



Coimisiún um
Iomaíocht agus
Cosaint Tomhaltóirí

Competition and
Consumer Protection
Commission

Consumer Protection Act 2007

Compliance Notice (Section 75)

Ken Horan

Competition and Consumer Protection Commission

Trading as Ken Horan Motors

Bloom House

Kilcolgan

Railway Street

Co. Galway

Dublin 1

I, Colette McGuigan, 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 the provision of misleading information by Ken Horan relating to the usage or prior history of a motor vehicle to an average consumer thereby causing that consumer to make a transactional decision which that consumer would not have otherwise made.

Statement of alleged contravention

That you, Ken Horan, a trader for the purposes of the Consumer Protection Act 2007, trading as Ken Horan Motors, Kilcolgan, Co. Galway on 20 July 2015, engaged in a misleading commercial practice by providing misleading information in relation to the usage or prior history of motor vehicle offered by you for sale, and that information would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

Section 42(1) of the Consumer Protection Act 2007 provides that a trader shall not engage in a misleading commercial practice. Section 43(2) of the Consumer Protection Act 2007 provides that a commercial practice is misleading if it would be likely to cause the average consumer to be deceived or misled in relation to the main characteristics of a product, including the usage or prior history (as identified by Section 43(3)(b)(vii)), and to make a transactional decision that the average consumer would not otherwise make. Section 47 of the Consumer Protection Act 2007 provides that it is an offence to engage in a misleading commercial practice as described by Section 43(2) of the Consumer Protection Act 2007.

My opinion

I am of the opinion that Ken Horan provided misleading information relating to the prior usage or history of a motor vehicle by providing misleading information relating to the extent of the damage sustained to the car, 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, Ken Horan, trading as Ken Horan Motors, trading at Kilcolgan, Co. Galway, can be described as a 'trader' for the purposes of the Consumer Protection Act 2007.
2. You, Ken Horan, purchased a motor vehicle Kia Venga, registered number 131MO1145 (the *Motor Vehicle*) in a crashed state. The Motor Vehicle was a Category D write off.
3. On or about 20 July 2015, you, Ken Horan, offered for sale the Motor Vehicle on the website www.donedeal.com. The Motor Vehicle was no longer in a crashed state.
4. On or about 20 July 2015, a consumer for the purposes of the Consumer Protection Act 2007, contacted you by telephone to enquire about the Motor Vehicle and visited you at Ken Horan Motors, Kilcolgan, Co. Galway to test drive the Motor Vehicle. On or about 20 July 2015, you, Ken Horan, told the consumer that the sole damage to the Motor Vehicle was side panel damage which had been repaired. You did not inform the consumer that the Motor Vehicle was a Category D write off.
5. On or about 20 July 2015, the consumer made a transactional decision to purchase the Motor Vehicle from you and on or about 10 August 2015 the consumer took possession of the Motor Vehicle from you.
6. In my opinion, between 20 July 2015 and 10 August 2015, while the consumer was in the course of making a transactional decision, you were aware that the Motor Vehicle was a Category D write off. I base this opinion on the fact that you purchased the Motor Vehicle in a crashed state, as a Category D write off.
7. In my opinion, the consumer would not have purchased the Motor Vehicle if you had informed the consumer that the Motor Vehicle was a Category D write off.
8. I have established that the loss incurred by the consumer is €1,500.00.
9. Therefore, I believe that you, Ken Horan, trading as "Ken Horan Motors", trading at Kilcolgan, Co. Galway, on or about 20 July 2015 provided misleading information to the consumer in relation to the extent of previous crash damage to the Motor Vehicle, and caused the consumer to make a transactional decision that the consumer would not otherwise have made.

Compliance direction and requirements

1. Ken Horan, a trader, is hereby directed to cease engaging in misleading commercial practices contrary to Section 47 and as described by Section 43(2) and Section 43(3)(b)(vii) of the Consumer Protection Act 2007.

2. Ken Horan, a trader, is hereby required to remedy the matter occasioning this notice by compensating the consumer €1,500.00.
3. Ken Horan, a trader, is hereby required to provide true and accurate information to consumers with respect to the usage and prior history of its products.
 - a) You must comply with this compliance direction and requirements by **23 February 2018**.
 - b) 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**.
 - c) 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.
 - d) 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.
 - e) 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.

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

Signature: 

Colette McGuigan

Authorised Officer

Competition and Consumer Protection Commission

Date: 26 January 2018

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.