

# D Y M O C K S G R O U P

The General Manager  
Consumer & Small Business Strategies Branch  
Australian Competition & Consumer Commission  
360 Elizabeth Street  
Melbourne Central  
Melbourne, Victoria 3000

25 October 2016

Dear Mr Salisbury,

**RE: ACCC New Car Retailing Industry Market Study - BMW 650i Registered DUK 700**

This submission alleges that BMW Sydney sold two fundamentally defective motor vehicles to Dymocks Book Arcade Pty Limited (**Dymocks**) and that the BMW Group failed to provide any proper remedy to the purchaser.

Attached is a dossier which comprises a copy of each relevant document and a table which links each documented event to the relevant document.

The facts and circumstances surrounding this issue are set out in detail in the dossier but, in summary, they are as follows:

1. In June 2008, Dymocks purchased for the sum of A\$225,000, a BMW Six Series LCI Convertible EB 52-10E (**First Vehicle**) for the use of its chairman, John Forsyth AM and his partner, Ann Verschuer;
2. The First Vehicle had a major and fundamental defect in that on five separate occasions between June 2008 and March 2010, it started normally at the commencement of the journey but stranded its occupants by refusing to start after being shut down during the journey;
3. The First Vehicle was delivered to BMW Sydney for its first service on 26 March 2010 and:
  - a. upon delivery to the service centre, BMW tried to move the vehicle but could not do so because it would not start;
  - b. BMW tried to return the vehicle at the end of that day but could not do so because it would not start;
  - c. BMW tried to return the vehicle the following day but it broke down between Rushcutters Bay and the Sydney CBD;
  - d. BMW tried to return the vehicle to Terrey Hills six weeks later but the driver stopped for directions and could not then proceed because the vehicle would not start.
4. Purely as a consequence of this fundamental defect, Dymocks, in March 2010, traded in the First Vehicle with BMW Sydney on a BMW Six Series LCI Convertible EB 5 (**Second Vehicle**) at a change-over price of \$55,000;
5. Quite unbelievably, the Second Vehicle exhibited precisely the same fault in that it failed to start on at least two separate occasions within fifteen months of delivery;
6. The Second Vehicle was delivered to BMW Sydney for its first service on 24 May 2012 but when BMW tried to move it, it would not start;
7. The Second Vehicle was not returned to Mr Forsyth and Ms Verschuer until about 14 June 2012;
8. Between 14 June 2012 and 27 November 2012, the Second Vehicle failed to start mid-journey on at least five occasions;
9. On 27 November 2012, the Second Vehicle failed to start mid-journey;

10. On 1 December 2012, a driver from BMW Sydney collected the Second Vehicle from the Sydney suburb of Terrey Hills but it initially failed to start;
11. The Second Vehicle was returned to Mr Forsyth and Ms Verschuer in February 2013;
12. In May 2013 the Second Vehicle yet again failed to start;
13. In May 2013, BMW Sydney collected the Second Vehicle from Grassy Head, a town some 500 kilometres north of Sydney, and trucked it to its service centre in Sydney;
14. In July or early August 2013, BMW Sydney advised Mr Forsyth and Ms Verschuer that the Second Vehicle was ready for collection;
15. Mr Forsyth and Ms Verschuer initially declined to accept delivery of the Second Vehicle because they had lost all confidence in it and did not want to be stranded again;
16. By letter dated 30 August 2013, Dymocks' solicitors, Eakin McCaffery Cox, notified BMW Sydney that upon their return from overseas on 21 October 2013, Mr Forsyth and Ms Verschuer would reluctantly accept delivery of the Second Vehicle upon its absolute assurance the defect had been fully and properly rectified;
17. A letter dated 19 September 2013 from BMW Sydney's solicitor, GA Kinsey to Eakin McCaffery Cox included the following passage:

"Notwithstanding that there was a fault in the alternator, our client's opinion is that the non-start issue is directly related to your client's use (or lack thereof) of the vehicle. We understand that the vehicle is usually garaged in Port Macquarie and is not driven on a regular basis. On those occasions, when Mr Forsyth does drive the vehicle, it is predominantly for short trips and the battery does not fully charge. This is confirmed by data stored in the vehicle's computer.....

.....Our client's opinion is that the no-start problem is directly related to the non-use of the vehicle which causes the battery to run down. If there is not sufficient energy in the battery, the vehicle's electrical system and computers will not function."

18. In their letter to GA Kinsey dated 25 September 2013, Eakin McCaffery Cox:
  - a. made the following obvious point:

"...it would seem to us that if the no-start problem is caused by a battery that is not fully charged then this would not explain why the car starts for the start of a trip but then fails to start once it has been parked during a trip (stranding the driver in the process). One would have thought that if a flat battery was to blame that the car would not start at the commencement of a trip."
  - b. asked Mr Kinsey to specify the frequency with which the Second Vehicle must be driven and the minimum distance that must be travelled on each trip;
19. The Second Vehicle was re-delivered to Mr Forsyth and Ms Verschuer on about 21 October 2013;
20. BMW did provide Mr Forsyth and Ms Verschuer with a battery charger on or sometime after redelivery of the vehicle;
21. A letter dated 28 October 2013 from GA Kinsey to Eakin McCaffery Cox included the following passages:
  - a. "In response to your enquiry about the frequency with which the vehicle must be driven, our client has instructed us that there is no definitive answer to that question. However, it depends on a range of factors including:
    - Temperature;
    - How fast the car is driven. This impacts on the engine revs per minute and hence the charging of the battery;
    - The time taken for the journey (stop/start driving as opposed to highway running);
    - The mix of journeys (eg 5 short trips or 1 long trip each week);
    - The life cycle of the battery (eg new as opposed to old);
    - Whether electrical accessories are turned off after the engine is stopped, as if they are left on they will have a detrimental effect on the battery life."
  - b. "As a rough guide, our client believes that a trip every second day for a period of more than 25 minutes and at least one trip exceeding one hour each week, should maintain the battery in a

reasonable condition and avoid the re-start issue.”

22. From this time on, Mr Forsyth and Ms Verschuer have connected the Second Vehicle to a battery charger when it is not in use;
23. On 11 February 2015 the Second Vehicle failed to start mid journey despite having been connected to the battery charger when not in use;
24. On 15 March 2015 the Second Vehicle failed to start mid journey despite having been connected to the battery charger when not in use;
25. On 28 April 2015, Mr Kinsey had a conversation with Dymocks’ solicitor in which he made the following assertions:
  - a. that BMW mechanics had looked at the vehicle a number of times and could not find any fault with it;
  - b. that BMW mechanics think that the no-start problem was arising from the way in which the vehicle was being driven;
  - c. that he would not consider any settlement of the dispute unless Dymocks obtained an independent report from a mechanic to say that the vehicle has an inherent defect.
26. On 22 July 2015, Dymocks wrote to BMW Australia Limited:
  - a. setting out the history of both the First Vehicle and the Second Vehicle;
  - b. asserting the self-evident fact that the Second Vehicle was not fit for the purpose for which it was purchased and was not of merchantable quality; and
  - c. asking that BMW accept a return of the Second Vehicle and either refund the purchase price or replace it with a new, reliable, equivalent vehicle;
27. By email dated 17 August 2015 to Dymocks, Jordan Wright of BMW Group Australia notified Dymocks that BMW Group Australia would be willing to offer an agreed buy back taking into consideration that the vehicle was then five years of age and asking Dymocks to arrange for it to be presented at BMW Sydney for valuation.
28. By email dated 17 August 2015 to Mr Wright, Dymocks made the point that the age and current value of the Second Vehicle were irrelevant because it had had a major defect since new.
29. The Second Vehicle was ultimately delivered to McGuigan BMW at Port Macquarie, a town about 120 kilometres south of Grassy Head, for valuation;
30. By email dated 29 October 2015, BMW Group Australia notified Dymocks that the vehicle had been valued at \$60,000 and offered to buy it back for \$75,000;
31. By email dated 29 October 2015, Dymocks advised BMW Group Australia that Mr Forsyth and Ms Verschuer believed that it should refund the total amount of approximately \$280,000 paid for the two defective vehicles but that they would be prepared to accept the sum of \$180,000;
32. By email dated 2 November 2015, BMW Group Australia increased its offer to \$80,000;
33. By email dated 29 October 2015, Dymocks advised BMW Group Australia that the revised offer was not acceptable;
34. A search of the internet disclosed that the asking price for a similar vehicle was \$89,990.


