



PRESS ADVISORY

FAIR TRADING COMMISSION
52 GRENADA CRESCENT, KINGSTON 5
TELEPHONE: (876) 960.0120-4
FAX (876) 960.0763
E-MAIL: ftc@cwjamaica.com

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FTC wins model year case against Crichton Automotive Limited

On May 22, 2015 the Supreme Court delivered judgment in the case of **Fair Trading Commission v Crichton Automotive Limited**. In its judgment the Court found that Crichton Automotive Ltd (CAL) is liable for misleading representation under section 37 of the Fair Competition Act (FCA).

The case had arisen upon the FTC's investigation into an allegation that CAL had misled a customer regarding the model year of a Nissan Sunny motor car. At the time of sale, the car was represented as a 2007 model, but subsequently, valuers, the Island Traffic Authority and Fidelity Motors Limited, the authorized Nissan dealer in Jamaica, confirmed that the motor car is in fact, a 2005 model.

The Court found that:

- CAL's representation to the customer about the motor car was in fact false.
- The FCA requires businesses to provide accurate statements about goods and services, and that CAL failed to do so in the circumstances.
- While CAL honestly believed that the car was a 2007 model, nonetheless its representation was objectively false and in breach of the FCA.
- Although government agencies such as the Trade Board had initially recorded the wrong model year, it was CAL who was the source of that information provided to the said agencies.
- CAL's reliance on documents generated by government agencies is not an answer to its duty to provide the public with accurate information about its goods and services.

The Court imposed a penalty of \$2 million dollars against CAL for breach of the FCA; and awarded costs to the FTC. In doing so, the Court indicated that it was concerned that CAL had refused to take responsibility for the error. In that regard, there was evidence before the Court that even when CAL was presented with confirmation of the correct model year, it refused to resolve the matter, thereby making court action necessary.

David Miller
Executive Director