

20 December 2017

Brent Smith T/A Motor Me
282 Church Street
Onehunga
Auckland

www.comcom.govt.nz

Ref: 16301

By email only: admin@motorme.co.nz

Dear Mr Smith

Fair Trading Act 1986: Warning and compliance advice

1. The Commerce Commission (**Commission**) has been investigating under the Fair Trading Act 1986 (**Act**), your conduct as the owner and operator of the Motor Me business (**Motor Me**). The investigation relates to Motor Me's conduct as a motor vehicle dealer selling vehicles on Trade Me, its website and through its car yard.
2. We have now completed our investigation and are writing to alert you to our concerns.
3. In summary, the Commission considers that you have likely breached the Act by making false or misleading representations as to:
 - 3.1 the quality and the particular history of vehicles offered for sale (section 13(a)); and
 - 3.2 the benefits, approval or endorsement of a vehicle offered for sale (section 13(e)).
4. We also consider you to be at risk of breaching the Act by making false or misleading representations concerning the rights or remedies available to consumers under the Consumer Guarantees Act 1993 (CGA) (section 13(i)).
5. Extracts of these sections of the Act are provided as **Attachment A**.
6. We recommend that you take immediate action to address our concerns and seek legal advice about complying with the Act.

The investigation

7. During our investigation, the Commission considered evidence provided by five complainants, and your response to the Commission's request for information.

Complaints

8. The five complaints are summarised as follows:
 - 8.1 All five complaints alleged that the vehicles purchased from Motor Me were of lower quality in respect of the condition and/or performance, than what was represented to them.
 - 8.2 One complaint alleged that the vehicle purchased had a higher odometer reading than what was advertised in the Trade Me listing.
 - 8.3 One complaint alleged that the Trade Me listing stated that the vehicle had an AA tick and safety certification, when it did not.
 - 8.4 Two complaints alleged that they were provided false information about the rights or remedies available to them under the CGA.

Motor Me's response to the allegations

9. The Commission received a response to its information request from you on 13 April 2017. You provided the Commission with explanations to each of the five complaints that we brought to your attention. Your response with regards to some vehicles was that they were old and the buyers did not get a mechanical inspection carried out.
10. You believed that some of the complainants likely misunderstood the listing details, including the suitability of the vehicle i.e. that it was better suited for off road/rural purposes. You also believed that internal administrative errors led to some of the incorrect listing details being included on Trade Me.
11. You advised that you attempted to resolve the issues with each of the complainants, and in some cases refunded the full purchase price of the vehicles. The five complainants have confirmed that they received either a partial or full refund from you.

The Commission's view

12. Having considered all the available evidence, the Commission's view is that you have likely breached:
 - 12.1 section 13(a) of the Act by making false or misleading representations about the quality and the particular history of vehicles offered for sale; and
 - 12.2 section 13(e) of the Act by making false or misleading representations about the benefits, approval or endorsement of a vehicle offered for sale.
13. We are also of the view that you may have breached section 13(i) of the Act by making false or misleading representations concerning the right or remedy available to consumers under the Consumer Guarantees Act 1993 (CGA) .

14. After considering the factors set out in our Enforcement Response Guidelines¹, we have decided to formally warn Motor Me for the representations set out in paragraph 12 above, and offer general compliance advice in relation to paragraph 13.

Warning

Representations about vehicle 'quality' and 'particular history'– section 13(a)

15. We consider that you have likely made false or misleading representations as to the quality and particular history of the vehicles offered for sale to the complainants.
16. Three of the complainants have provided evidence to show that the vehicles purchased from Motor Me were of a lower quality, in respect of the physical condition and/or mechanical performance, to what was initially represented to them on the Trade Me listings or through initial email correspondence.
17. The first vehicle was described as being “[i]n good condition inside and out”. Photographic and other evidence provided by the complainant showed that the vehicle had rust spots, damage to the bodywork, the engine had failed to start, it had condensation and not enough oil in the engine, sludge in the radiator, broken handles and bonnet release, loose lights, screws holding lights and arm rests missing.
18. Evidence provided by the complainant also showed that this vehicle had 283,554 km on the odometer at the time of its arrival, compared to 230,000 km as advertised on the Trade Me listing.
19. The second vehicle was described as being an “[e]xcellent performer on and off the road. Will go anywhere do anything”, “serviced”, “in great condition” and “drive (sic) excellent”. The complainant provided an invoice as evidence to show that the vehicle needed repairs, including a wheel alignment and balancing, adjustment of its wheel bearing, drive belt remedies and it was stated on the repair invoice that it was overdue for a service.
20. You told us that this vehicle was more of an “off road/farm type of vehicle” and the complainant misunderstood the suitability of the vehicle. The statement made by you in the listing that the car “[w]ill go anywhere do anything” however, contradicts your explanation to us.
21. The third vehicle was described as “[h]ighly recommended. Excellent performer”. The complainant provided evidence to show that the vehicle needed costly repairs within a month of purchase, relating to a blown head gasket and air bag issues. In addition, an AA Auto service and repair estimate was provided by the complainant that showed a replacement engine was required for the vehicle.

