

Compliance Notice

Section 75 of the Consumer Protection Act 2007

Company Secretary,
John McElhinney Unlimited Company,
Main Street,
Ballybofey,
Donegal.

Competition and Consumer
Protection Commission
Bloom House
Railway Street
Dublin 1
D01 C576

I, [REDACTED] an Authorised Officer of the Competition and Consumer Protection Commission ('the CCPC'), hereby give you, John McElhinney Unlimited, notice pursuant to section 75(2) of the Consumer Protection Act 2007 ('the 2007 Act') that I am of the opinion that you have engaged in a prohibited act or practice, as described in section 67(a) of the 2007 Act, name a misleading commercial practice under section 43(2) as set out in section 43(3)(j) of the 2007 Act.

The alleged contravention contained herein relates to information that you, John McElhinney Unlimited Company, provided to consumers on the website <https://mcelhinneys.com> ('the Website'), specifically the information you provided referring to the cancellation of distance contracts for the sale of gift cards.

A. Statement of alleged contravention

1. That you, John McElhinney Unlimited Company, a trader for the purposes of the 2007 Act, on 22 January 2025 engaged in a misleading commercial practice by providing information to consumers which would be likely to cause the average consumer to be deceived or misled in relation to their legal rights (whether contractual or otherwise) or matters respecting when, how or in what circumstances those rights may be exercised. In this regard, you, John McElhinney Unlimited Company, provided information that would be likely to deceive or mislead consumers as to their cancellation rights in relation to distance contracts under the Consumer Rights Act 2022 ('the 2022 Act'). Such a commercial practice would be likely to cause the average consumer to make a transactional decision that the average consumer would not otherwise make.

Such a practice, being prohibited by section 42(1) of the 2007 Act as described by section 43(2) and section 43(3)(j) of that Act, is an offence contrary to section 47 of the 2007 Act.

2. Furthermore, such a misleading commercial practice is a 'prohibited act or practice' in accordance with section 67(a) of the 2007 Act.

B. My opinion

I am of the opinion that you, John McElhinney Unlimited Company, engaged in the prohibited act or practice outlined in the statement of alleged contravention above, by providing information that would be likely to deceive or mislead consumers as to their legal rights (whether contractual or otherwise) or matters respecting how or in what circumstances those rights may be exercised, namely by providing information that would be likely to deceive or mislead consumers as to their cancellation rights in relation to distance contracts under the 2022 Act.

C. The reason for my opinion

My opinion follows an inspection of the Website conducted on 22 January 2025. The reasons for my opinion are based on the following:

1. John McElhinney Unlimited Company is a legal person and can be described as a 'trader' for the purposes of the 2007 Act and the 2022 Act. Trader is defined in section 2 of both the 2007 Act and the 2022 Act.
2. John McElhinney Unlimited Company, through the Website, provides a facility for consumers to conclude distance contracts with John McElhinney Unlimited Company.

Distance contracts are defined in section 2 of the 2022 Act as meaning:

"a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, and with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded;"

3. My inspection of the Website on 22 January 2025 revealed the following instances of you providing information that is likely to deceive or mislead consumers:

- (i) The Website under the “terms and conditions” page includes the following statement: *“Gift Cards cannot be returned once purchased and cannot be exchanged for cash or other gift cards.”*
- 4. The information provided to a consumer entered into or seeking to conclude a distance contract, as described in point C3(i) above, is likely to deceive or mislead consumers for the following reasons:
 - (i) Section 112 of the 2022 Act provides that the consumer may, at any time prior to the expiry of the cancellation period, cancel a distance contract without giving any reason for the cancellation. Gift cards are not exempt from this provision.
 - (ii) Section 2 of the 2007 Act defines ‘transactional decision’ as being:

“... in relation to a consumer transaction, whether or not that transaction is completed, any decision by the consumer concerning whether, how or on what terms to do, refrain from doing, any of the following:

 - (a) Purchase the product
 - (b) Make payment in whole or in part for the product;
 - (c) Retain or return the product after its purchase
 - (d) Dispose of the product;
 - (e) Exercise a contractual right in relation to the product;
 - (iii) It is my view that the average consumer would be likely to make a transactional decision that they may not otherwise make in circumstances where the right to cancel a distance contract in respect of a particular good is not provided on the trader’s website.

