

1 June 2022

[REDACTED]

Autoworld Cars Limited
Invercargill

By email: [REDACTED]

Dear [REDACTED]

Fair Trading Act 1986: Warning for misleading representations about used motor vehicles

1. The Commerce Commission (**Commission**) has been investigating Autoworld Cars Limited (**Autoworld Cars**) under the Fair Trading Act 1986 (**FT Act**). We have now completed our investigation and are writing to inform you about our views.
2. The Commission considers that Autoworld Cars is likely to have breached the FT Act in that:
 - 2.1 When advertising used motor vehicles (**vehicles**) for sale on Trade Me, nine Consumer Information Notices (**CINs**) attached to those Trade Me listings contained a false and misleading representation that the vehicle was not imported damaged, when in fact it was.¹
 - 2.2 Two sales staff made false and misleading representations as to the history of a particular vehicle when describing previous damage to seven prospective purchasers. The sales staff described the previous damage as being caused by hail, when the damage had been caused by an accident, and this was known to the sales staff, as at the time the representations were made this information was contained in the vehicle files held by Autoworld Cars.

¹ NZ Transport Rules require any vehicle that is a statutory write off in Australia be flagged on the NZTA registration records as being imported damaged, and accordingly on the CIN. In some circumstances, damaged flags can be removed if the vehicle is examined by a NZTA approved Repair Certifier, and that vehicle was found not to have structural damage. The certifier must submit a request on a NZTA relevant form for the damage flag to be removed.

- 2.3 The representation of “*We only select vehicles with only minor damage ie, hail, malicious, theft recovered etc*” that was made on Autoworld Cars’ website and on relevant Trade Me listings was likely to mislead prospective purchasers as some of the representations did not accurately reflect the nature and/or extent of the damage, or how it occurred.
3. We are issuing Autoworld Cars’ this warning letter because in our view, its conduct is likely to have breached sections 10 and 13(a) of the FT Act. 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.²

The investigation

4. The Commission received a complaint alleging that Autoworld Cars were advertising used motor vehicles that had incorrect information on the CIN. The CINs incorrectly identified the vehicles as not being imported as damaged vehicles, when in fact they had been.
5. During our investigation, we considered a range of representations made by Autoworld Cars on its website, Trade Me listings and verbally to customers by sales staff.
6. Based on information voluntarily provided by Autoworld Cars and during witness interviews, the Commission established the following:
- 6.1 Nine CINs falsely represented that the respective vehicle had not been imported damaged, when in fact the related vehicle had been imported damaged.
- 6.2 Previous damage to the vehicles was, on occasions misrepresented by sales staff, advising that the damage was minimal such as caused by hail, when the damage was more serious and caused by an accident or crash. By definition under s.45 of the sales staff are agents of Autoworld.
- 6.3 On a Vehicle Offer and Sale Agreement (VO&SA), the cause of the damage to the vehicle was stated as hail damage, when in fact it was accident damage.
- 6.4 In a text message from a staff member to a consumer, a false statement was made that the vehicle was sold ‘brand new’ three years prior, when that vehicle had been an imported damaged used motor vehicle.

How this conduct can break the Law

7. Section 10 of the FT Act prohibits conduct in trade that is liable to mislead the public as to the nature, manufacturing process, **characteristics**, suitability for a purpose of quantity of goods.

² Commission’s published *Enforcement Response Guidelines* at [41].

8. Section 13(a) of the FT Act prohibits false and misleading representations, in trade, in connection with the supply or possible supply of goods or services that goods are of a particular kind, standard, **quality**, grade, composition, style, or model, or **have had a particular history** or particular previous use.
9. Making false and/or misleading representations on CINs that a vehicle was not imported damaged when in fact it was, may breach the FT Act. Likewise false and/or misleading representations as to previous damage to the vehicles being sold and how that damage occurred, is likely to breach the FT Act.

Autoworld Cars' response

10. Autoworld Cars responded to the Commission's enquiries by:
 - 10.1 Promptly amending the representations on its website and in Trade Me listings;
 - 10.2 Acknowledging the errors on the CINs and informing the Commission that Autoworld Cars contacted each purchaser to advise that the CIN had the incorrect information, and that the vehicle was imported damaged. The purchasers re-signed a corrected CIN;
 - 10.3 Informing the Commission that each sales staff member had access to the vehicle repair certificate and information about previous damage as it was on the individual vehicle file. However, could not be certain that staff did access this information to ensure the consumer was fully informed about the history of the vehicle; and
 - 10.4 Instituting a compliance programme that will ensure sales staff review the vehicle files, and are fully aware of the cause of the damage to the vehicle that was repaired.

The Commission's view

11. In this case, and having fully considered relevant information received, the Commission's view is that it is likely that Autoworld Cars' conduct breached the FT Act.
12. We have reached this view because:
 - 12.1 The representations on nine CINs were false. The CINs stated the vehicle was not imported damaged when they had.
 - 12.2 The nature and/or extent of the damage and how it occurred was not accurately reflected in a representation on Autoworld Cars' website and Trade Me which stated "*We only select vehicles with only minor damage ie, hail, malicious, theft recovered etc.*"
 - 12.3 Sales staff likely made false and misleading representations as to the history of particular vehicles.

Warning

13. 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 by issuing legal proceedings.
14. We note that Autoworld Cars responded quickly to the Commission's investigation and changed its website and Trade Me representations to ensure they are accurate.
15. This warning represents our opinion that the conduct in which Autoworld Cars have engaged is likely to have breached the FT Act and that legal action remains available to the Commission in future if the conduct continues or is repeated.
16. We may draw this warning letter to the attention of a court in any subsequent proceedings brought by the Commission against Autoworld Cars.
17. This warning letter is public information and will be published on the case register on our website. We may also make public comment about our investigations and conclusions, including issuing a media release or making comment to media. Prior to issuing the Warning Letter, we will forward it to your solicitor for their information and comment prior to it be finalised and issued.
18. We also remind Autoworld Cars that individuals can be found liable for breaches under the FT Act.

The Commission's role

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

Penalties for breaching the FT Act

20. As indicated above only the courts can decide if there has actually been a breach of the FT Act. The court can impose penalties where it finds the law has been broken. A company that breaches the FT Act can be fined up to \$600,000 and an individual up to \$200,000 per offence.
21. 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

22. We recommend that you seek legal advice and encourage you to regularly review your compliance procedures, training, and policies.
23. We have published a series of fact sheets and other resources to help businesses comply with the FT 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.

24. You can also view the FT Act and other legislation at www.legislation.co.nz.
25. Thank you for your assistance with this investigation. Please contact Merv Theobald on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely



Kirsten Mannix
Fair Trading Investigations and Compliance Manager