¹ Available at: <http://www.comcom.govt.nz/the-commission/commission-policies/enforcement-response-guidelines/>.

Representations about vehicle approval, endorsement and benefits – section 13(e)

22. We consider that you have likely made a false or misleading representation as to the approval, endorsement and benefits of the vehicle offered for sale (as mentioned in paragraph 21.) by stating in the Trade Me listing that it had an AA tick and safety certification, when this was not the case.

Compliance advice

Representations about consumer rights – section 13(i)

23. The CGA sets minimum guarantees about goods and services bought for personal use and provides remedies for consumers when guarantees are not met.
24. We consider the representations you made to two complainants about the rights and remedies available under the CGA may give rise to a breach of section 13(i) of the Act. The complainants alleged:
- 24.1 Motor Me would not pay for the shipping costs associated with returning a complainant's faulty vehicle from Christchurch to the Motor Me yard in Auckland. This may be misleading as a consumer may be able to "obtain from the supplier, damages for any loss or damage to the consumer resulting from the failure"² i.e. the shipping costs in this case.
- 24.2 Motor Me would not repair a complainant's vehicle under the Consumer Guarantees Act, and asked the consumer to submit a claim with their warranty provider Protecta instead. The warranty was allegedly declined as it was a pre-existing fault that Motor Me was responsible for. This may be misleading, as a consumer may require the supplier to remedy the failure (if the failure can be remedied) within a reasonable time i.e. repairing the complainant's vehicle in this case.³

Additional comments

25. While we will not be taking further action against you at this time, we suggest you take legal advice to ensure compliance with the Act.
26. The Commission requests that you confirm:
- 26.1 receipt of this letter; and
- 26.2 that you understand the concerns raised in this letter.
27. Please note we may also draw this letter to the attention of a court in any subsequent proceedings brought by the Commission against you.

² As set out in Section 18(4) of the CGA: 'Options against suppliers where goods do not comply with guarantees',

³ As set out in Section 18(2)(a) of the CGA: 'Options against suppliers where goods do not comply with guarantees',

28. We may make public comment about our investigations and conclusions, including issuing a media release or making comment to media. This letter is public information and will be published on the Commission's website.

The Commission's role

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

Penalties for breaching the Act

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

Further information

32. We have published a series of fact sheets and other resources to help businesses comply with the Act and the other legislation we enforce. These are available on our website at www.comcom.govt.nz.
33. We encourage you to visit our website to better understand your obligations and the Commission's role in enforcing the Act. You can also view the Act and other legislation at www.legislation.co.nz.
34. Please contact Gemma Coppins on (04) 924 3607 or at gemma.coppins@comcom.govt.nz if you have any questions about this letter.

Yours sincerely



Ritchie Hutton
Head of Strategy, Intelligence and Advocacy

Attachment A

The Consumer Guarantees Act 1993

The Consumer Guarantees Act (CGA) provides consumers a number of guarantees designed to protect them when they purchase goods and services. These rights cannot be excluded by terms and conditions and include the right to receive a refund in the circumstances that a product is not fit for its purpose or significantly differs from its description.

The remedies provided under the CGA include consequential loss for any loss to consumers resulting from the failure of goods which was reasonably foreseeable as liable to result from the failure.

It is important to note that the CGA is intended to be self-enforcing and where a dispute between a retailer and a consumer cannot be resolved, it will often be resolved through the Disputes Tribunal.

The Commerce Commission has a role to play where businesses mislead consumers about their rights, as this can result in a breach of section 13(i) of the Fair Trading Act 1986 occurring.

The Fair Trading Act 1986

Misleading conduct in relation to goods

Section 10 of the Act states:

No person shall, in trade, engage in conduct that is liable to mislead the public as to the nature, manufacturing process, characteristics, suitability for purpose, or quantity of goods.

False or misleading representations

Section 13 of the Act states:

“No person shall, in trade, in connection with the supply or possibly supply of goods or services or with the promotion by any means of the supply or use of goods or services-

- (a) make a false or misleading representation that goods are of a particular kind, standard, quality, grade, quantity, composition, style, or model, or have had a particular history or particular previous use.
- (e) make a false or misleading representation that goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses, or benefits.
- (i) make a false or misleading representation 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 Consumer Guarantees Act 1993.