Dymocks makes the following comments in relation to the facts and circumstances set out above:

1. It is not credible to suggest that the no-start problem arises out of a lack of energy in the battery because:
  - a. a battery which has lost its charge as a result of non-use would fail to start the vehicle at the outset of a journey but the battery started these vehicles perfectly well at the outset but failed to re-start them after the vehicles had travelled numerous kilometres;

- b. The no-start problem continued even after the battery had been connected to the charger when the vehicle was not in use.
2. It is just ludicrous to assert that a late model luxury vehicle costing upwards of \$225,000 will not operate unless it is driven every 2nd day for a period of more than 25 minutes and at least one trip exceeding 1 hour each week.
3. It is also ludicrous for BMW to instruct Mr Kinsey to say that the problem arises from the way in which the vehicle is being driven having regard to the following circumstances:
  - a. Both Mr Forsyth and Ms Verschuer have been driving vehicles of various makes for many, many years and have never encountered this problem with any other vehicle;
  - b. Both vehicle failed to start on numerous occasions when they were being driven by BMW personnel;
  - c. The Second Vehicle failed to start on two occasions despite the fact that it had been connected to a battery charger supplied by BMW.
4. A search of the Internet discloses that this no-start problem has been experienced by other BMW 650i owners and this reinforces Dymocks' assertion that the manner in which these vehicles were driven by Mr Forsyth and Ms Verschuer had nothing to do with the problem.
5. Both of these vehicles were plainly defective but the BMW Group has offered to do no more than to trade in the First Vehicle for a substantial changeover price and to repurchase the Second Vehicle for a price less than the price of a similar vehicle advertised for sale on the internet.

If there is any further information that you require, please let me know.

Yours Sincerely,



**Andrew Forsyth** | Strategy and Business Director

Dymocks Book Arcade Pty Limited

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Email: [andrew.forsyth@dymocks.com.au](mailto:andrew.forsyth@dymocks.com.au)

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NSW 2000 AUSTRALIA

[www.dymocks.com.au](http://www.dymocks.com.au) | [www.healthyhabits.com.au](http://www.healthyhabits.com.au) | [www.patons.com.au](http://www.patons.com.au)

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## REFERENCE SCHEDULE

MALFUNCTION	REFERENCE	PAGE
<b>FIRST VEHICLE</b>		
1. This vehicle failed to start on five separate occasions between June 2008 and March 2010 whilst being driven by Ann Verschuer or John Forsyth.	Letter from John Forsyth to Jonathan Puttick dated 12 March 2010 and Chronology dated 22 August 2013 paragraphs 2 and 3.	2 & 7
2. At its first service on 26 March 2010:		
a. Upon delivery to the service centre, BMW tried to move the vehicle but could not do so because it would not start	Letter from John Forsyth to Jonathan Puttick dated 12 March 2010 and Chronology dated 22 August 2013 paragraph 4	2 & 7
b. BMW tried to return the vehicle at the end of that day but could not do so because it would not start;	Chronology dated 22 August 2013 paragraph 5.	7
c. BMW tried to return the vehicle the following day but it broke down between Rushcutters Bay and the Sydney CBD;	Letter from John Forsyth to Jonathan Puttick dated 12 March 2010 and Chronology dated 22 August 2013 paragraph 6	2 & 7
d. BMW tried to return the vehicle to Terrey Hills six weeks later but the driver stopped for directions and could not then proceed because the vehicle would not start.	Chronology dated 22 August 2013 paragraphs 8 and 9.	7
<b>SECOND VEHICLE</b>		
3. This vehicle failed to start on at least two separate occasions within fifteen months of delivery.	Letter from John Forsyth to Phil Horton dated 7 December 2012 and Chronology dated 22 August 2013 paragraph 14.	4
4. At its first service on 24 May 2012, BMW tried to move the vehicle but could not do so because it would not start.	Letter from John Forsyth to Phil Horton dated 7 December 2012 and Chronology dated 22 August 2013 paragraph 16.	4 & 7
5. The vehicle was not returned until about 14 June 2012.	Chronology dated 22 August 2013 paragraph 19.	7
6. Between 14 June 2012 and 27 November 2012, the vehicle failed to start on at least five occasions.	Letter from John Forsyth to Phil Horton dated 7 December 2012.	4
7. On 27 November 2012, the vehicle failed to start.	Letter from John Forsyth to Phil Horton dated 7 December 2012 and Chronology dated 22 August 2013 paragraph 20.	4 & 7

8. On 1 December 2012, BMW collected the vehicle from Terrey Hills and experienced the same no-start fault.	Letter from John Forsyth to Phil Horton dated 7 December 2012.	4
9. The vehicle was returned in February 2013.	Chronology dated 22 August 2013 paragraph 24.	7
10. In May 2013, the vehicle failed to start.	Chronology dated 22 August 2013 paragraph 25.	7
11. By letter dated 19 September 2013, Mr Kinsey notified our solicitors that:	Letter from GA Kinsey to Eakin McCaffery Cox dated 19 September 2013.	14
a. BMW had examined the vehicle and found that the alternator was defective;		
b. The non-start issue was related to use (or lack thereof);		
c. BMW was satisfied that the vehicle had no mechanical fault;		
d. BMW had replaced the battery and the alternator and had offered to provide a battery charger at no cost.		
e. the vehicle was ready for collection but would be stored until John Forsyth and Ann Verschuer returned from overseas on 21 October 2013.		
12. By letter dated 25 September 2013, Eakin McCaffery Cox:	Letter from Eakin McCaffery Cox to GA Kinsey dated 25 September 2013.	16
a. made the point that it was ludicrous to assert that a late model luxury vehicle costing upwards of \$225,000 would not function without an external battery charger unless it was driven frequently on trips of greater than short duration;		
b. asked Mr Kinsey to specify the frequency with which the vehicle must be driven and the minimum distance that must be travelled on each trip.		
c. Notified Mr Kinsey that we would reluctantly accept re-delivery of		

the vehicle but with all rights reserved.		
13. The vehicle was redelivered to Mr Forsyth and Ms Verschuer on or shortly after 21 October 2013.		
14. BMW did provide Mr Forsyth and Ms Verschuer with a battery charger on or sometime after redelivery of the vehicle and from then on, the battery has been connected to the charger when the vehicle is not in use.		
15. By letter dated 28 October 2013, Mr Kinsey notified our solicitors that the frequency with which the vehicle must be driven depended upon a number of factors but that as a rough guide, a trip every 2 <sup>nd</sup> day for a period of more than 25 minutes and at least one trip exceeding 1 hour each week should maintain the battery in a reasonable condition and avoid the re-start issue.	Letter from GA Kinsey to Eakin McCaffery Cox dated 28 October 2013.	21
16. On 11 February 2015, the vehicle failed to start despite having been connected to the battery charger when not in use.	Letter from Eakin McCaffery Cox to Mr Kinsey dated 18 February 2015.	23
17. On 15 March 2015, the vehicle failed to start despite having been connected to the battery charger when not in use.	Letter from Eakin McCaffery Cox to Mr Kinsey dated 23 March 2015	29
18. On 28 April 2015, Mr Kinsey had a conversation with our solicitor in which he made the following assertions:		
a. that BMW mechanics had looked at the vehicle a number of times and could not find any fault with it;		
b. that BMW mechanics think that the no-start problem was arising from the way in which the vehicle was being driven;		
c. that he would not consider any settlement of the dispute unless we obtain an independent report from a mechanic		



to say that the vehicle has an inherent defect.		
19. By letter dated 26 May 2015, Eakin McCaffery Cox suggested to Mr Kinsey that the dispute be mediated.	Letter from Eakin McCaffery Cox to Mr Kinsey dated 26 May 2015.	31
20. Mr Kinsey has not replied to the letter from Eakin McCaffery Cox dated 26 May 2015.		
21. BMW Australia Group has offered to buy back the Second Vehicle for the sum of \$80,000.	Email from Jordan Wright to Andrew Forsyth dated 2 November 2015.	46
22. A search of the internet disclosed that on 22 November 2015, the asking price for a similar vehicle was \$89,990.	Extract from Carsales website	47

101680

# NEW VEHICLE TAX INVOICE

Invoice to:  
Dymocks Book Arcade Pty Limited

428 George Street  
Sydney  
NSW 2000  
ABN NO.

Deliver to:  
Dymocks Book Arcade Pty Limited

428 George Street  
Sydney  
NSW 2000  
ABN NO.

Order No.	Order date	Consultant	Delivery date	Stockbook No.	Sale Type	Invoice No.	Inv. Date
057093	27/06/2008	Joe	27/06/2008	2886	R	1003298	27/06/2008

Vehicle : BMW 6 Series LCI Convertible EB52-10 E  
 Chassis No. : WBAEB520908695168  
 Engine No. : 50464216  
 Compliance : 23/04/2008

Colour : Titan Silver Metall  
 Trim : Black Pearl Leather  
 Registration: BGJ07T  
 Build Date : 01/01/2008

Description	Total
Vehicle price	159887.11
Fine wood trim Birch dark	Included
M sport steering wheel	185.00
19" Star Spoke 249 245/275 R19	2074.00
High gloss Shadowline	704.00
HIFI System Logic 7	1111.00
Lane change warning	889.00
Anthracite Roof Lining	556.00
Titan Silver/Blk Pearl	Included
Dealer Delivery	2995.00

ENTERED

Deposit Paid Diners \$10,000  
25/6/8

Paid 26.06.2008  
Bank cheque \$215k

### ADDITIONAL INFORMATION

Dep.Ref. 5004480/ 0/ 0  
 Trade Nos. 0/ 0/ 0  
 Trade Rego / /  
 PO Account / /  
 PO Owing 0.00/ 0.00/ 0.00  
 Invoice A/C v0010

NET 168401.11  
 GST 16840.11  
 LCT 29117.78

SUB-TOTAL 214359.00

103570-4205 → Registration 464.00  
 103570-4205 → CTP 357.00  
 Stamp Duty 9820.00  
 Other Items 0.00

INVOICE TOTAL 225000.00

### BANKING DETAILS

BANK: COMMONWEALTH BANK  
 A/C NAME: BMW SYDNEY PTY LTD  
 BSB NO: 063-000  
 A/C NO: 00366719

Excl GST  
 \$ 207,338.90  
 8 yrs pe.  
 @ 20% DVM-

Net T/I Allowances 0.00  
 Part Payment Received 10000.00 (A)  
 Part Payment Due 0.00

NET TOTAL DUE 215000.00

Paid.

