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Manager

New Car Retailing Industry Market Study

Australian Competition and Consumer Commission

I would like to make a submission regarding our experience of Australian Consumer Law as the owners of a small Motorcycle Shop in Sydney.

We sold a new Aprilia motorcycle to a customer in June 2016. Around the 17th October with about 3000 kms on the clock, the motorcycle developed a problem which we fixed under Factory Warranty authorised by the then Distributor of Aprilia in Australia – John Sample Group.

Around 21 November with 7000 kms on the clock, the customer complained of another problem, which was intermittent, difficult to replicate and difficult to diagnose.

Without going into all the mechanical details we then made another application with John Sample Group for another Factory Warranty Claim however in the middle of this process the Distributorship of Aprilia in Australia was taken over by another company - P S Importers in Melbourne.

This change caused us a whole lot of problems as we were stuck in the position where the Distributor we had bought the motorcycle from was no longer interested in honouring the Factory Warranty and the new Distributor did not want to become involved because they were not the Distributor at the time of the fault occurring. Therefore we were left trying to keep the customer happy whilst having absolutely no success going backward and forward between the two Distributors trying to get someone to help us diagnose the problem in the first instance and give the go ahead to fix it and order the parts once the problem had been diagnosed.

Eventually after quite some time we got the go ahead from the new Distributor but the lengthy delay meant that the motorcycle was off the road for an unacceptable length of time, approximately 4 months and understandably the customer was very unhappy.

The Factory Warranty is 2 years unlimited kilometres. This is not our warranty as the Retailer, we don't make the decisions on whether something can be fixed under warranty, we can't order parts

except through the Distributor, we can only do our best to diagnose the problem and make the application and they either say yes or no on behalf of the Factory.

This is where I think there is something very wrong with this legislation for Small Businesses at the moment.

In spite of it being out of our hands and beyond our means financially, it is the Retailer who ends up being brought before Fair Trading under the legislation.

Fair Trading escalated the complaint to NCAT and because of the way the legislation is written both John Sample Group and PS Importers were able to wipe their hands of it and leave us with the problem.

The person in NCAT who heard the case had absolutely no mechanical understanding at all and therefore it was not possible to argue that the problem was not a recurrence of the original problem or that it was not a major catastrophic failure and she wasn't interested anyway. The case was reduced to a simple matter that the motorcycle had been off the road for 4 months out of 7 and was therefore "not fit for purpose".

From my reading on the Fair Trading NSW website it makes no sense that we were even brought before the Tribunal because the problem was to do with "the consumer guarantee on repairs and spare parts, and any express warranty" which is a Manufacturer or their Representative's issue. It was not a matter of the customer being misled by the Supplier on the "Purpose the vehicle was fit for" and subsequently finding it to be unfit for that purpose in which case it would be a Supplier problem but of course as the Small Business in NCAT we had no opportunity to raise that concern.

The other clause referred to in the judgement states that a reasonable consumer would not have bought the goods if they had known about the problem. This implies that as the Retailer we sold a product with a major fault which we were aware of. This was not the case and this fault has not occurred in any other Aprilia's of that model that we have dealt with. Obviously if we had known of such a fault we would not have paid \$20130.00 to buy the motorcycle from the Distributor.

We did not have legal representation because (a) we couldn't afford it and (b) we were under the impression that the purpose of NCAT is to avoid costly legal cases. However in retrospect this was an expensive mistake.

NCAT found the motorcycle was 'not fit for purpose' and ordered us to repay the customer the full purchase price of the vehicle plus the cost of the accessories that had been fitted to the vehicle at the time of purchase an amount of \$22451.00 for a 7000km second hand vehicle with wear and tear which we would be lucky to sell for \$15,000.00 and which the customer had had the use of for 7000kms.

We are a small husband and wife business which we have owned since 1982. We have 5 employees.

This motorcycle cost us \$21707.00 with freight and on-roads not including pre-delivery and interest on floor finance.

We sold it at a loss which is pretty common in the motor cycle industry and we have spent hours dealing with the Customer and the two Distributors which are both large multi-million dollar companies. If we had been given the go ahead to fix the problem as we had wanted to fix it in the

beginning this issue would not have arisen but because of the decision made from above, the problem escalated and then we were the ones left bearing the cost.

Perhaps in the clothing industry where the selling price is smaller and the Retailers are able to make a reasonable mark-up on the product it is not such an imposition but in the Motor Vehicle Industry the amount of profit on the sale of a vehicle is often miniscule. The Retailer is expected to make their profit from selling finance, insurance and accessories and from future servicing.

Expecting the Retailer in our industry to refund the sale price of faulty goods will send us broke.

I realise that it is possible to take the Distributor to a Tribunal to try to recoup our losses but our Dealership relies on our relationship with the Distributor to supply us with the brands we sell so any attempt to re-claim our losses would jeopardise our entire business.

Surely if the claim is to do with a Factory fault under Factory Warranty then it should be the Factory (Piaggio) or in this case their representatives – either John Sample Group or P S Importers who should be facing the Tribunal – not the small guy who had no control over how these problems were dealt with.

Unfortunately we now have two more warranty issues with the same brand heading in the same direction and we are having the same problems getting the Distributor to understand the need for urgency in dealing with these issues because they won't be held to account.

There needs to be a requirement for the Wholesaler to supply parts in a reasonable time frame and the Wholesaler needs to be held accountable for the rectification of Factory Warranty issues.

We really need someone to advocate for an amendment to this legislation for this industry.

My contact number is 02 94393549. I have been in this industry since 1974 and would be happy to offer my expertise if it is required.

Carl Blecher
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