

Compliance Notice

Section 75 of the Consumer Protection Act 2007

To: Mr Umar Anwar

At: Innovate

12 Parnell Street

Ennis

Co Clare

V95 XE13

Competition and Consumer

Protection Commission

Bloom House

Railway Street

Dublin 1

D01 C576

I, Pat McGonigle, an authorised officer of the Competition and Consumer Protection Commission, duly appointed 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. Further, I 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 prohibited commercial practice under Part 3 of the Consumer Protection Act 2007, such a prohibited commercial practice being a prohibited act or practice as defined by section 67(c) of the Consumer Protection Act 2007.

The contraventions contained herein relate to the commercial practices involved in the sale, or offer for sale, of the Sony Playstation 5 to consumers by you operating from the Innovate Store ('Innovate') between 23 October 2020 and 15 February 2021.

A. Statement of alleged contravention

1. That you, Umar Anwar, trading at Innovate, a trader for the purposes of the Consumer Protection Act 2007, between 23 October 2020 and 15 February 2021, engaged in misleading commercial practices by providing deceiving or misleading information with respect to;
 - i. the availability of the Sony Playstation 5;
 - ii. the handling of consumer complaints in relation to the Sony Playstation 5;
 - iii. the method or date of delivery of the Sony Playstation 5;
 - iv. the identity of the trader from whom consumers purchased the Sony Playstation 5;
 - v. the nature of the supply process of the Sony Playstation 5;and that such information would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

Such practices, being prohibited under section 42(1) of the Consumer Protection Act 2007 as described by section 43(2), section 43(3)(b)(ii), section 43(3)(b)(xi), section 43(3)(b)(xii)(I), section 43(3)(f)(i) and section 43(3)(i) are offences contrary to section 47 of the Consumer Protection Act 2007 (hereinafter referred to as the “CPA 2007”).

2. That you, Umar Anwar, trading at Innovate, a trader for the purposes of the CPA 2007, between 23 October 2020 and 03 December 2020 engaged in a prohibited commercial practice by making an invitation to purchase the Sony Playstation 5 from you without disclosing the existence of any reasonable grounds for believing that you would not be able to supply, or procure another trader to supply, the Sony Playstation 5 at the price specified in the invitation.

Such a practice, being prohibited under section 55(1)(I) of the CPA 2007, is an offence contrary to section 56 of the CPA 2007.

B. My Opinion

1. I am of the opinion that you, Umar Anwar, trading at Innovate, on various dates between 23 October 2020 and 15 February 2021 committed the prohibited commercial practices outlined in the statement of alleged contravention at paragraph A(1), above, by providing misleading information that would likely deceive or mislead consumers in relation: to the availability of the Sony Playstation 5; the date or method of delivery of the Sony Playstation 5; the handling of consumer complaints relating to the Sony Playstation 5; the identity of the trader from whom consumers purchased the Sony Playstation 5; and the supply process of the Sony Playstation 5; and that such misleading commercial practices would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.
2. Further, I am of the opinion that you, Umar Anwar, trading at Innovate, on various dates between 23 October 2020 and 03 December 2020 engaged in the prohibited commercial practice outlined in the statement of alleged contravention at paragraph A(2), above, by making an invitation to purchase the Sony Playstation 5 without disclosing reasonable grounds for believing that you would not be able to supply, or procure another trader to supply, the Sony Playstation 5.

C. The Reasons for my opinion are based on the following

1. You, Umar Anwar, trading at Innovate, as a legal person, can be described as a “trader” for the purposes of the CPA 2007.
2. The following statements were posted on the Innovate Facebook page, <https://www.facebook.com/Innovate-Ennis-370847092976067/>;
 - a. On 23 October 2020, the Sony Playstation 5 console was advertised on the Innovate Facebook page for pre-order sale. The post stated “*Playstation 5 Pre-Order available now! We will have stock arriving for delivery in the first week of December. Supplied with 1 DualSense controller, 825GB SSD storage, Disc Version - €550! All pre-orders require full payment for order to be accepted. Call us on 087 3344674 or DM us for payment options*”.