Jonathan Puttick  
Managing Director  
BMW Sydney

March 12, 2010

Dear Mr Puttick

BMW 650i BGJ07T

I am extremely concerned about the situation we have following the purchase of a BMW 650i convertible, from BMW Sydney on June 30, 2008.

Not long after we bought the vehicle it stranded us on an isolated road between Port Macquarie and Tamworth [with no mobile phone coverage]. The vehicle would not start and we could not get help. After nearly two hours of fiddling, locking and unlocking the car, it eventually burst into life as if nothing had happened.

Similar events happened on four further occasions but due to other commitments [and the fact that the vehicle is kept most of the time on the mid north coast] we were unable to deliver the car to BMW for until its first service on March 26, 2010. On delivering the car for service, the problem reoccurred immediately after we dropped it off at Rushcutters Bay. The following day BMW tried to return the vehicle but it broke down between Rushcutters Bay and my CBD office – I remember it well because it was the day of our Board meeting. Two of the directors of Dymocks are BMW drivers and they were bemused and concerned about the car and its reliability.

It is now more than three weeks later and each time your staff try to return the vehicle, the no-start problem reappears. It is still in your workshop.

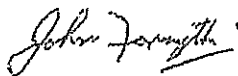
The car has become a standing joke around our board table and elsewhere, which is doing very little to enhance the BMW reputation.

We now have a total loss of confidence in the car. My wife uses the car mainly for country driving; both she and I are concerned about the car in case it strands her yet again.

I believe that the proper course of action would be for your company to provide a new replacement car. The vehicle has done about 10,000 km. We would be prepared to make a small contribution towards the new vehicle.

I look forward to finding a solution

Yours sincerely



John Forsyth AM  
Chairman

Copies: Joe Denina  
Brad Cranston

BMW Group Dealer

Company  
Licence No

Address  
Telephone  
Facsimile

# BMW Sydney

BMW Sydney Pty Ltd, A.B.N. 12 007 103 433  
14036

Rushcutters Bay Sales  
65 Craigend Street, Rushcutters Bay, NSW 2011  
(02) 9334 4555  
(02) 9334 4566

Customer Centre: (02) 9334 4555  
Internet: www.bmw悉尼.com.au



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## VEHICLE TAX INVOICE

**Invoice to:**  
Dymocks Book Arcade Pty Limited

Gpo Box 1521  
Sydney  
NSW 2001  
ABN NO.

**Deliver to:**  
Dymocks Book Arcade Pty Limited

Gpo Box 1521  
Sydney  
NSW 2001  
ABN NO.

Order No.	Order date	Consultant	Delivery date	Stockbook No.	Sales type	Invoice No.	Inv Date
		Joe	125/03/2010	8537	R	1007784	24/03/2010

Vehicle Type : New  
 Vehicle : BMW 6 Series LCI Sport Convertible EB5  
 Chassis No. : WBAEB52080B695405  
 Engine No. : 50014661  
 Compliance : 18/03/2010

Colour : Titan Silver Metall  
 Trim : Black Pearl Leather  
 Registration : BNL11Z  
 Build Date : 01/01/2010

Description	Total
Vehicle price	130326.72
Tit.Silver/Blk Pearl	Included
HiFi System Logic 7	1111.00
Connect music player to mobile	154.00
Dealer Delivery	3495.00

NET 135086.72  
 GST 13508.67  
 LCT 27424.62

### ADDITIONAL INFORMATION

Dep.Ref. 5009583/ 0/ 0  
 Trade Nos. 510008/ 0/ 0  
 Trade Rego BGJ07T / /

PO Account / /  
 PO Owning 0.00/ 0.00/ 0.00

Invoice A/C v0010

### BANKING DETAILS

BANK: COMMONWEALTH BANK  
 A/C NAME: BMW SYDNEY PTY LTD  
 BSB NO: 063-000  
 A/C NO: 00366719

SUB-TOTAL 176020.01

Registration 619.00  
 CTP 456.00  
 Stamp Duty 7905.00  
 Other Items 0.00

INVOICE TOTAL 185000.01

Net T/I Allowances 130000.00  
 Part Payment Received 10000.00  
 Part Payment Due 0.01

NET TOTAL DUE 45000.00

Phil Horton  
Managing Director  
BMW Australia

Dear Mr Horton

No-start BMW650i - DUK700

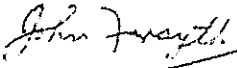
It is regrettable that I need to write to BMW again on this issue. We currently own two of your luxury vehicles – a 750Li and a 650i

Our first 650i had an intermittent no-start problem during the 10,000 kilometres we owned it. Please see attached letter to Jonathan Puttick. At the time we were told that BMW had never experienced this problem before. In March 2010 we arranged with BMW to pay \$50,000 and swapped the no-start car for a new 2010 model 650i.

The new vehicle has the same problem – it has done less than 7000 kilometres. On each occasion that it has stranded me or my wife, we have notified Joe Denina. Subsequently when we delivered the vehicle to BMW Port Macquarie for its first service, they experienced the same problem and replaced the CAS. Since then it has not started and stranded us on five further occasions, each of which was reported to Joe Denina. Because of these problems, we have now returned the vehicle to Sydney. When BMW Sydney collected the car from Terrey Hills on December 1st, they too experienced the no-start problem.

The advice from the Matthew Rosenthal is that the vehicle now needs a new *active roll stabilization unit*. If this unit permanently fixes the problem, we will be happy. If not we assume you will agree that the vehicle is not fit for purpose and will replace it at no cost to us.

Regards



John Forsyth AM  
Chairman

December 7, 2012

Copy: Joe Denina

MEMORANDUM FOR MR. HORTON

428 GEORGE STREET SYDNEY  
GPO BOX 1521 SYDNEY  
NSW 2001 AUSTRALIA

+61 2 9224 0411  
+61 2 9224 9407

Phil Horton

Managing Director  
BMW Group Australia



*Spoke to John Rocca Fri 7/6/12  
Wed 12/6/12*

5

*Spoke to John Forsyth Thurs 12/6/12*

Mr John Forsyth AM  
Chairman  
Dymocks  
GPO Box 1521  
Sydney NSW 2001

21 December 2012

*How did road  
6500*

Dear Mr Forsyth,

Thank you for your letter of 7 December 2012, regarding your BMW 750Li.

I am very sorry to learn of this matter and I appreciate you bringing it to my attention. I would also like to apologise for the inconvenience that this has caused.

To ensure that your concerns are attended to without delay, I have requested that our Customer Relations Department investigate this matter further. Accordingly one of our Customer Service Executives will be in contact with you on my behalf.

Please be assured that every effort will be made to address your outstanding concerns and restore both your confidence in, and satisfaction with BMW as soon as possible.

Yours sincerely,

Company  
BMW Australia Ltd  
ACN 004 675 129  
AEN 11 004 675 129

BMW Group Company

Postal address  
PO Box 145  
Mulgrave Vic 3170

Company address  
783 Springvale Road  
Mulgrave, Vic 3170

Telephone  
+61 (0) 3 9264 4000

Facsimile  
+61 (0) 3 9561 7771

Forsyth/Verschuer

21 January 2013 10:43 AM

Juckmaster@bigpond.com>

To: tony.altieri@bmwsydney.com.au

DUK700 650i

Dear Tony

You will recall that we have had major "no start" problems with this car, which was returned to you late in November. BMW Sydney then arranged for the vehicle to be delivered to the Port Macquarie dealership, as the car is kept at Grassy Head, an hour and a half further north.

On being advise that the car had arrived at Port Macquarie, I double-checked that the head up display was working - it wasn't. [I had advised Matthew Rosenthal that the display wasn't working by email and verbally on December1, 2012.] I just had a call from Carl at BMW Port Macquarie - .... the part will take two weeks to arrive and then fitted ... you know the story.

This will mean that I will have been without the vehicle for more than two and a half months.

Just thought you should be aware of these problems and customer dissatisfaction.

