

20 November 2019

[REDACTED]

By email only: [REDACTED]

Dear [REDACTED]

Official Information Act #19.071 - MM Company Limited

1. We refer to your request received on 29 October 2019 for a copy of the compliance advice letter (CAL) sent by the Commerce Commission (Commission) to MM Company Limited, in relation to your complaint (ENQ0525528).
2. We have treated this as a request for information under the Official Information Act 1982 (OIA).

Our response

3. We have decided to grant your request. Please find a copy of the CAL sent to MM dated 17 September 2019 **attached**.
4. You can find further information about CALs and the Commission's other enforcement response options in the Enforcement Response Guidelines on our website.¹
5. Please note that the CAL does not represent a finding that MM Company Limited has contravened the Fair Trading Act 1986. Only the Courts can decide if a breach of the law has occurred. Compliance advice letters are educative, and are issued in response to problematic conduct that we have identified. Accordingly, what the letter advises of is the risk of conduct breaching the law, and how to avoid a potential breach in future
6. Please note the Commission will be publishing this response to your request on our website. Your personal details will be redacted from the published response.

¹ <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-response-guidelines>

7. Please do not hesitate to contact us at uia@comcom.govt.nz if you have any questions about this request.

Yours sincerely

Mary Sheppard

Mary Sheppard
OIA Coordinator

Released Under Official Information Act 1982

17 September 2019

www.comcom.govt.nz

Mr Shaun Turton
Director
Mad Motor Company limited

PRJ0043979

Email: maddeals@xtra.co.nz

Commerce Commission investigation: Compliance Advice Letter

1. The Commerce Commission (the Commission) has been investigating Mad Motor Company Limited (MMCL) under the Fair Trading Act 1986 (the FTA). We have now completed our investigation and are writing to you to provide advice to assist you to comply with the FTA.
2. In summary, the Commission considers that the investigated behaviour established that MMCL was at risk of breaching sections 13(i) of the FTA.
3. Section 13(i) relates to making false or misleading representations concerning any warranty, guarantee, right or remedy. With reference to this specific investigation, any guarantee, right or remedy for a consumer was considered under the provisions of the Consumer Guarantees Act 1993 (CGA).
4. The Commission has decided to resolve this matter by a compliance advice letter to MMCL to assist you in complying with obligations under the FTA. If you are unsure about your legal obligations, you should continue to take legal advice.
5. The Commission will not be taking any further action on this matter, other than this compliance advice letter.

The Law

6. MMCL would be termed to be an in trade vendor under the Auctioneers Act 2013, and therefore have responsibilities under the CGA. Accordingly, the guarantees, rights and remedies available under the CGA apply to consumers purchasing at auction a vehicle from MMCL. These CGA rights are similar to those that would apply to any sale made at a 'buy now price' as often offered by MMCL.

The investigation

8. The Commission investigated a complaint received in May 2019 that MMCL had, following an auction, made misleading representations as to the consumers rights and/or remedies available under the CGA in breach of the FTA.
9. Commission inquiries established that:
 - 9.1 the complainant purchased a [REDACTED] from MMCL by auction in April 2019.
 - 9.2 The vehicle was transported from [REDACTED] for delivery to the complainant.
 - 9.3 On receiving and driving the vehicle, the complainant alleged faults were noticeable with the vehicle that were of concern to her. These concerns were raised with MMCL on 11 April 2019. It is alleged that MMCL failed to address these concerns at that time.
 - 9.4 After an exchange of emails and telephone calls, MMCL advised the complainant on 1 May 2019 that MMCL would pay for the cost of some specified repairs to the vehicle.
 - 9.5 Further emails were exchanged, with no resolution being achieved.
10. The Commission was advised by MMCL on 16 September 2019 that when the issues were first raised by the complainant, MMCL requested the complainant take the vehicle to a mechanic and have the mechanic contact MMCL direct to discuss the concerns. MMCL advised that it had not heard from any person other than the complainant about the vehicle and its issues.
11. MMCL further advise that it has still not received any account for the remedial work on the vehicle it had offered to pay for.

The Commission's view

12. If the facts as alleged by the complainant are correct, MMCL is at risk of breaching section 13(i) of the FTA. In trade vendors, when selling goods (in MMCL's case a used motor vehicle), must comply with the requirement of the CGA whether that good is sold by auction or at a 'buy now price'.

13. It is important to realise that at any point of complaint, the vendor should consider its obligations as to the rights, remedies and guarantees available to a consumer under the CGA.

The Commission's role

14. 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 in the promotion and sale of goods and/or services.

Penalties for breaching the Fair Trading Act

15. Only the courts can decide if there has been a breach of the Act. The courts can impose severe penalties where it finds the law has been broken. A company that breaches s13(i) of the FTA can be fined up to \$600,000 per offence, and for an individual, that person can be fined up to \$200,000 per offence.
16. It is important to understand that an individual making a false or misleading representation can be held liable for making that representation.
17. You should be aware that our decision to issue this compliance advice letter does not prevent any other person or entity from taking private action through the courts.

Selling motor vehicles without a current warrant of fitness (WOF) or a WOF certified one month or more before the date of delivery

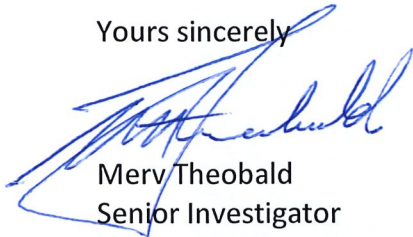
18. Although not a matter policed by the Commission, this issue has been raised by the complainant and yourself in the email correspondence that has been viewed by the Commission. MMCL should be aware of its obligations in respect to this warrant of fitness matter as outlined in the Land transport Rule – Vehicle Standards Compliance 2002 (the Rules).
19. Clause 9.12 of the Rules clearly outlines MMCL requirements when selling vehicles in these circumstances.

Further information

20. 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. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act.
21. You can also view the Fair Trading Act and other legislation at www.legislation.co.nz.

22. Thank you for your assistance with this investigation. If you have any questions in relation to this letter, please contact me on 04 924 3767 or by email: mervyn.theobald@comcom.govt.nz

Yours sincerely



Merv Theobald
Senior Investigator
Competition and Consumer Branch: Wellington

Released Under Official Information Act 1982