

19 March 2018

Nigel Thompson  
PO Box 10029  
Phillipstown  
Christchurch

By email: [nigeltwthompson@gmail.com](mailto:nigeltwthompson@gmail.com)

Dear Mr Thompson

### **Fair Trading Act 1986: Warning**

1. The Commerce Commission (**Commission**) has been investigating your conduct personally under the Fair Trading Act 1986 as the former owner and Managing Director of Nigel Thompson Motor Company Limited (**NTMC**), now in liquidation. We have completed our investigation and are writing to alert you to our concerns.
2. In summary the Commission considers that you have likely breached section 13(i) of the Fair Trading Act. This provision prohibits traders from making false or misleading representations concerning the existence or effect of any condition, warranty, guarantee, right, or remedy, including guarantees, rights or remedies available under the Consumer Guarantees Act 1993 (**CGA**).
3. We considered complaints from customers who each purchased a second-hand car from NTMC. Our view is that you made representations that are likely to have misled some of these customers about their rights under the CGA when they sought redress for faults with the cars they purchased.
4. If this type of conduct is ongoing, we recommend that you take immediate action to address our concerns and seek legal advice about complying with the Fair Trading Act. We also recommend you seek legal advice about your obligations as a supplier under the CGA.

### **The investigation**

5. The nature of the complaints we investigated were that:
  - 5.1 The consumer purchased a second-hand car from NTMC, which was supplied with a short term warranty for major mechanical faults.
  - 5.2 The consumer then experienced mechanical difficulties with the car.



- 5.3 The consumer sought redress from NTMC for the mechanical failure.
- 5.4 You then sent an email to the consumer setting out that NTMC did not have legal obligations to remedy the fault because the term of the vehicle warranty you supplied had expired. By way of example, we have evidence showing that you emailed a consumer telling her that *“Under consumer guarantees (yes we are trained on this) the vehicle qualifies for a 1 month mechanical warranty”*.

### **Your response to the allegations**

6. At interview you told us that you did not think that you or NTMC misled consumers about their rights under the CGA and that it was appropriate to encourage consumers to go to the Motor Vehicles Disputes Tribunal if the consumer insisted that NTMC was liable for repairing faults. In your view the complainants who contacted the Commission experienced faults with their cars that did not qualify for coverage under the CGA.

### **The Commission’s view**

7. Our view is that you misled consumers about their rights by implying that the consumers’ legal protection under the CGA was limited to the period of the vehicle warranty (eg. one month). We consider such representations to be misleading because when cars are supplied to the consumers they come with a set of statutory guarantees, including that the cars are of an acceptable quality. The statutory guarantees are separate and additional to any other warranty NTMC agrees to provide.
8. How long a second-hand car would normally be expected to last before problems start to occur depends on its type, price, any statements made about the car and how it is used. This timeframe will vary between cars.
9. Traders must not make representations that mislead consumers into believing that the CGA has a legally defined timeframe. Falsely implying a statutory timeframe may have the effect of deterring consumers from exercising their statutory right to challenge the trader’s application of the CGA through a disputes tribunal.
10. While we will not be taking any further action against you personally at this time, we will take this warning into account if this conduct continues or if you engage in similar conduct in the future. We may also draw this warning to the attention of a court in any subsequent proceedings brought by the Commission against you.
11. This warning letter is public information. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media.



### **The Commission's role**

12. The Commission is responsible for enforcing and promoting compliance with a number of laws that promote competition in New Zealand, including the Fair Trading Act. The Act prohibits false and misleading behaviour by businesses in the promotion and sale of goods and services.

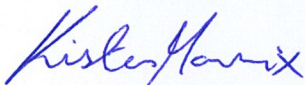
### **Penalties for breaching the Fair Trading Act**

13. Only the courts can decide if there has actually been a breach of the Fair Trading Act. The court can impose penalties where it finds the law has been broken. A company that breaches the Fair Trading Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
14. You should be aware that our decision to issue this warning letter does not prevent any other person or entity from taking private action through the courts.

### **Further information**

15. We have published a series of fact sheets and other resources to help businesses comply with the Fair Trading Act and the other legislation we enforce. These are available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz). We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
16. You can also view the Fair Trading Act and other legislation at [www.legislation.co.nz](http://www.legislation.co.nz).
17. Thank you for your assistance with this investigation. Please contact Anna Walton on 04 924 3797 or by email at [anna.walton@comcom.govt.nz](mailto:anna.walton@comcom.govt.nz) if you have any questions about this letter.

Yours sincerely



Kirsten Mannix  
Consumer Manager Wellington