Ann Verschuer

John Forsyth & Ann Verschuer  
Dymocks Group of Companies  
GPO Box 1521  
SYDNEY NSW 2001  
Tel: +61 (0)415977177  
[juckmaster@bigpond.com](mailto:juckmaster@bigpond.com)

First car BMW 650i

1. Purchased for \$225,000 on 30 June 2008
2. First no-start was at a remote café on the Oxley highway about half way between Port Macquarie and Tamworth. Stopped for a cup of coffee. Car would not start – no lights, nothing. Eventually contacted BMW's Joe Denina from whom we bought the car. Car started about two hours later.
3. No-start problem happened another four times, BMW Sydney was notified each time.
4. On February 26, 2010 the car was due for a 10,000 km service [its first] we delivered it to BMW Sydney. On delivery and before we left the service department, the no-start problem occurred again when a BMW driver got into the car to shift it.
5. The car was due to be delivered back to Dymocks at the end of the day after the service but BMW called to say that it was still having problems with the no-start and they would like to keep the car overnight to identify the problem
6. When BMW tried to deliver the car the next day they were unable to do so because the car would not start.
7. BMW then advised us that the car needed a new part from overseas and it would take two weeks to get it.
8. After six weeks, BMW rang to say that the car had been fixed and they would deliver it to our home at Terrey Hills that day.
9. On the way the driver stopped to get further directions to our house but could not start the car again. The car was collected by BMW from the road side and taken back to BMW Sydney
10. At this point John Forsyth advised that we had totally lost confidence in the car and asked BMW to suggest a solution – he made it clear that we did not want the car back as it was too unreliable and not fit for purpose.
11. On the advice of Joe Denina, John Forsyth wrote to Jonathan Puttick the managing Director of BMW Sydney.
12. The issue was resolved by us paying \$55,000 and surrendering the car; and receiving a new 2010 model 650i.

Second car

13. Swapped for first car plus \$55,000 because of no-start problem with first car in March 2010.
14. This car experienced the no-start problem at least twice within the first 15 months of delivery. Each time Joe Denina at BMW Sydney was notified of us being stranded.



- F
15. On May 24 2012 the vehicle was delivered to the BMW Port Macquarie service center for it's first service. The car had done 7000km.
  16. The car was parked in the BMW visitor car park. When the BMW service manager Carl Evans went to shift the car to the service area, the car would not start – displaying the typical no-start problem that we had experienced.
  17. Consequently BMW had the car for some weeks while they waited for parts to come from overseas.
  18. Subsequently when questioned Carl Evans said that they has replaced the "CAS" & it needed an "active roll stabilization control unit"
  19. We got the car back on or about June 14, 2012.
  20. On November 27, 2012 I drove the car from the farm to Valla (40 minutes). Stopped at a shop before my appointment. Car wouldn't start. Had to leave my brother with the car while I ran 2 km to the appointment. My brother eventually started the car about an hour later.
  21. November 29, 2012 drove the car from the farm to Terrey Hills without switching off the engine.
  22. December 1<sup>st</sup>, BMW Sydney collected to the car from Terrey Hills.
  23. On December 7<sup>th</sup>, 201~~2~~<sup>2</sup>, John Forsyth wrote to Phil Horton CEO of BMW Australia, outlining the problems with the car.
  24. BMW Sydney had the car until mid January when they sent it back to Port Macquarie. On arrival at Port Macquarie it was found that the head up display had not been repaired. It then took until the end of February to solve this problem.
  25. In May the car had a no-start incident in Macksville.
  26. BMW Sydney was advised and they picked up the car from the farm and trucked it to BMW Sydney.
  27. BMW was advised that we had lost confidence in the reliability of the car and we didn't want it back.
  28. BMW advised that it now thought that the no-start problem was related to the alternator not charging the battery; and that a new alternator needed to be imported from Germany. This took many weeks after which we were advised that BMW would give us a trickle charger for the battery. BMW said that *because the car's technology was so complex, we would have to connect the charger to the car when it was not in use.*
  29. In late July or early August 2013 BMW Sydney advised that the car was ready for collection.

30. August 22, 2013 car still at BMW Sydney because we are not prepared to risk being stranded again.

ANN VERSCHUER  
August 22, 2013

# BMW GROUP Australia



10

*Stamps AF*

Mr John Forsyth  
314 Mona Vale Road  
Terry Hills NSW 2084

Your reference

Telephone (03) 9264 4151  
Fax (03) 9562 0278  
E-mail logan.auld@bmw.com.au  
Date 28/08/2013  
Subject **BMW 650i – B695405**

Dear Mr Forsyth,

I refer to your recent discussions with Mr John Roca from BMW Sydney regarding the recent repairs that have been carried out to your BMW 650i.

Naturally it is our intention to build vehicles that offer faultless performance. Therefore it is concerning to learn when a vehicle has not met a customer's expectations. I apologise for the inconvenience that has been caused.

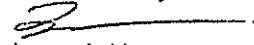
Having since spoken to Mr Matthew Rosenthal the Assistant Service Manager at BMW Sydney, I understand that during the diagnosis of your vehicle the both the Battery and Alternator were found to be not operating effectively and required replacement. Your vehicle was then extensively evaluated and tested. During all testing, your BMW started and performed as expected, showing no abnormal issues and during further diagnosis checks, no faults were stored in any of the vehicle operating systems.

Based on the information provided to us, we believe that the concerns you brought to our attention are now resolved. In a bid to further reduce the likelihood of any further issues, BMW Group Australia has supplied as a gesture of goodwill a Trickle Battery Charger. We note from technical data drawn from your BMW that it is used for short trips and is parked for long periods without use. The Trickle Charger will help the battery maintain at an optimal level for your driving profile.

Mr Forsyth, whilst we regret that you remain unsatisfied with our response in relation to your concerns we genuinely believe that we have acted fair and reasonably and if approached by a third party we willing to discuss our position in relation to this matter. BMW Sydney will be in touch with you to arrange transportation and return of your vehicle. If your vehicle cannot be received by the 10<sup>th</sup> of September 2013, it will be delivered to a storage facility where fees may apply due to space restrictions at our Rushcutters Bay facility.

Thank you once again for allowing us the opportunity to review this matter and the opportunity to provide our response.

Yours Sincerely

  
Logan Auld

**Customer Relations Executive**

Company  
BMW Australia Ltd  
A.C.N. 004 675 129  
A.B.N. 11 004 675 129  
BMW Group Company

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BMW Customer  
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Chairman  
Hendrik von Kuenheim

Managing Director  
Phil Horton

Director – Finance &  
Administration  
Peter Buchauer

30 August 2013



EAKIN  
M<sup>C</sup>CAFFERY  
COX

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Mr John Roca  
Dealer Principal  
BMW Sydney Pty Ltd  
65, Craigend Street  
Rushcutters Bay NSW 2011

By facsimile and post: (02) 9334 4566

Dear Mr Roca

**Dymocks Book Arcade Pty Limited**  
**BMW 650i Motor Vehicle**

We act for Dymocks Book Arcade Pty Limited in connection with its BMW 650i motor vehicle registration number DUK 700.

We refer to our client's previous correspondence in this matter, particularly its letters of 12 March 2010 and 7 December 2012. Our client instructs us that you are fully aware of the history of this matter and we therefore only provide a brief summary here:

We are instructed that on or about 30 June 2008, our client purchased a BMW 650i motor vehicle, originally registered BGJ07T (**first vehicle**), which subsequently, and on numerous occasions, failed to start once it had been turned-off (the **no-start problem**). In March 2010, owing to the ongoing no-start problem, BMW Sydney Pty Ltd (**BMW Sydney**) agreed to replace the defective first vehicle with a BMW 650i motor vehicle registered number DUK700 (**second vehicle**) upon payment of a sum of \$55,000.

As you are aware, after the replacement of the first vehicle, the same no-start problem manifested itself in the second vehicle within the first fifteen (15) months of delivery. We are instructed that the no-start problem has persisted despite several attempts by BMW Sydney to remedy this mechanical defect.

Our Ref: JS/DYM/510/2/JS  
Enquiries: Jennifer Shaw  
Direct Line: 9265 3056  
Email Address: [Shaw@eakin.com.au](mailto:Shaw@eakin.com.au)  
Responsible Partner:  
Your Ref:

1279227



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Legislation.

We are instructed that BMW Sydney has given our client yet another assurance that the defect in the second vehicle has finally been fully and properly rectified and we assume that your earlier suggestion to our client that the vehicle needs to be attached to a battery charger when not in use no longer applies.

If, but only if, that assumption is correct, our client will reluctantly accept re-delivery of the second vehicle in absolute reliance upon your assurance that the defect has now been fully and properly rectified.

