

Christian vdB [redacted]
[redacted]
Co. Cork

Tuesday, 15th June, 2010.

Jason O'Brien
Jason O'Brien Car Sales
Unit 19, Tramore Commercial Park
Tramore Road
Cork

Unroadworthy car (93-C-15599) supplied by Jason O'Brien Car Sales

Dear Mr. O'Brien,

As you know I purchased a Suzuki Cappuccino (registration number 93-C-15599) from you for the sum of €2900 on Friday 2nd April 2010, on the clear understanding that it had a new timing belt and was roadworthy, given its fresh NCT certificate (copy enclosed), and furthermore, that the car had been garaged during winter and thus was in good condition for its age. I paid €2500 by bank draft (payable to you) and the balance in cash.

I drove the car away and was initially delighted with it, despite some difficulties with the alarm and immobiliser on arriving home, which you provided no assistance in respect of.

After buying the car, I noticed that there was no sign of any recent work to the timing belt cover, and so for peace of mind on April 29th I spent €293.30 (copy receipt enclosed) to get a new timing belt kit (timing belt, tensioner, and water pump) fitted at Dempsey's Garage in Kinsale; the mechanics at Dempsey's confirmed that these items had most certainly not been replaced in the recent past. I was rather disappointed by this, but decided to take no action at this time, given that I was otherwise happy with the car.

I note that it is an offence under consumer legislation to provide false or misleading information to consumers in commercial transactions, and you appear to have done so.

On Friday May 21st, I delivered the car to Dempsey's Garage again to have the engine, gearbox and differential oils drained and replaced. Shortly afterwards, the staff at the garage began work by putting the car up on a lift, so as to gain access to its underside.

On doing this it became readily apparent to them that there was long-standing extensive rust damage to the primary structure of the car (several holes big enough to insert a hand). They telephoned me, inviting me to inspect the car myself; I did so, took a quantity of photographs documenting why this car should not have passed the NCT (selected copies and explanation enclosed herewith), and cancelled the work order.

I telephoned you shortly afterwards on the same day, requesting that you or your agent recover the car from Dempsey's Garage in Kinsale, and that you refund me the purchase price plus the cost of the subsequent work performed. You suggested instead that I obtain quotes for repair work, undertaking to pay for same. I reluctantly acceded, noting the impracticality of obtaining such quotes in respect of an undrivable car.

I obtained opinions on the car from a number of people familiar with the motor trade in Ireland and the UK, including several highly conversant with bodywork generally, and the Suzuki Cappuccino specifically; comments received included "yikes", "not worth repairing", "straight to the scrap heap", "death trap", "beyond economical repair", "if it hit anything it would just fold up", "worth £500 - £800", and "in a crash you'd be like toothpaste in a tube".

An NCT certificate cannot legitimately be issued in respect of a car in such a state; for a detailed explanation, see the attached non-exhaustive schedule of faults found.

The Sale of Goods and Supply of Services Act 1980, section 13, states "in every contract for the sale of a motor vehicle (except a contract in which the buyer is a person whose business it is to deal in motor vehicles) there is an implied condition that at the time of delivery of the vehicle under the contract it is free from any defect which

would render it a danger to the public, including persons travelling in the vehicle.” - this vehicle is not free of such defects, despite the issuing of an NCT certificate in respect of it.

You are clearly in breach of this section, and others, of the Act referred to.

On Saturday 12th June 2010 I visited your premises in person, having tried and failed to make contact with you by telephone. I reiterated my request for refund, and you gave a verbal undertaking to have the car recovered from Dempsey's Garage on Monday 14th June (where it has remained since May 21st) for subsequent evaluation by you.

You offered to repair or replace the car subject to such an evaluation. I will not accept either of these options, as I cannot feel confident that you will supply a roadworthy vehicle. I seek a refund of €3193.30, i.e. the initial purchase price of €2900, plus the €293.30 subsequently incurred by me to bring the car up to the stated standard.

As of Tuesday 15th June 2010, the car remains in Kinsale, and as far as I am aware you have made no attempt to contact me or Dempsey's garage to arrange collection.

I strongly suggest you provide the full refund as requested; it seems likely, given the preponderance of evidence, that a court will find in my favour, and award a full refund, and costs, against you.

Before bringing this to court I will need to show that I made a good faith effort to resolve this. This letter is the completion of that effort.

