

**IN THE DISTRICT COURT
AT WELLINGTON**

**CRI-2010-091-002305
CRI-2010-091-002301**

COMMERCE COMMISSION
Informant

v

SUNRISE MOTOR GROUP LTD

SURYA KUMAR
Defendants

Hearing: 12 October 2010

Appearances: K S Grau for the Informant
J A Langford for the Defendant and the Defendant Company

Judgment: 12 October 2010

NOTES OF JUDGE I G MILL ON SENTENCING

[1] Sunrise Motor Group Limited and Surya Kumar have pleaded guilty to a number of charges under the Fair Trading Act.

[2] The company has pleaded guilty to 12 charges. Six of advertising to supply goods without complying with a consumer information standard, one of conduct liable to mislead the public as to the nature of the goods and five of false or misleading representation that goods have a particular history.

[3] Mr Kumar has pleaded guilty to six charges. One of advertising to supply goods without complying with the consumer information standard, one of conduct liable to mislead the public as to the nature of the goods and four of false or misleading representation that goods have a particular history.

[4] All this offending is in relation to the sale of second hand motor vehicles, and in these particular cases vehicles imported from overseas, that had a history of damage prior to import.

[5] The facts are that the Commission began monitoring TradeMe internet listings for the two defendants and became aware that in certain cases, information notices, that is consumer information notices, were not completed or available for viewing. Now a number of the vehicles that were imported by the defendants had been damaged prior to importing. Some of those had the damage flag, as it is called, removed, but a number of vehicles, including the vehicles that I am concerned with, had been identified as damaged, correctly so.

[6] In three of the cases that I am involved with, the notices stated that they were not imported damaged and certain representations were made to the purchasers about damage to the vehicle. In my view, Mr Kumar, as the principal of the company and the person responsible for the employees and the sale of the vehicles, he is responsible primarily for these statements made.

[7] Some of the notices were not correctly filled out to reveal what the state was. So as a result, five of the charges relate to vehicles advertised on TradeMe with no notice, or access to a notice displayed on the internet page. A charge against each of the defendants relates to a vehicle where the notice did not indicate whether or not the vehicle had been imported damaged.

[8] And another charge, where the vehicles had a notice that the vehicles were not imported damaged, and then the charges relating to various statements made to respective purchasers about the damage either being minor or something along those lines. As far as the internet trading is concerned, once this was brought to the attention of Mr Kumar, it was remedied.

[9] In respect of the more serious matters however, a number of people were affected. The nature of the cars were such that they were not sold at large prices but that very fact no doubt meant that the people buying these cars had little money to spend in this way and were affected personally to a significant degree. It is true that Mr Kumar attempted to deal with most of these matters himself or through tribunals. In the case of one car, the owner had trouble shortly after purchase, and after being advised of the commission investigation, attempted to return the car. Mr Kumar would not refund the purchase price but the Motor Vehicle Disputes Tribunal determined that a refund was to be paid, together with expenses she incurred.

[10] In another case, there was a major leak in the rear body compartment. No resolution was reached, and the purchase price of the car was \$7500 and sold for \$2500, and the owner is seeking at least partial repayment of the difference of the prices.

[11] In another case, a person approached Mr Kumar shortly after being advised by the commission that the vehicle was imported damaged and he was compensated \$1000 by Mr Kumar and was perfectly happy with that.

[12] In another case, significant rust was detected in the vehicle and investigation revealed it was subject to this damage and condition prior to being imported. Money was spent on minor repairs to repair the vehicle by Mr Kumar, and the vehicle was subsequently sold. It was later examined again at the request of the commission and it was found to have still the structural issues which had been covered up. And similar stories can be told with the other deals.

[13] So these are serious breaches of the Act. They may not have resulted in a huge amount of compensation being involved, but for the parties concerned including Mr Kumar and his company, there is some significance.

[14] In approaching sentence, I have to be aware of a number of things. First the seriousness of the offending. In my view this is reasonably serious for the parties involved, but not the most serious sort of offending that would be covered by these regulations.

[15] As far as culpability is concerned, in my view Mr Kumar is primarily responsible for the advertising, the filling in of the forms and the representations made, so he is principally at fault in these transactions. His company is also liable, but in my view Mr Kumar is the principal offender. As far as a starting point is concerned that is always difficult to reach, especially in this case where there is little or no helpful guidance with similar cases.

[16] Both counsel have helped as much as they can with this; and Mr Langford suggests that as between both defendants the total fines in the end should be around \$10,000 spread across the various 18 informations.

[17] I must then look if there are any aggravating circumstances and in my view there are not any aggravating circumstances.

[18] In mitigating circumstances, there have been explanations by Mr Kumar. He has, in some cases, done his best to try and remedy the situation, but the situation was caused by his dealings, and there is little in way of mitigation, apart from the guilty pleas entered on behalf of both defendants.

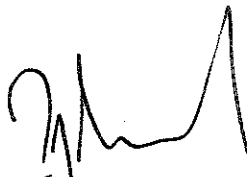
[19] In my view, so far as Mr Kumar is concerned, the submission by the Crown is correct. Taking the totality of the offending and the six offences that he has pleaded guilty to, a starting point overall of 25 percent is appropriate. This would mean a fine of \$2500 on each of the six counts as a starting point. A total of \$15,000 would be the fines in respect of him.

[20] In my view, there are no aggravating circumstances, and the only mitigating circumstance in my view, notwithstanding his personal circumstances, is the plea of guilty, now that would reduce the fine by one third.

[21] So in respect of all of the offences for Mr Kumar, you are convicted and fined \$1600 on each, together with Court costs of \$132.89 and a solicitors fee of \$100.

[22] In respect of the company, the culpability of the company is such that in my view 25 percent is too high, and 15 percent would be a more appropriate figure for the company. As it happens, calculating in that way, I calculate the fine in each case to be again, \$2500 starting point on each of the informations making a total fine of \$30,000.

[23] One third should be reduced for the guilty pleas by the company and again the fines on each information, so far as the company is concerned, is a fine of \$1600, together with Court costs of \$132.89 and a solicitors fee of \$100.



JG Mill
District Court Judge