Our client puts on record the following:

1. Both the first and second vehicles (the "Vehicles") were purchased prior to 1 January 2011 and therefore were subject to implied warranties and conditions under the *Trade Practice Act 1974 (Cth)* ("TPA") and the *Sale of Goods Act 1923 (NSW)* ("SGA")
2. BMW Sydney, for the purposes of the TPA and SGA, is required to provide vehicles that are of merchantable quality and fit for purpose. In other words, goods such as the Vehicles must be free of obvious defects, meet the basic levels of quality and performance for their price and description and do everything usually and reasonably expected by the consumer.
3. Vehicles which are not of merchantable quality or regarded as being not fit for the purpose for which they were acquired, will result in a consumer, such as our client, having a direct right of action against the contravener of the TPA and SGA for loss or damages sustained.
4. A consumer who suffers loss or damage by such a contravener is entitled to recover compensation from the contravener.

In light of the mechanical defects in both Vehicles, clearly both were not of merchantable quality or fit for purpose in breach of the implied warranties and conditions.

We put you on notice that if the second vehicle fails to start on one more occasion, contrary to your assurance, our client will rely upon the multitude of malfunctions experienced by it in respect of the Vehicles to bring a claim for compensation and damages against BMW Sydney for failing to comply with section 71 of the TPA and section 19 of the SGA.

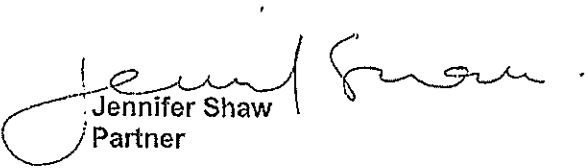


Please confirm that the second vehicle is not required to be attached to a battery charger when not in use and subject to that confirmation, make arrangements direct with our client for the re-delivery of the second vehicle by truck to the address from which it was last collected namely, 510 Grassy Head Road, Grassy Head.

Please be advised that our client's chairman will be overseas until 21 October next so please arrange to re-deliver the second vehicle after that date.

All of our client's rights are expressly reserved.

Yours sincerely  
EAKIN McCAFFERY COX

  
Jennifer Shaw  
Partner

**G.A. KINSEY**  
**SOLICITOR**

14

GRAHAM ANTHONY KINSEY, LL.B

SUITE 2  
28 NORFOLK AVENUE BEVERLY HILLS 2209  
P.O. BOX 210, BEVERLY HILLS 2209

OUR REFERENCE: GAK:LK  
2013/085

TELEPHONE: 9580 8122  
FAX: 9580 8913

YOUR REFERENCE: JS/DYM/510/2/JS

19 September 2013

Eakin McCaffery Cox  
Lawyers  
PO BOX Q1196  
QVB NSW 1230

Dear Sir,

RE: BMW SYDNEY PTY LIMITED & DYMOCKS BOOK ARCADE PTY LTD

We act on behalf of BMW Sydney Pty Limited. Our client has handed to us a copy of your letter dated 30 August 2013 for a reply.

We are instructed that your letter contains factual errors. In paragraph 3 of your letter you state:

“In March 2010, owing to the ongoing no-start problem, BMW Sydney Pty Ltd (BMW Sydney) agreed to replace the defective first vehicle with a BMW 650i motor vehicle registered number DUK700 (second vehicle) upon payment of a sum of \$55,000.”

John Forsyth had been in contact with our client and informed BMW Sydney of problems he had with starting the vehicle. Upon examination of the vehicle, our client could find no defect and told Mr Forsyth that the problem was caused by battery issues. From the history given by Mr Forsyth, it appears that the vehicle was either driven on short trips or not for long periods. The battery was not fully charged and would run down.

In an effort to placate Mr Forsyth, our client agreed to trade-in the first vehicle in June 2010 and provide him with a new BMW motor vehicle at a change over cost of \$55,000. This change over price represented a substantial discount and was a gesture of goodwill on the part of BMW Sydney. The vehicle was subsequently sold by our client and the new purchaser has not reported any issues with starting it.

You state in your letter that “the same no-start problem manifested itself in the second vehicle within the first fifteen (15) months of delivery. We are instructed that the no-start problem has persisted despite several attempts by BMW Sydney to remedy this mechanical defect.”



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Once again our client has carried out an examination of the second vehicle and found there was a fault with the alternator which was replaced. We are instructed that faults in alternators may occur for a number of reasons including attempts to jump start a vehicle incorrectly or the recharging of the battery. Our client does not have evidence as to why there was a fault in the alternator.

Notwithstanding that there was a fault in the alternator, our client's opinion is that the non-start issue is directly related to your client's use (or lack thereof) of the vehicle. We understand that the vehicle is usually garaged in Port Macquarie and is not driven on a regular basis. On those occasions, when Mr Forsyth does drive the vehicle, it is predominantly for short trips and the battery does not fully charge. This is confirmed by data stored in the vehicle's computer.

We enclose a copy of page 189 from BMW Series 6 Owners Manual which clearly states that charging the battery is necessary when making frequent short trips or when leaving the vehicle for periods of longer than one month. You may be aware that as a gesture of goodwill, our client has replaced the battery and the alternator, and offered to provide a battery charger to Mr Forsyth at no cost.

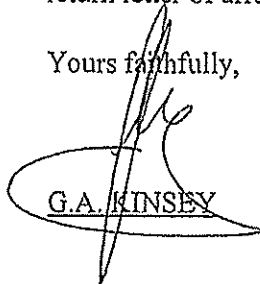
The vehicle has been road tested by the Dealer Principal, Service Manager and the Quality Controller who is a BMW master mechanic with 18 years' experience working for our client. They are satisfied with the vehicle's performance and that it has no mechanical fault.

You require our client to give an assurance that the defect has now been fully and properly rectified. Our client will not provide the assurance requested as there is no evidence there is any defect in the vehicle. Our client's opinion is that the no start problem is directly related to the non- use of the vehicle which causes the battery to run down. If there is not sufficient energy in the battery, the vehicle's electrical system and computers will not function.

We note your comments regarding the implied warranties and conditions under the Trade Practice Act 1974 and Sale of Goods Act 1923. As you will be aware the warranties and conditions are implied into the Contract for Sale. We disagree with your assertions that the vehicle was not of merchantable quality or fit for purpose in breach of the implied warranties and conditions. At the date of sale both vehicles sold to your client were clearly fit for the purpose and of merchantable quality.

The vehicle is ready for delivery to your client. Whilst we appreciate that Mr Forsyth will be overseas until 21<sup>st</sup> October 2013, our client is prepared to hold the vehicle until his return despite storage restrictions at its premises. We would appreciate if you could advise us by return letter of arrangements for delivery of the vehicle.

Yours faithfully,



G.A. KINSEY





**EAKIN  
M<sup>C</sup>CAFFERY  
COX**

LAWYERS

Level 28, 1 Market Street  
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W www.eakin.com.au

25 September 2013

Mr G.A. Kinsey  
Solicitor  
PO Box 210  
Beverly Hills NSW 2209

Also by facsimile: (02) 9580 8913

Dear Mr Kinsey

**Dymocks Book Arcade Pty Ltd and BMW Sydney Pty Limited**

We are in receipt of your letter dated 19 September 2013 and note that you act for BMW Sydney Pty Ltd.

We note that page 189 of the BMW Series 6 Owners Manual to which you refer in your letter was not enclosed. Can you please provide us with a copy?

In your letter you state that, in your client's opinion the no-start problem (as defined in our letter to your client dated 30 August 2013) is directly related to our client's alleged lack of use of the vehicle and alleged use of the vehicle predominantly for short trips meaning that the battery does not fully charge. However, it would seem to us that if the no-start problem is caused by a battery that is not fully charged then this would not explain why the car starts for the start of a trip but then fails to start once it has been parked during a trip (stranding the driver in the process). One would have thought that if a flat battery was to blame that the car would not start at the commencement of a trip.

In any event, it seems to us to be ludicrous to assert that a late model luxury vehicle which costs upwards of \$225,000 will not function without an external battery charger unless it is driven frequently on trips of greater than short duration.

We would accordingly be grateful if you would specify the frequency with which the vehicle must be driven and the minimum distance that must be travelled on each trip.

We reiterate our client's position as set out in our letter of 30 August 2013. Whilst your client refuses to give the assurance requested in our letter, we note that your client is now satisfied with the vehicle's performance. In the circumstances, our client is reluctantly prepared to accept re-delivery of the vehicle but expressly reserves all of its rights.


Our Ref: JS/DYM/210/2/CCC  
Enquiries: Jennifer Shaw  
Direct Line: 9265 3056  
Email Address: Shaw@eakin.com.au  
Responsible Partner: Jennifer Shaw  
Your Ref: GAK:LK:2013/085

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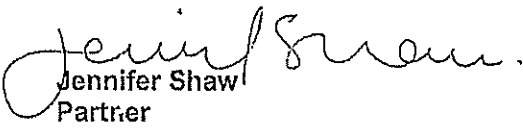
Mr G.A. Kinsey  
Solicitor

  
25 September 2013

17

We request that your client contact Mr Forsyth directly to arrange delivery or collection upon his return from overseas on 21 October 2013.

