

Dig?

CRN0042013478

IN THE DISTRICT COURT  
AT NELSON

COMMERCE COMMISSION

*Informant*

HAVEN MOTORS LTD

*Defendant*

Hearing: 21 November 2000  
Date of Sentence: 21 November 2000  
Counsel: Mr A Parker for Informant  
Mr K Hennessey for Defendant

---

NOTES OF JUDGE R L WATSON ON SENTENCE

---

Solicitors:  
*Commerce Commission for Informant*  
Kelly Hennessey for Defendant

FT Act.  
but other  
dec's  
noted in  
case would  
need to go in

Haven Motors Limited have pleaded guilty to one charged laid under section 40 of the Fair Trading Act in that contrary to section 11 of the Fair Trading Act it engaged in conduct that was liable to mislead the public as to the nature or characteristics of a credit service by advertising in the Nelson Mail Newspaper an interest free credit service on all used vehicles, when in fact that credit service did not apply to all used vehicles. Simply that charge arose from an advertisement which the Company had placed in the Nelson Mail on the days of Wednesday 31 May, Saturday 3 June and Wednesday 7 June. That advertisement indicated that sales of used vehicles would be interest free and the advertisement went on to say that there would be a 1/3 payment now, 1/3 payment in twelve months and 1/3 payment in 24 months. Clearly that advertisement could be interpreted to indicate to any potential or interested buyer that in request of used vehicles on display in Havens of Nelson the terms of sale could be spread over 24 months on an interest free basis. I accept that the advertisement did contain the words "some conditions may apply" but I certainly also accept the comment made in the submissions of the Informant that this particular addition really did not negate or exonerate the company in any way from their obligations in relation to advertising.

In determining the matter of penalty in respect of this case the Court has been greatly assisted by the submission presented by Mr Parker on behalf of the Commerce Commission and also from Mr Hennessey acting on behalf of Haven Motors. It has been helpful to the Court to have laid out in front of it those principals or factors to be taken into account as set out in the decision of the Commerce Commission v L. V. Nathan and Co Limited and also those further factors covered by Judge Abbott in the decision of Commerce Commission v Kearny.

Clearly the Court must start from the basis of the objectives of the Act and the Fair Trading Act while a regulatory statute is an Act in place to prohibit unfair trading practices particularly focusing on the protection of the consumer. I

accept without hesitation that that is the most important aspect of the Fair Trading Act.

When one looks at the matter set out in the *Commerce Commission v L. V. Nathan and Co Limited* the Court should be focusing on the importance of the untrue statement and in this regard I pick up on the matters raised by Mr Parker in his submission that this type of conduct in a highly competitive car market can create what is described as a tilted or unfair playing field. Any type of interest free deal over a period of two years or so must look attractive to consumers and the issue then is to determine whether anyone has been prejudiced as a consequence of that advertisement. In that regard of course it is always difficult to determine prejudice, or just what a consumer has thought, or whether a consumer has reacted to such an advertisement. But in this case of course there was one person, he went to the car yard, he thought apparently that the interest free terms would apply to the vehicle he was looking at but he was then advised those terms only applied to vehicles under 10 years of age. The vehicle he was looking at was over that particular age limitation and the provisions as to interest free as offered in terms of the advertisement simply were not available to him. The company did accept that they should make some other reduced offer insofar as the complainant was concerned but that of course was not of any interest to him. We do therefore have in this case somebody who is able to put their hands up and say that in response to this advertisement I was prejudiced, I had gone to the premises and what was advertised was not available to me and this had not been made clear in the advertisement. I accept that is this situation, as does the company, that this amounted to unfair advertising. There was a degree of carelessness and that matter has been covered also by Mr Hennessey in his comments on behalf of the company to the Court.

Insofar as matters as to dissemination, prejudice and whether the statements depart from the truth, the comments I have already made cover I believe those

three particular points. We do have as I have said a customer who was prejudiced. There is no doubt in cases such as this the Court has an obligation to impose deterrent sentences and this of course is clearly and succinctly set out by Tipping J in the Lanes Appliance Centre Limited when he stated “in my view it is important that the Act be seen to have some teeth, traders must not be left with the view that it is worthwhile breaching the Act because profits will outweigh the fine”.

It is appropriate in this case for the Court to give credit to the Company for the early guilty plea, for the total co-operation that it has shown the Commerce Commission throughout its investigations, the fact that it is anxious to have this matter disposed of as quickly as possible and in term it will suffer because of the undue publicity that will be attracted to this particular prosecution. Indeed as Counsel has indicated there have been other spin-offs insofar as the company is concerned with the loss of one of its Senior Sales Person as a consequence of what has occurred.

I accept the situation that the penalty that should be imposed in this case must be one that recognises the deterrent aspect in relation to what has occurred but also balances those matters which the defendant has addressed immediately this problem is drawn to his attention, including particularly I might add the fact that the advertisement that was originally published was immediately modified to set out the accurate and correct position. I accept that in this case the appropriate penalty to impose is the sum of \$5,000.00 and in relation to this particular prosecution the defendant is fined the sum of \$5,000.00 with Court Costs of \$130.00.



R L WATSON  
**District Court Judge.**