



ASIC

Australian Securities & Investments Commission



S02586078

INFRINGEMENT NOTICE

Section 12GXA of the *Australian Securities and Investments Commission Act 2001*

Day of issue: 10 November 2017

Unique identification code: S02586078

TO: Volkswagen Financial Services Australia Pty Ltd
ACN 097 071 460
Level 1, 24 Muir Road
CHULLORA NSW 290

1. ASIC issues this infringement notice under section 12GXA of the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)*.
2. ASIC has reasonable grounds to believe that in the period 13 November 2016 to 30 January 2017, Volkswagen Financial Services Australia Pty Ltd (ACN 097 071 460) (VWFSA) contravened section 12DB(1)(g) of the ASIC Act by, in trade or commerce, in connection with the supply or possible supply of financial services, or in connection with the promotion by any means of the supply or use of financial services, making false or misleading representations with respect to the price of services.

Particulars

Between 13 November 2016 and 30 January 2017, VWFSA made the following representations in an advertisement published on the Frizelle Sunshine Automotive website (the **Advertisement**) in relation to the purchase of selected Volkswagen models:

- a) The purchase of a Polo 66TSI Trendline manual model Volkswagen could be financed from \$49 per week on a 1% per annum Finance Comparison Rate; and
- b) The purchase of a Golf 92TSI manual model Volkswagen could be financed from \$67 per week on a 1% per annum Finance Comparison Rate.

(the **Representations**)

ASIC has reasonable grounds to believe the Representations were misleading because:

- a) It was not clearly or prominently disclosed in the Advertisement that the finance contract in relation to the offer would be provided for a period of 48 months only. This condition was in a very fine print disclaimer, amongst other terms and conditions, at the base of the Advertisement and was disproportionate in size and impact to the Representations.
- b) It was not clearly or prominently disclosed in the Advertisement that the consumer would be required to pay a significant residual loan balance at

the end of the 48 months to retain ownership of the vehicle. This condition was in a very fine print disclaimer, amongst other terms and conditions, at the base of the Advertisement and was disproportionate in size and impact to the Representations. Further, the relevant disclaimer text referred to payment of the residual loan balance as a 'GFV balloon' without adequately explaining the meaning of this term or how it operated for a consumer.

- c) The general reference to additional fees & charges in the disclaimer was not adequate to inform a consumer that a significant additional fee may be imposed by the relevant Volkswagen dealer for arranging finance.

Penalty under this notice

3. The penalty payable under this notice in relation to the alleged contravention is \$10,800.

This penalty is payable to ASIC on behalf of the Commonwealth.

This penalty can be paid using one of the methods detailed in the enclosed invoice.

Consequences of complying with this notice

4. If you pay the penalty stated in this notice within the time for payment mentioned below then (unless this notice is subsequently withdrawn and any penalty paid refunded):
 - (a) no proceedings (whether criminal or civil) will be brought against you by the Commonwealth or ASIC for the alleged contravention of the infringement notice provision or an offence constituted by the same conduct; and
 - (b) you will not be regarded as having contravened the infringement notice provision or having been convicted of an offence constituted by the same conduct.

Consequences of failing to comply with this notice

5. If you do not pay the penalty specified in this notice within the time for payment mentioned below, and the notice is not withdrawn, the Commonwealth or ASIC may bring proceedings under Subdivision G of Division 2 of Part 2 the consumer protection provisions of the ASIC Act (whether criminal or civil) against you for the alleged contravention of the infringement notice provision or offence constituted by the same conduct.
6. The maximum pecuniary penalty that a court may order you to pay for the alleged contravention is \$1.8 million.

Time for payment

7. The time for payment is:
 - (a) within 28 days after the day on which the notice is issued to you; or

- (b) if ASIC extends, by notice in writing the compliance period for this notice, within that further period allowed.

Applying for more time to pay the penalty under this notice

- 8. ASIC may extend the compliance period for this infringement notice if ASIC is satisfied that it is appropriate to do so. The extension must not be for longer than 28 days.
- 9. If you wish to apply for an extension of time to pay the penalty specified in this notice, you should do so in writing within 28 days after the day the notice is issued to you (see paragraph 15).

Applying to have this notice withdrawn

- 10. Within 28 days after the day on which this notice is issued, you may apply to ASIC in writing to have this notice withdrawn.
- 11. Evidence or information that you or your representative gives to ASIC in the course of applying for this notice to be withdrawn is not admissible in evidence against you or your representative in any proceedings (other than proceedings for an offence based on the evidence or information being false or misleading).

Withdrawal of this notice

- 12. ASIC may, by written notice given to you, withdraw this infringement notice if ASIC is satisfied that it is appropriate to do so, whether or not you have applied to have this notice withdrawn.
- 13. A withdrawal notice must be given to you within the time for payment of this infringement notice to be effective.
- 14. If the withdrawal notice is given after you have paid the penalty specified in this infringement notice, ASIC will refund to you the amount paid under the infringement notice.

Requirements for applications

- 15. An application to have this notice withdrawn, or for more time to pay the penalty under this notice:
 - (a) must be in writing; and
 - (b) must include the unique identification code set out at the top of this notice; and
 - (c) must include your reasons for making the application; and
 - (d) may be made by forwarding your application to ASIC at the address in paragraph 16.

16. You may contact ASIC in relation to this notice by contacting:

Tim Brooks
Australian Securities and Investments Commission
GPO Box 9827
SYDNEY NSW 2000

or by email: tim.brooks@asic.gov.au



Peter Kell
as a delegate of the Australian Securities and Investments Commission