Yours sincerely  
EAKIN McCAFFERY COX

  
Jennifer Shaw  
Partner

18

**G.A. KINSEY  
SOLICITOR**



GRAHAM ANTHONY KINSEY, LL.B

SUITE 2  
18 NORFOLK AVENUE BEVERLY HILLS 2209  
P.O. BOX 210, BEVERLY HILLS 2209

OUR REFERENCE: GAK:GA  
1013/085

TELEPHONE: 9580 8121  
FAX: 9580 8913

YOUR REFERENCE:

16 October 2013

Eakin McCaffery Cox  
Lawyers  
PO Box Q1196  
QVB NSW 1230

FACSIMILE NO. 9261 5918

Dear Sirs,

RE: BMW SYDNEY PTY LIMITED AND DYMCKS BOOK ARCADE PTY LTD

We refer to the writer's telephone discussions with Jennifer Shaw yesterday and attach a copy of pages 188 and 189 from the Owners Manual.

We have sent an email to our client requesting information about the minimum distance a vehicle should be driven in any week. Once we receive this information, we shall write to you again.

Yours faithfully,

  
G.A. KINSEY



Lights in the boot lid

Access to the lights



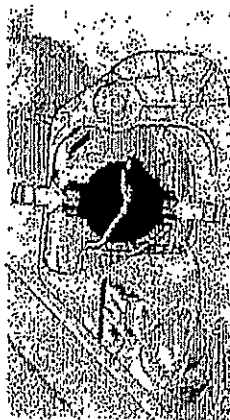
As required, see the screwdriver from the on-board tool kit to loosen the fastenings and fold out the cover.

Rear fog light

Follow the instructions regarding bulbs and lights, see page 185

24-watt bulb, HP24W

- 1. Squeeze the bulb holder together at top and bottom and remove it.



- 2. Pull off the cover.

- 3. Change the bulb.

- 4. Install the bulb holder and cover of the boot lid in reverse order.

Replacing lights

Follow the instructions regarding bulbs and lights, see page 185.

16 Watt bulb, W16W

- 1. Unscrew the bulb fitting by turning it clockwise.



- 2. Pull out the bulb and change it.

- 3. Install the bulb holder and cover of the boot lid in reverse order.

Changing a wheel

Notes

Due to the vehicle equipment, no spare wheel is available.

For tyres with emergency running properties when using tyre sealants, immediate wheel change for tyre pressure loss in case of break down is not required.

The tools for changing wheels are available optional accessories from your Service centre.

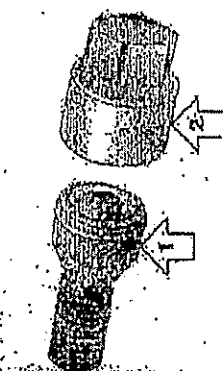
Jack mounting points



The jacking points are at the positions marked

Waterproof wheel studs

The waterproof wheel studs can be found in the kit or in an accessories tray in the tool kit, see page 185.



Wheel stud, arrow 1.

Adapter, arrow 2.

Removing

Place the adapter on the wheel stud.

Unscrew wheel stud.

After reaching the wheel stud, remove the starter again.

Car battery

Maintenance

The battery does not require routine maintenance. In other words the quality of acid it contains is sufficient for the full operating life of the battery.

If you have any queries regarding the battery, your Service centre will be pleased to assist you.

Replacing the battery

Only use approved vehicle batteries.

Only use vehicle batteries that are approved by the manufacturer of your vehicle. Otherwise the vehicle may be damaged and availability of systems or functions may be limited.

If an outside battery has been changed, leave the battery registered on the vehicle.

your Service centre to ensure that all comfort functions are fully available and any appropriate checks. Control messages are no longer displayed.

Recharging the battery

Note

Do not connect charger to socket. Do not connect battery charger to the sockets installed in the vehicle in the factory, otherwise this could damage the battery.

General

Ensure the charge level of the battery is sufficient to guarantee the full life of the battery. In the following cases, charging the battery is necessary:

- a. When making frequent short trips.
- b. When leaving for periods of longer than one month.

Jump-starting connections

Recharge the battery only with the engine stopped, via the jump-starting connections set page 193, in the engine compartment.

Charger

Chargers developed especially for the vehicle and adapted to the onboard network can be obtained from the Service centre.

Power failure

A power failure may affect power supply information. Some items of equipment must be maintained. Individual settings must be kept.

- a. Seat, interior and steering wheel position memory: to safe position.
- b. Tinted light.
- c. Date update.
- d. Radio transmitters: save.

28 October 2013



EAKIN  
McCAFFERY  
COX

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Mr G.A. Kinsey  
Solicitor  
PO Box 210  
Beverly Hills NSW 2209

Also by facsimile: (02) 9580 8913

Dear Mr Kinsey

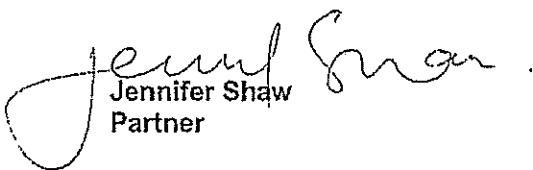
**Dymocks Book Arcade Pty Ltd and BMW Sydney Pty Limited**

We refer to our letter dated 25 September 2013 in which we stated that it seemed to us to be ludicrous to assert, in your letter of 19 September 2013, that a late model luxury vehicle which costs upwards of \$225,000 will not function without an external battery charger unless it is driven frequently on trips of greater than short duration.

We requested your client to specify the frequency with which the vehicle must be driven and the minimum distance that must be travelled on each trip.

If you do not provide this information within a further 7 days of the date of this letter, our client shall assume that the assertion has no foundation and is withdrawn.

Yours sincerely  
EAKIN McCAFFERY COX

  
Jennifer Shaw  
Partner

Our Ref: JSIDYM510/2/CCC  
Enquiries: Jennifer Shaw  
Direct Line: 9265 3056  
Email Address: Shaw@eakin.com.au  
Responsible Partner: Jennifer Shaw  
Your Ref: GAK:LK:2013/085

1303839



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21

# G.A. KINSEY SOLICITOR

GRAHAM ANTHONY KINSEY, LL.B

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P.O. BOX 210, BEVERLY HILLS 2209

OUR REFERENCE: GAK:GA  
2013/085

TELEPHONE: 9580 8123  
FAX: 9580 8913

YOUR REFERENCE:

28 October 2013

Eakin McCaffery Cox  
Lawyers  
PO Box Q1196  
QVB NSW 1230

FACSIMILE NO. 9261 5918

Dear Sirs,

RE: BMW SYDNEY PTY LIMITED AND DYMOCKS BOOK ARCADE PTY LTD

We refer to your letter of even date and advise that the writer has been absent on leave the past week and only returned to work today.

In response to your inquiry about the frequency with which the vehicle must be driven, our client has instructed us that there is no definitive answer to that question. However, it depends on a range of factors including:-

1. Temperature;
2. How fast the car is driven. This impacts on the engine revs per minute and hence the charging of the battery;
3. The time taken for the journey (stop/start driving as opposed to highway running);
4. The mix of journeys (e.g. 5 short trips or 1 long trip each week);
5. The life cycle of the battery (e.g. new as opposed to old);
6. Whether electrical accessories are turned off after the engine is stopped, as if they are left on they will have a detrimental effect on the battery life.

As a rough guide, our client believes that a trip every 2<sup>nd</sup> day for a period of more than 25 minutes and at least one trip exceeding 1 hour each week, should maintain the battery in a reasonable condition and avoid the re-start issue.

Should your client have any further issues regarding the vehicle, Mr Forsyth should contact Natalie Bloomfield, who is the dealer principal's personal assistant, on 9334 4555

Yours faithfully,

G.A. KINSEY



30 October 2013



EAKIN  
McCAFFERY  
COX

LAWYERS

Level 28, 1 Market Street  
SYDNEY NSW 2000  
PO Box Q1196, QVB NSW 1230  
DX 1069 SYDNEY  
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F 02 9261 5918  
E [info@eakin.com.au](mailto:info@eakin.com.au)  
W [www.eakin.com.au](http://www.eakin.com.au)

Mr G.A. Kinsey  
Solicitor  
PO Box 210  
Beverly Hills NSW 2209

Also by facsimile: (02) 9580 8913

Dear Mr Kinsey

**Dymocks Book Arcade Pty Ltd and BMW Sydney Pty Limited**

We refer to our letters dated 25 September 2013 and 28 October 2013 and to your letter in reply dated 28 October 2013.

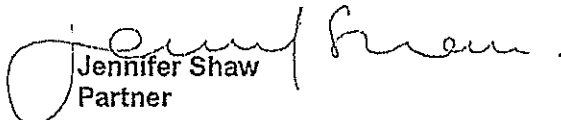
The response from your client is highly unsatisfactory. If it is really true to suggest that a late model luxury vehicle must, as a rough guide, be driven for more than 25 minutes every second day and for a trip of at least 1 hour each week, for it to remain fully operational, then it is clearly not of merchantable quality or fit for purpose in breach of the implied warranties and conditions under the *Trade Practice Act 1975 (Cth) (TPA)* and the *Sale of Goods Act 1923 (NSW) (SGA)*.

