres.
 - f. Model: Volkswagen Passat; registration number; 09MN6126; mileage: 99,999 miles/160,928 kilometres.
4. Following an inspection by the Competition and Consumer Protection Commission on 15 March 2017 at No 2 Fox and Geese, Naas Road, Dublin, the mileage readings on the odometers of the following motor vehicles were as follows:
 - a. Model: Audi A3; registration number: 08D56925; mileage: 137,996 kilometres.
 - b. Model: BMW 640; registration number: WV63KBO; mileage: 65,779 kilometres
 - c. Model: Mini Cooper; registration number: 07D90118; mileage: 138,099 kilometres.
 - d. Model: Honda Civic; registration number: 08LH5771; mileage: 176,826 kilometres.

- e. Model: Ford Focus; registration number: 08MN2095; mileage: 124,762 kilometres.
 - f. Model: Volkswagen Passat; registration number: 09MN6126; mileage: 112,776 miles.
5. The mileage recordings provided by you on your website, www.chartonmotorcompany.ie, on 13 March 2017 and 14 March 2017 are, therefore, significantly less than the mileage readings recorded on the odometers of the motor vehicles on 15 March 2017. I am of the opinion that the information provided by you on your website, www.chartonmotorcompany.ie, was therefore, false information.
6. The mileage of a motor vehicle is one of the main characteristics of a motor vehicle and it provides information as to the usage and prior history of the motor vehicle. This information is material information that a consumer needs when deciding whether or not to purchase a motor vehicle.

In my opinion, the information provided on your website is false information relating to the usage and prior history of the motor vehicle, and that information would likely cause the average consumer to make a transactional decision that the average consumer would not otherwise make

Compliance direction and requirements

- 1. D.S. Cars Limited, a trader, is hereby directed to cease engaging in a prohibited commercial practice, contrary to Section 47 and as described by Section 43(1) and Section 43(3)(b)(vii) of the Consumer Protection Act 2007.**
 - 2. D.S. Cars Limited, a trader, is hereby required to provide true and accurate information to consumers with respect to the usage and prior history of its products.**
- 1.1 You must comply with this compliance direction and requirements by **10 January 2018**.
- 2.1 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**.
- 3.1 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.
- 4.1 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.
- 5.1 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 to 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.

6.1 A copy of Section 75 Consumer Protection Act 2007 is attached to this Compliance Notice. It is intended for information purposes only and does not constitute part of the Compliance Notice.

Signature: Evelyn Galvin

Authorised Officer

Competition and Consumer Protection Commission

Date: 20 December 2017

Consumer Protection Act 2007

Chapter 3

Compliance Notices

75.— (1) In this section “prohibited act or practice” does not include a contravention of a regulation under section 57 (respecting price display regulations).

(2) An authorised officer who is of the opinion that a person is committing or engaging in, or has committed or engaged in, a prohibited act or practice or is contravening or has contravened an enactment specified in Schedule 5 may serve, personally or by post, a written notice on that person (a “compliance notice”).

(3) A compliance notice shall be signed and dated by the authorised officer and shall—

(a) contain a statement of the alleged contravention (identifying the relevant enactment), the opinion referred to in subsection (2) and the reasons for that opinion,

(b) direct the person to remedy the contravention or the matters occasioning that notice, including any other requirement that the authorised officer considers appropriate in order to remedy the contravention or matter (the “compliance direction and requirements”),

(c) specify the date by which the person is to comply with the compliance direction and requirements,

(d) contain a statement that the person may appeal the notice to the District Court within 14 days after service of the notice, including information specifying—

(i) the form and manner of such an appeal, and

(ii) the service address of the Agency for purposes of notifying the Agency under subsection (6),

and

(e) contain a statement that, if an appeal is not made in accordance with this section and within the time specified in paragraph (d), then—

(i) the notice will be treated as not disputed,

(ii) the person will be deemed to have accepted the notice and have agreed to comply with the compliance direction and requirements, and

(iii) any failure or refusal to so comply is an offence and, on summary conviction, the person will be liable to the fine and penalties set out in Chapter 4 .

(4) The date specified under subsection (3)(c) shall not be earlier than the end of the period within which an appeal may be made under subsection (5).

(5) If the person on whom the compliance notice is served wishes to dispute the notice, the person may, no later than 14 days after the notice is served and in accordance with this section and in the form and manner specified in the notice, appeal the notice to a judge of the District Court in the district court district in which the notice was served.

(6) A person who appeals under subsection (5) shall at the same time notify the Agency of the appeal and the grounds for the appeal and the Agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(7) In determining an appeal under this section, the judge may confirm, vary or cancel the compliance notice, if satisfied that it is reasonable to do so.

(8) If on appeal the compliance notice is not cancelled, the notice takes effect on the later of the following:

(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.

(9) If there is no appeal under subsection (5), the compliance notice takes effect on the later of the following:

(a) 14 days after the notice is served on the person;

(b) the day specified in the notice.

(10) An authorised officer may—

(a) withdraw a compliance notice at any time, or

(b) if no appeal is made or pending under subsection (5), extend the date specified in the notice under subsection (3)(c).

(11) A person commits an offence who, without reasonable excuse, fails to comply with a compliance direction or requirement specified in a compliance notice and, on summary conviction, is liable to the fines and penalties provided in Chapter 4.

(12) Withdrawal of a compliance notice under subsection (10) does not prevent the service of another compliance notice, whether in respect of the same matter or a different matter.

(13) If a compliance notice takes effect in accordance with this section, the Agency shall publish the compliance notice, or cause it to be published, in any form or manner the Agency considers appropriate.

(14) Nothing in this section prevents the commencement of proceedings for an offence.