- b. On 23 October 2020, the following was posted on the Innovate Facebook page; *“We got our orders in early but didn't want to announce it until we knew when the delivery would be”*.
 - c. On 23 October 2020, in response to a consumer post on the Innovate Facebook page, the following was posted on the Innovate Facebook page; *“you tried to order from us and we said we're sold out? We haven't completely sold out just yet but will soon”*.
 - d. On 09 November 2020 the following was posted on the Innovate Facebook page; *“Playstation 5 Preorders now sold out! We will not have any additional stock available. If we do, we'll let everyone know on social media”*.
 - e. On 14 November 2020 the following was posted on the Innovate Facebook page; *“Pre-orders now open for Official Sony PS5 DualSense controllers - €70! Stock will arrive with the PS5 delivery in the first week of December”*.
 - f. On 16 November 2020 the following was posted on the Innovate Facebook page; *“Playstation 5- We have some additional units available. Delivery for this batch is expected 18th December but not guaranteed before Christmas. Please call or DM us to pre-order”*.
 - g. On 16 November 2020 the following was posted on the Innovate Facebook page; *“Hi All, we are struggling to deal with the sheer volume of calls and messages coming in about the PS5, please be patient we will get to you. Some more info about the preorders, it is full payment up front to secure the order. The cost is €550. It is the disc version which you can play games with a disk and download them. We'll be here till 6pm today. Thank you”*
 - h. On 18 November 2020 the following was posted on the Innovate Facebook page; *“Playstation 5 preorders now sold out! We will definitely NOT be getting any more stock in before Christmas. Thanks to those who purchased and apologies to those who missed out.”*
3. A 25 November 2020 statement by Playstation confirmed that demand for the Sony Playstation 5 was ‘unprecedented’.

4. The Competition and Consumer Protection Commission (“the CCPC”) has received contacts from consumers who advised the CCPC that they purchased a Sony Playstation 5 from Innovate but did not receive the product.
5. Consumers who contacted the CCPC following their purchase of the Sony Playstation 5 from Innovate reported the following;
 - a. Consumers who purchased the Sony Playstation 5 from Innovate were advised by Umar Anwar trading at Innovate that the Sony Playstation 5 would be delivered in either the first week of December 2020 or in the week prior to 25 December 2020.
 - b. Consumers were advised by Umar Anwar trading at Innovate that Innovate was sourcing its supply of 300 Sony Playstation 5 directly from Sony in the United Kingdom.
 - c. Consumers were subsequently advised by Umar Anwar trading at Innovate that a consignment of 300 Sony Playstation 5 units purchased by Innovate had been delayed in Britain due, variously, to customs and Brexit related issues.
 - d. Consumers were subsequently advised by Umar Anwar trading at Innovate that Sony Playstation 5 Units would then be sourced directly from Sony, Germany.
 - e. Certain consumers were provided with a receipt/proof of payment which identified ‘UK Product Exports Ltd’, not ‘Innovate’ or any derivative thereof, as the beneficiary of the payment.
 - f. Consumers were advised by Umar Anwar trading at Innovate that 300 Sony Playstation 5 Units had been delivered to a secure location in Ennis and would then be allocated to consumers. Consumers were provided with a date and time for collection of the Sony Playstation 5 from the Innovate Store at 23 Parnell Street, Ennis, Co Clare, V95 XE13. However, on arrival at the Innovate premises, consumers found that the store was closed and no one was available to provide assistance.
 - g. Consumers reported making repeated unsuccessful attempts, variously through visits to the Innovate premises, SMS, Whatsapp, Facebook and Facebook Messenger, to lodge complaints with Innovate in relation to the status of their order or their request for a reimbursement of payment following the exercising of their right to cancel the

purchase of the Sony Playstation 5 from Innovate. These requests for contact or an update from Innovate did not receive any response from Innovate.

- h. None of the consumers who contacted the CCPC in relation to their purchase of a Sony Playstation 5 from Innovate reported that they received the product purchased from Innovate.

D. Compliance direction and requirements


1. **Mr Umar Anwar, a trader, trading at Innovate, is hereby directed to cease engaging in the prohibited commercial practices, contrary to section 47 and described by section 43(2), section 43(3)(b)(ii), section 43(3)(b)(xi), section 43(3)(b)(xii)(I), section 43(3)(f)(i) and section 43(3)(i) of the Consumer Protection Act 2007.**
2. **Mr Umar Anwar, a trader, trading at Innovate, is hereby required to reimburse in full all consumers who purchased, between 23 October 2020 and 24 December 2020, a Sony Playstation 5 from Innovate, but did not receive the goods they purchased.**
3. **Mr Umar Anwar, a trader, trading at Innovate, is hereby directed to cease engaging in the prohibited commercial practice, contrary to section 56 and described by section 55(1)(I), of the Consumer Protection Act 2007.**

You must comply with this compliance direction and requirements by 01 November 2021.

E. Appeal procedure

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.
2. The form and manner of such an appeal is that to be found in the District Court Rules, Form 40D.01 Schedule C. This is available from the registrar at your local District Court office and on the website www.courts.ie.
3. 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.

4. 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: 

Pat McGonigle

Authorised Officer

Competition and Consumer Protection Commission

Date: 11 October 2021