We are instructed that our client has recently taken re-delivery of the vehicle from your client. Our client will be closely monitoring the vehicle's performance and the no-start problem.

Should the vehicle fail to start on one more occasion, our client will rely on your letter of 28 October 2013 together with the multitude of malfunctions experienced by it in respect of the vehicle, and the malfunctions experienced by it in respect of the first vehicle (as defined in our letter to your client of 30 August 2004), to bring a claim for compensation and damages against your client for failing to comply with section 71 of the TPA and section 19 of the SGA.

Our client expressly reserves its position and rights with respect to this matter

Yours sincerely  
EAKIN McCAFFERY COX

  
Jennifer Shaw  
Partner

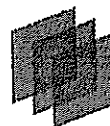
1305804

Our Ref: JS/DYM/210/2/CCC  
Enquiries: Jennifer Shaw  
Direct Line: 9265 3056  
Email Address: [Shaw@eakin.com.au](mailto:Shaw@eakin.com.au)  
Responsible Partner: Jennifer Shaw  
Your Ref: GAK:LK:2013/085



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Professional Standards  
Legislation.

18 February 2015



**EAKIN  
McCAFFERY  
COX**

LAWYERS

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E [info@eakin.com.au](mailto:info@eakin.com.au)  
W [www.eakin.com.au](http://www.eakin.com.au)

Mr G.A. Kinsey  
Solicitor  
PO Box 210  
Beverly Hills NSW 2209

Also by facsimile: (02) 9585 0096

Dear Mr Kinsey

**Dymocks Book Arcade Pty Ltd and BMW Sydney Pty Limited**

We refer to our letters dated 25 September 2013, 28 October 2013, to your letter dated 28 October 2013 and to our letter dated 30 October 2013. We enclose a copy of this correspondence for ease of reference.

We are instructed to inform you that on 11 February 2015 the vehicle was driven from Grassy Head to Nambucca Heads via Valla by Ms Verschuer. The vehicle was parked and turned off at Nambucca Heads for about five minutes. When Ms Verschuer returned to the vehicle it would not start. After trying several times to start the vehicle, Ms Verschuer got out of the vehicle, locked it and left it for a few minutes. She then tried again but the vehicle still would not start. At this point, Ms Verschuer telephoned John Roca, Dealer Principal at BMW Sydney Pty Ltd in Rushcutters Bay. The call went to voicemail and recommended that Ms Verschuer send a text message. Ms Verschuer sent a text message to Mr Roca explaining that she was in the vehicle but it would not start and asking him to call her back to advise her as to what she should do. Ms Verschuer then tried to contact Matthew Rosenthal, the Service Manager at BMW Sydney Pty Ltd and managed to speak to Mr Roca's personal assistant, Natalie, who advised that neither Mr Roca nor Mr Rosenthal were available but that she would call back once she had advice from the service department. Ms Verschuer then waited half an hour from when she had first tried to start the vehicle and when she went back to the vehicle it started. Neither Mr Roca nor Mr Rosenthal ever contacted Ms Verschuer.

In our letter dated 30 October 2013 we stated that, should the vehicle fail to start on one more occasion, our client will rely on your letter of 28 October 2013 together with the multitude of malfunctions experienced by it in respect of the vehicle, and the malfunctions experienced in respect of the first vehicle (as defined in our letter to your client dated 30 August 2004) to bring a claim including a claim for compensation and damages against your client for failing to comply with *section 71 of the Trade Practices Act 1974 (Cth)* ("TPA") and the *Sale of Goods Act 1923 (NSW)* ("SGA").

1293006

Our Ref: JS/DYM/210/2  
Enquiries: Jennifer Shaw  
Direct Line: 9265 3056  
Email Address: [Shaw@eakin.com.au](mailto:Shaw@eakin.com.au)  
Responsible Partner: Jennifer Shaw  
Your Ref: GAK:LK:2013/085



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Mr G.A. Kinsey  
Solicitor

  
18 February 2015

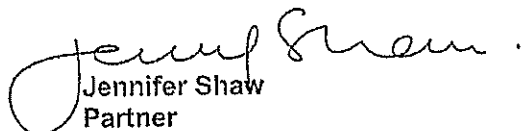
In breach of the implied warranties and conditions under the TPA and the SGA the vehicle is clearly not of merchantable quality nor is it fit for purpose. Your client has had multiple opportunities to fix the defect in the vehicle and yet the no start problem continues to manifest itself with serious consequences for the driver, who is left stranded.

In the circumstances our client wishes to return the vehicle for a refund of the purchase price.

Please seek your client's instructions.

We await your response.

Yours sincerely  
EAKIN McCAFFERY COX

  
Jennifer Shaw  
Partner

# KOUTZOUUMIS LAWYERS

incorporating the practice of  
**G.A.KINSEY**  
SOLICITOR

OUR REF: GAK:GA:2013/085  
YOUR REF: JS/DYM/210/2

RECEIVED

24 February 2015

Ms Jennifer Shaw  
Eakin McCaffery Cox  
PO Box Q1196  
QUEEN VICTORIA BUILDING NSW 1230

EAKIN MCCAFFERY COX

By email: Shaw@eakin.com.au

Dear Sirs,

RE: BMW SYDNEY PTY LIMITED AND DYMOCKS BOOK ARCADE PTY LTD

We refer to your letter dated 18 February 2015 concerning the motor vehicle purchased by Dymocks Book Arcade Pty Ltd.

Our client denies any breach of the implied warranties and conditions under section 71 of the Trade Practices Act 1974 and/or the Sale of Goods Act 1923. It is noted that the vehicle was delivered to your client on 14 February 2011. Almost 4 years have passed since the date of delivery and the vehicle is out of warranty. Your client has not provided any evidence which would demonstrate that the vehicle was not of merchantable quality nor fit for purpose.

We are instructed that under no circumstances will our client accept the return of the vehicle and provide a refund of the purchase price. We are instructed to vigorously defend any proceedings which your client may institute against our client.

Yours faithfully

KOUTZOUUMIS LAWYERS

Principal: Gary Koutzoumis  
Email: gary@koutzoumislawyers.com.au

Solicitor: Graham Anthony Kinsey  
Email: graham@koutzoumislawyers.com.au



518 King Georges Road Beverly Hills NSW 2209  
Telephone: 02 9585 0040 Facsimile: 02 9585 0096  
Web: www.koutzoumislawyers.com.au

All Correspondence: P.O. Box 250 Beverly Hills NSW 2209  
General Enquiries: info@koutzoumislawyers.com.au  
Conveyancing: conveyancing@koutzoumislawyers.com.au

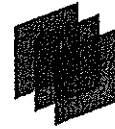
ABN 66 466 953 625

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13 March 2015

Mr GA Kinsey  
Koutzoumis Lawyers  
incorporating the practice of GA Kinsey Solicitor  
PO Box 250  
Beverly Hills NSW 2209



**EAKIN  
M<sup>C</sup>CAFFERY  
COX**

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SYDNEY NSW 2000  
PO Box Q1196, QVB NSW 1230  
OX 1069 SYDNEY  
T 02 9265 3000  
F 02 9261 5918  
E info@eakin.com.au  
W www.eakin.com.au

**Also by facsimile: 02 9585 0096**

Dear Mr Kinsey

**Dymocks Book Arcade Pty Ltd and BMW Sydney Pty Limited**

We are in receipt of your letter dated 24 February 2015.

You state that almost 4 years have passed since the date of delivery of the vehicle to our client. You fail to acknowledge the history of the no-start problem with this vehicle. A history of which your client is fully aware. We set out a brief summary of that history again below, based on our client's recollection of events, as follows:

On or about 30 June 2008, our client purchased a BMW 650i motor vehicle, originally registered BGJ07T for the sum of \$225,000 from your client, which subsequently, and on numerous occasions, failed to start once it had been turned off during a trip (the no-start problem). On or about 26 February 2010 that car was delivered to your client for its first service. The car was due to be delivered back to our client the following day but your client called to say that it was still having problems with the no-start issue.

In or about March 2010, owing to the ongoing no-start problem, your client agreed to replace the defective vehicle with a BMW650i motor vehicle registration number DUK700 upon our client surrendering the defective vehicle and paying \$55,000. We note that you state this vehicle was delivered to our client on 14 February 2011.

As your client is fully aware, after replacement of the first defective vehicle, the same no start problem manifested itself in the second vehicle at least twice within the first 15 months of delivery. Each time it occurred our client notified Mr Joe Denina, who was then of your client's Sydney office, that they had been stranded mid-journey.

