

19 November 2019

Auckland Campervan Limited

By email only: [REDACTED]
[REDACTED]

CC: [REDACTED]
[REDACTED]

Dear Mr [REDACTED]

Fair Trading Act 1986: Warning

The Commerce Commission (**Commission**) has been investigating Auckland Campervan Limited (the **Company**) under the Fair Trading Act 1986 (**FTA**) regarding representations made in warranty documents, and the Company's failure to display and provide Consumer Information Notices (**CINs**).

We have now completed our investigation and are writing to inform you about our views.

The Commission considers that by making purchasers sign a document (**warranty document**) stating that vehicles are sold with a one-month warranty "only for the engine and gearbox", that there is "no warranty for the clutch" and "nothing else is covered", the Company has likely made false or misleading representations about consumers' rights under the Consumer Guarantees Act 1993 (**CGA**).

In our view, the warranty document gives purchasers the impression that they have no remedy available at law for faults occurring to parts of the vehicle excluded in the warranty document, which is untrue because the purchaser may have rights to a remedy under the CGA. It is an offence under s13(i) of the FTA to make false or misleading representations concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the CGA.

The Commission also considers that the Company offered used vehicles for sale to consumers without displaying or providing access to CINs.

We are issuing you with this warning letter because in our view, the Company's conduct is likely to have breached s13(i) and s28(1) of the FTA. A warning is not a finding of non-

compliance; only the courts can decide whether a breach of the law has occurred, and we have determined that at this time we will not be bringing legal action to establish fault.¹

The investigation

The Commission has investigated allegations that the Company made false or misleading representations in warranty documents and failed to display and provide access to CINs.

The Company is a registered motor vehicle trader and predominantly sells vehicles to overseas tourists holidaying in New Zealand.

During our investigation, we obtained the following evidence, which we consider indicates likely breaches of the FTA:

- Between 31 October 2017 and 20 November 2018, the Company sold 78 vehicles to consumers. The Company offers vehicles for sale from a physical car-yard, its website and Trade Me. The Company confirmed that it had not displayed or provided access to CINs for the vehicles it sold.
- The Company required some purchasers to sign the warranty document. The Company's lawyer confirmed that the Company supplied this warranty document to consumers during a two month period and is no longer using the document.

How this conduct can break the Law

Section 13(i) of the FTA prohibits traders from making false or misleading representations concerning the existence, exclusion, or effect of any condition, warranty, guarantee, right, or remedy, including (to avoid doubt) in relation to any guarantee, right, or remedy available under the CGA.

Section 28(1) of the FTA prohibits any person from supplying, offering to supply or advertising to supply goods or services unless they comply with the applicable consumer mandatory information standard. All motor vehicle traders who offer used motor vehicles for sale must comply with the [Consumer Information Standards \(Used Motor Vehicles\) Regulations 2008 \(Regulations\)](#).

The Regulations require a motor vehicle trader to have a CIN relating to the motor vehicle on sale firmly attached to the vehicle in a prominent position that makes it clearly visible. In circumstances where the purchase of the vehicle can be competed online, the CIN must be clearly and prominently displayed on the same webpage as the vehicle offered for sale and on the same page.

¹ Commission's published *Enforcement Response Guidelines* at [41].

The Company's response

The Company told the Commission that the purpose of the warranty document was to deter purchasers from returning vehicles with what it considered to be unreasonable claims for refunds.

The Company responded to the Commission's enquiries confirming that it had stopped using the warranty document and is now displaying and providing access to CINs as required. It has engaged a lawyer to ensure that it is meeting its legal obligations as a motor vehicle trader.

The Commission's view

In this case, the Commission's view is that the Company's conduct is likely to have breached the FTA.

We have reached the view that the warranty document contained representations that were likely to mislead consumers as to their available rights under the CGA, specifically we consider:

- The words *No Warranty for the Clutch* and *nothing else is covered*, together with the trader's silence as to whether the consumer has any other rights at law, including those under the CGA, was likely to mislead consumers because they implied that consumers have no remedies available at law for faults occurring to parts of the vehicle excluded in the warranty document. This is untrue because the purchaser may have rights to a remedy under the CGA.
- The statement *"if the owner gets the vehicle fixed by a mechanic we will not be paying the costs the owner will have to bring the vehicle to the seller to get it fixed"* was likely to mislead consumers because the statement represents that under no circumstances will the trader be paying costs for repairs carried out by a mechanic and that all repairs have to be carried out by the trader. Under the CGA, a consumer must give the supplier an opportunity to repair a fault in the first instance. However, there are circumstances, allowed for under the CGA, in which it might be necessary for a consumer to have the vehicle repaired by someone else and seek reimbursement from the trader.

In our view, the warranty document would have likely prevented purchasers from seeking remedies for faults with the parts of the vehicle expressly excluded by the terms of the warranty because they were led to believe that nothing else was covered.

As such, the Company's warranty document is likely to have constituted a false or misleading representation as to the existence or effect of a right available under the CGA, in likely breach of s13(i) of the FTA.

The Company failed to display and provide access to CINs in relation to the used motor vehicles it sold. In our view, this conduct breaches the Regulations and accordingly, s28(1) of the FTA.

Warning

After weighing up the factors set out in our Enforcement Response Guidelines, we have decided it is appropriate and sufficient to conclude our investigation by issuing this warning letter rather than issuing legal proceedings.

We recommend that you seek legal advice on behalf of the Company and encourage you to regularly review the Company's compliance procedures and policies.

While we will not be taking any further action against the Company at this time, we will take this warning into account if this conduct continues or if you or the Company 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 or the Company.

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

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

Penalties for breaching the Fair Trading Act

Only the courts can decide if there has actually been a breach of the FTA. The court can impose penalties where it finds the law has been broken. A company that breaches the FTA can be fined up to \$600,000 and an individual up to \$200,000 per offence.

A company that breaches section 28(1) of the FTA can be issued with an infringement notice requiring the payment of a fine of \$1,000 per offence. An infringement notice can be issued by the Commission if it has reasonable grounds to believe a trader has not complied with a consumer information standard.

If the non-compliance is more serious, the Commission may choose to prosecute. Companies are liable to a fine of up to \$30,000 for each breach of the FTA. Individuals can be fined up to \$10,000.

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

We have published a series of fact sheets and other resources to help businesses comply with the FTA and the other legislation we enforce. These are available on our website at www.comcom.govt.nz. We encourage you to visit our website to better understand the Company's obligations and the Commission's role in enforcing the Fair Trading Act.

You can also view the FTA and other legislation at www.legislation.co.nz.

Thank you for your assistance with this investigation. Please contact [REDACTED] on [REDACTED] or by email at [REDACTED]@comcom.govt.nz if you have any questions about this letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kirsten Mannix'.

Kirsten Mannix
Consumer Manager Wellington