

Compliance Notice

Section 75 of the Consumer Protection Act 2007

To: Competition and Consumer Protection Commission
Ryan Neary,
R Neary Motors,
Ballyellen Upper
Inch,
Gorey.
Co. Wexford

Bloom House
Railway Street
Dublin 1

I Cornelius Dwane, 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, Ryan Neary, trading as R Neary Motors, notice**, pursuant to section 75(2) of the Consumer Protection Act 2007, that I am of the opinion that you engaged in a prohibited act or practice as further described herein and **hereby direct Ryan Neary, trading as R Neary Motors**, to remedy that contravention in the manner set out below.

A. Statement of alleged contraventions

That you, Ryan Neary, trading as R Neary Motors, a trader within the meaning of the Consumer Protection Act 2007 (the "2007 Act"), on 26 and 27 August 2020, engaged in a misleading commercial practice by providing false information regarding a vehicle's usage or prior history, namely its mileage and the extent of its previous ownership 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.

Section 42(1) of the 2007 Act provides that a trader shall not engage in a misleading commercial practice.

Section 43(1) of the 2007 Act provides that a commercial practice is misleading if it includes the provision of false information in relation to the main characteristics of a product, including its usage or prior history, as identified by Section 43(3)(b)(vii), 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 47 of the 2007 Act provides that it is an offence to engage in a misleading commercial practice as described by Section 43(1) of the Consumer Protection Act 2007.

B. My opinion

I am of the opinion that you, Ryan Neary, trading as R Neary Motors, have committed or engaged in a misleading commercial practice, by providing false information in respect of a vehicle's prior usage or history, such a practice being a misleading commercial practice for the purposes of the 2007 Act.

C. Reasons for my opinion

The reasons for my opinion are based on the following:

1. That you, Ryan Neary, trading as R Neary Motors, Ballyellen Upper, Inch, Gorey, Co Wexford, are a legal person and can be described as a trader for the purposes of the 2007 Act.
2. That you, Ryan Neary, trading as R Neary Motors, obtained a motor vehicle, a BMW 730 Series with registration number 11D57231 (the "Motor Vehicle") in the course of your trade. The Motor Vehicle had been written off in the UK on 15 May 2016 and was recorded as having an odometer reading of 190,807 miles or 311,902kms on 7 March 2017. The Motor Vehicle had four previous owners in the UK and on 9 October 2017 was exported from the UK to Ireland.
3. That on 26 August 2020, you, Ryan Neary, trading as R Neary Motors, advertised this motor vehicle on Cars Ireland as having an odometer reading of 79,535 miles or 127,999kms to a Consumer within the meaning of the 2007 Act.
4. That on 26 August 2020, you Ryan Neary, trading as R Neary Motors, advertised this Motor Vehicle on Cars Ireland as having had two previous owners, thus displaying the prior history of the said Motor Vehicle to a Consumer within the meaning of the 2007 Act.

That on 29 August 2020, you Ryan Neary, trading as R Neary Motors, sold the Motor Vehicle to the Consumer.

5. That an assessment of the Motor Vehicle, carried out by a body licensed to assess motor vehicles, determined that the Motor Vehicle was not of merchantable quality and not fit for the purpose it was intended at the time of the sale.
6. That you failed in your obligations as a trader to carry out a full history check on the said Motor Vehicle, whereby if you did, you would have found that the vehicle had 190,807 miles or 311,902 kms on its odometer and four previous owners in the UK.
7. In my view, the Consumer would not have purchased the Motor Vehicle if the correct information relating to its mileage and prior usage was provided on the advertisement on Cars Ireland on 26 August 2020. In other words, the Consumer was caused to make a transactional decision that the average consumer would not otherwise make.
8. Section 2 of the 2007 Act defines "transactional decision" as:

"...means in relation to a consumer transaction, whether or not the transaction is completed, any decision by the consumer concerning whether, how or on what terms to do, or refrain from doing, any of the following:

- (a) purchase the product;
- (b) make payment in whole or in part for the product;
- (c) retain or return the product after its purchase;
- (d) dispose of the product;
- (e) exercise a contractual right in relation to the product;"

9. I believe therefore that you, Ryan Neary, trading as R Neary Motors, provided false information in respect of the Motor Vehicle's mileage and prior usage, and that information would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

D. Compliance direction and requirements

1. You, Ryan Neary trading as R Neary Motors are hereby required to comply with section 42(1) of the Consumer Protection Act 2007 in relation to the prohibition on misleading commercial practices.
2. You, Ryan Neary, trading as R Neary Motors, are hereby required to remedy the matter occasioning this notice by providing true and accurate information in all your communications, including advertisements, with or to consumers with respect to the usage and prior history of every motor vehicle advertised or offered for sale by you, whether on behalf of your employer or otherwise.
3. You, Ryan Neary, trading as R Neary Motors, are hereby required to ensure that appropriate due diligence is carried out in respect of the history and usage of every motor vehicle offered for sale by you, whether on behalf of your employer or otherwise. If you are selling vehicles that have been imported from the UK, you are required to complete a full UK History check on every vehicle.
4. You, Ryan Neary, trading as R Neary Motors, are hereby required to ensure that a record of the due diligence carried out on the history and usage referred to in paragraph 4) above is maintained for a period of three (3) years from the date of advertisement or the date of sale, whichever is later, of every used vehicle advertised or offered for sale by you. This record must be made available to the CCPC for inspection on request.
5.
 - a) You must comply with this compliance direction and requirements by **Tuesday 1 February 2022**.
 - 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, Form 40D.01 Schedule C, a copy of which is attached to this Compliance Notice. If you wish to appeal, this form should be completed and lodged with the District Court Clerk 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 and you will be deemed to have accepted the notice and to have agreed to comply with the compliance direction and requirements.
 - f) 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 namely:
 - a. "...on a first summary conviction for any such offence, to a fine not exceeding €4,000 and/or imprisonment for a term not exceeding 6 months or both; and

- b. on any subsequent summary conviction for the same offence or any other offence under this Act...to a fine not exceeding €5,000 or imprisonment for a term not exceeding 12 months or both.”

Signature: _____

Cornelius Dwane

Authorised Officer

Competition and Consumer Protection Commission

14 January 2022

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

Compliance Notice Notes

Consumer Protection Act 2007 (2007 Act)

1.	Section 75(6) of the 2007 Act 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: 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) of the 2007 Act, the compliance notice takes effect on the later of the following: a) 14 days after the notice is served. b) the day specified in the notice.
4.	An Authorised Officer may: a) withdraw a compliance notice at any time, or

	<p>b) if no appeal is made or pending under section 75(5) of the 2007 Act, extend the date by which the recipient is to comply with the compliance direction and requirements.</p>
5.	<p>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.</p>
6.	<p>In accordance with section 75(13) of the 2007 Act, 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.</p>
7.	<p>Section 86 of the 2007 Act requires the Commission to maintain a “Consumer Protection List” of names and addresses of persons together with a description of their trade, business or profession and the particulars of the matter occasioning any enforcement actions taken by the Commission. This includes persons against whom compliance notices have taken effect.</p>
8.	<p>Any person who, without a reasonable excuse, fails to comply with a direction or 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 of the 2007 Act.</p>
9.	<p>Section 79(1) of the 2007 Act 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 €4000 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) of the 2007 Act the issuing of this notice does not prevent the commencement of proceedings for an offence.</p>