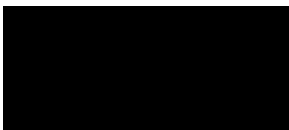
D. Compliance Direction and Requirements

You, John McElhinney Unlimited Company, a trader, are hereby directed to amend the term on the Website referred to at Section C3(i) above to ensure that the information available to consumers, including in any future terms and conditions (including returns policies), accurately reflects consumer’s legal rights, in particular regarding consumers’ cancellation rights in relation to distance sales contracts, accurately reflects the legal rights a consumer may avail of under the 2022 Act.

You must comply with this compliance direction and requirements by 11 August 2025.

E. Appeal Procedure

1. You may appeal this Compliance Notice to the District Court in which the notice is served within 14 days after its service.
2. The form and manner of such an appeal is to be found in the District Court Rules, Form 40D.01 Schedule C. This is available from the registrar at your local District Court office or on the Courts Service's website, www.courts.ie
3. In the event that you decide to appeal the Compliance Notice, you must, at the same time, notify the CCPC at the above address. You must also notify the CCPC of the grounds for the appeal.
4. If an appeal is not made in accordance with section 75 of the 2007 Act and within 14 days after service of the notice, this notice will be treated as not disputed, you will be deemed to have accepted the notice and have agreed to comply with the compliance direction and requirements.
5. Any failure or refusal to comply with this notice, is an offence and, on summary conviction, you will be liable to the fines and penalties set out in Part. 5, Chapter 4 of the 2007 Act.



Authorised Officer

Competition and Consumer Protection Commission
18 July 2025

This information is intended for information purposes only and does not constitute part of the Compliance Notice.

Compliance Notice Notes

Consumer Protection Act 2007 (2007 Act)

1.	Section 75(6) of the 2007 Act requires a person, when lodging an appeal, to, at the same time, notify the CCPC of the appeal and the grounds for the appeal. The CCPC is entitled to appear, be heard and adduce evidence on the hearing of the appeal.
2.	If on appeal the compliance notice is not cancelled, the notice takes effect on the later of the following: a) the day after the day on which the notice is confirmed or varied on appeal, b) if the appeal is withdrawn by the appellant the day after the day it is withdrawn, c) the day specified in the notice.
3.	If there is no appeal under section 75(5) of the 2007 Act, the compliance notice takes effect on the later of the following: a) 14 days after the notice is served. b) the day specified in the notice.
4.	An Authorised Officer may- a) withdraw a compliance notice at any time, or b) if no appeal is made or pending under section 75(5) of the 2007 Act, extend the date by which the recipient is to comply with the compliance direction and requirements.
5.	Withdrawal of a compliance notice does not prevent the service of another compliance direction or requirement specified in a compliance notice, whether it relates to the same matter or a different matter.
6.	In accordance with section 75(13) of the 2007 Act, if a compliance notice takes effect, the CCPC is required to publish the compliance notice, or cause it to be published in any form or manner it considers appropriate.
7.	Section 86 of the 2007 Act requires the CCPC to maintain a 'Consumer Protection List' of names and addresses of persons together with a description of their trade, business or profession and the particulars of the matter occasioning any enforcement actions taken by the CCPC. This includes persons against whom compliance notices have taken effect.
8.	Any person who, without a reasonable excuse, fails to comply with a direction or requirement specified in a compliance notice, commits an offence and, on summary conviction, is liable to the fines and penalties set out in section 79 of the 2007 Act.

9.	Section 79(1) of the 2007 Act provides that a person guilty of an offence under the 2007 Act is liable on summary conviction to the following fines and penalties: a) a Class B fine not exceeding €4000 or up to 6 months imprisonment or both, b) on any subsequent summary conviction, a fine not exceeding €5000, or imprisonment for a term not exceeding 12 months or both. c) If, after being convicted of an offence, a person continues to contravene the requirement or prohibition to which the offence relates, the person is guilty of a further offence on each day the contravention continues and for each such offence is liable on summary conviction to a fine not exceeding €500.
10.	According to section 75(14) of the 2007 Act, the issuing of this notice does not prevent the commencement of proceedings for an offence.