Yours sincerely,

Christian vdB [redacted]

Schedule of enclosures

1. Non-exhaustive schedule of faults found on Suzuki Cappuccino bearing the registration number 93-C-15599.
2. Selected photographs taken on Friday May 21st 2010 at Dempsey's Garage, Kinsale: A-1664; B-1667; C-1680; D-1670; E-1681; F-1674; G-1676; H-1685; I-1696; J-1697; K-1695. The full set of photos may be inspected at <http://cjb.ie/cappuccino/>
3. National Car Test (NCT) Manual 2010 (ISBN 978-1-4064-2491-1), pages 56-59 - downloaded from NCTS website at <http://www.ncts.ie/pdf/nctmanual.pdf>
4. Sale of Goods and Supply of Services Act, 1980 (Section 13) - downloaded from <http://www.irishstatutebook.ie/1980/en/act/pub/0016/sec0013.html>
5. Copy receipt 0289 from Jason O'Brien Car Sales dated 2nd April 2010 stating €2950 paid in full in respect of Suzuki, vehicle reg. no. 93-C-15599.
6. Copy NCT certificate and disc dated 2nd April 2010 in respect of Suzuki Cappuccino 93-C-15599.
7. Copy vehicle registration certificate for Suzuki Cappuccino 93-C-15599, showing change of ownership on 2nd April 2010.
8. Copy invoice 2275 from Dan Dempsey (Garage) dated 29th April 2010 in the amount of €293.30 in respect of parts and labour for timing belt kit (belt, tensioner and water pump) fitted to Suzuki 93-C-15599.

Non-exhaustive schedule of faults found on Suzuki Cappuccino bearing the registration number 93-C-15599

This is a list of faults found with the above mentioned vehicle on a cursory examination of the primary and secondary structural components visible from underneath when the vehicle is raised on a lift.

This does not purport to be a complete list of all faults present.

Please refer to pages 56-59 of the National Car Test (NCT) Manual 2010, covering NCT item 35 (bodywork).

On page 56, the testing methodology begins "Examine primary structural components (including floor pan) for cracks, security, damage or rust." and continues "The judgement to be made is whether or not the manufacturer's original strength has been maintained".

On page 57, "primary body structure" is defined to include such items as "suspension mountings and parts", "door sills", and "all floor panels".

On page 58, "advanced rust" is characterised by "rust concentration or pits; removal leaves pit marks which can only be eliminated by removal of parent metal"; "extensive rust" is characterised by "rust flakes - removal of which leaves a very rough or holed surface; pits go right through and cause eruption on far side". Clearly, "extensive rust" is far more serious than "advanced rust".

On page 59, the list of possible reasons for failure includes "primary structural components broken, cracked, insecure, damaged or rusted to an advanced stage"; "secondary structural components missing, insecure, rusted or damaged to such an extent as to leave sharp edges"; "body not sitting squarely due to distortion"; and "vehicle manufacturer's original strength or safety obviously not maintained".

Photographs A-1664, B-1667 and C-1680 show that the floor pan (a primary structural component) is broken, cracked, insecure, damaged and rusted, well beyond even that pictured as "extensive rust" in the NCT manual (recall that even "advanced rust" on primary structural components is considered grounds for NCT failure).

Photographs D-1670 and E-1681 show that the same is also true of the passenger side door sill (another primary structural component) - sufficient grounds for NCT failure.

Photograph F-1674 shows distortion towards the rear of the passenger side door sill, possibly due to jacking attempt, proving that the original strength of the structure has not been maintained - sufficient grounds for NCT failure.

Photographs G-1676 and H-1685 show extensive rust in the floor pan and rear passenger side wheel arch (a secondary structural component) - sufficient grounds for NCT failure.

Compare photographs I-1696 and J-1697 to see that the car body no longer sits squarely as required, the passenger side jacking point is missing, and that in a subsequent attempt to jack the car up in the absence of this jacking point, the door sill has been bent out of shape, proving that the original strength has not been maintained - sufficient grounds for NCT failure.

Photograph K-1695 shows advanced rust on suspension parts - sufficient grounds for NCT failure.

I am reliably informed that this level of rust damage is consistent with the car having been parked outdoors on grass for extensive periods, casting doubt on your statement that it was garaged when not in use in winter.

I certify herewith that the statements hereon are accurate and correct to the best of my knowledge and belief.

Christian vdB [redacted]
Tuesday, 15th June, 2010.