On or about 24 May 2012 our client delivered the vehicle to BMW Port Macquarie for its first service. At that time the vehicle had an odometer reading of about 7000km. On arrival, our client parked the vehicle in the BMW visitor car park. The service manager, Mr Carl Evans then went to move the vehicle to the service area and the vehicle would not start, thus displaying the typical no-start problem that our client had been experiencing. BMW Port Macquarie kept the vehicle for some 3 weeks whilst they waited for parts to arrive from

1363798\_1

Our Ref: JS//JS  
Enquiries: Jennifer Shaw  
Direct Line: 9265 3056  
Email Address: Shaw@eakin.com.au  
Responsible Partner:  
Your Ref:



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overseas. Mr Evans then informed our client that they had "replaced the CAS" and that the vehicle needed an "active roll stabilization unit". The vehicle was eventually returned to our client on or about 14 June 2012.

Between about 14 June 2012 and 29 November 2012 the vehicle failed to start mid-journey and stranded the driver and passenger(s) on approximately 5 further occasions, each of which was reported to Mr Denina. One of those occasions was on or about 27 November 2012 when Ms Verschuer drove the vehicle from Grassy Head to Valla, approximately a 40 minute drive, for an appointment. On the way she stopped at a shop before her appointment. When she returned to the vehicle it would not start. She had to leave her brother with the vehicle whilst she ran 2 kilometres to her appointment. Her brother was eventually able to start the vehicle again about 1 hour later.

On or about 29 November 2012, our client drove the vehicle to Terrey Hills without turning off the engine until arrival at Terrey Hills. On or about 1 December 2012 your client collected the vehicle from Terrey Hills. We attach a copy of our client's letter to Mr Phil Horton, Managing Director of BMW Australia dated 7 December 2012 which refers to these issues. Also enclosed is a copy of Mr Horton's reply dated 21 December 2012.

Our client was then without the vehicle for approximately 1.5 months whilst your client tried to fix the vehicle. Your client then returned the vehicle to BMW Port Macquarie in or about mid January 2013. On being advised that the vehicle was available for collection at BMW Port Macquarie Ms Verschuer discovered that the head up display was still not working. BMW Port Macquarie then kept the vehicle until about the end of February 2013. By this stage our client had been without use of the vehicle for approximately 2.5 months. We attach an email from our client to Mr Altieri of your client dated 21 January 2013 in this regard.

In or about May 2013 the vehicle failed to start again in Macksville, again stranding the driver and passenger(s) mid-journey. Our client advised your client that the no-start problem persisted, that our client had lost confidence in the reliability of the car and that our client did not want it back. Your client picked up the vehicle from Grassy Head and trucked it to Sydney. Your client then advised our client that it thought that the no-start problem was related to the alternator not charging the battery and that a new alternator needed to be imported from Germany. Our client was without use of the vehicle for some 2-3 months until late July or early August 2013 when your client advised that the vehicle was ready for collection. Your client informed our client that, "because the car's technology is so complex, you will have to connect the trickle charger to the car when the car is not in use".

Prior to our client agreeing to take re-delivery of the vehicle, our client engaged this firm to write to your client. We wrote to your client on 30 August 2013 (copy enclosed) putting your client on notice that the vehicle was clearly not of merchantable quality or fit for purpose in breach of the implied warranties and conditions under the *Trade Practices Act 1974 (Cth)* (TPA) and the *Sale of Goods Act 1923 (NSW)* (SGA). Further, we stated that if the vehicle failed to start on one more occasion, contrary to your client's assurance, our client will rely upon the multitude of malfunctions experienced by it in respect of both vehicles to bring a claim for compensation and damages against your client for failing to comply with the TPA and the SGA.

We received a reply from you dated 19 September 2013 (copy enclosed) stating that your client had carried out an examination of the vehicle and found there was a fault with the alternator which was replaced. Further, you referred us to page 189 of the BMW Series 6 Owners Manual and stated that charging the battery is necessary when making frequent short trips or when leaving the vehicle for periods of longer than one month. You stated that your client's opinion was that the no-start problem is directly related to the non-use of the

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13 March 2015

vehicle which causes the battery to run down and that if there is not sufficient energy in the battery, the vehicle's electrical system and computers will not function.

We replied by letter dated 25 September 2013 (**enclosed**) and pointed out that if the no-start problem was caused by a battery that is not fully charged then this would not explain why the car starts for the start of the trip but then fails to start once it has been parked during the trip (stranding the driver in the process). One would have thought that if a flat battery was to blame that the car would not start at the commencement of a trip. We stated that it seemed ludicrous to assert that a late model luxury vehicle which costs upwards of \$225,000 will not function without an external battery charger unless it is driven frequently on trips of greater than short duration. We asked you to specify the frequency with which the vehicle must be driven and the minimum distance that must be travelled on each trip. Based upon your statement that your client was now satisfied with the vehicle's performance our client reluctantly accepted re-delivery of the vehicle but expressly reserved all of its rights.

You responded by letter dated 28 October 2013 (**enclosed**) and stated, "*As a rough guide, our client believes that a trip every 2nd day for a period of more than 25 minutes and at least one trip exceeding 1 hour each week, should maintain the battery in a reasonable condition and avoid the re-start issue*".

We replied by letter dated 30 October 2013 (**enclosed**) stating that your response was highly unsatisfactory. If it is really true to suggest that a late model luxury vehicle must, as a rough guide, be driven for more than 25 minutes every second day and for a trip of at least 1 hour each week, for it to remain fully operational, then it is clearly not of merchantable quality or fit for purpose in breach of the implied warranties and conditions under the TPA and SGA. We stated that should the vehicle fail to start on one more occasion, our client will rely on your letter of 28 October 2013 together with the multitude of malfunctions experienced by it in respect of the vehicle, and the malfunctions experienced by it in respect of the first vehicle to bring a claim for damages and compensation against your client for failing to comply with the TPA and SGA.

On 18 February 2015 we wrote to you informing you that the no-start problem had occurred yet again on 11 February 2015.

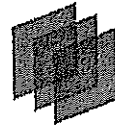
It is evident from the history summarised above, that, on the balance of probabilities, the vehicle had a serious latent defect when it was sold to our client. Further, that the inherent defect, albeit of intermittent occurrence, rendered the vehicle unsafe to drive, not of merchantable quality and not fit for purpose. Despite our client having had the vehicle for 4 years it is evident that our client has also suffered considerable inconvenience throughout that time, repeatedly returning the vehicle to your client for very lengthy periods.

If your client will not accept our client's request to return the vehicle for a fair and equitable refund of the purchase price our client will take the matter further.

Yours sincerely  
**EAKIN McCaffery COX**

  
Jennifer Shaw  
Partner

23 March 2015



**EAKIN  
McCAFFERY  
COX**

LAWYERS

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Mr GA Kinsey  
Koutzoumis Lawyers  
incorporating the practice of GA Kinsey Solicitor  
PO Box 250  
Beverly Hills NSW 2209

Also by facsimile: 02 9585 0096

Dear Mr Kinsey

**Dymocks Book Arcade Pty Ltd and BMW Sydney Pty Limited**

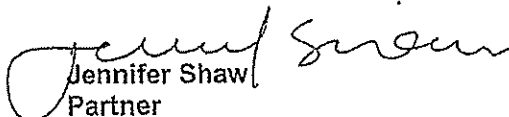
We write further to our letter dated 13 March 2015 and note that we have not yet received a response from you.

We are instructed that on 15 March 2015 Ms Verschuer drove the vehicle from Grassy Head to South West Rocks, a 45 minute trip. Mr John Forsyth was a passenger in the vehicle. Prior to this trip the vehicle had been garaged for approximately 3 weeks but had been left on the charger as per the recommendations of your client as referred to in your letter of 19 September 2013. Ms Verschuer parked the vehicle at Rocks Shopping Fair at South West Rocks. On returning to the vehicle it would not start. The vehicle eventually started after multiple attempts over a period of about half an hour.

Ms Verschuer sent BMW Sydney's CEO John Rocca a text message alerting him to the fact that the vehicle had yet again failed to start. Mr Rocca replied by text message suggesting that Ms Verschuer contact the NRMA and he would have Matthew Rosenthal contact Ms Verschuer the following day.

This further reinforces the submissions we have made on behalf of our client, that it is evident that, on the balance of probabilities, the vehicle had a serious latent defect when it was sold to our client which rendered it unsafe to drive, not of merchantable quality and not fit for purpose.

Yours sincerely  
**EAKIN McCAFFERY COX**

  
Jennifer Shaw  
Partner

Our Ref: JS/DYM/510/1/JS  
Enquiries: Jennifer Shaw  
Direct Line: 9265 3056  
Email Address: Shaw@eakin.com.au  
Responsible Partner:  
Your Ref:

1373867\_1



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Andrew Forsyth

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30

**From:** Verschuer/Forsyth <duckmaster@bigpond.com>  
**Sent:** Wednesday, 1 April 2015 12:55 PM  
**To:** Matthew Rosenthal  
**Cc:** Andrew Forsyth  
**Subject:** DUK700

Hi Matthew

Following our conversation today and your advice that I should take the car to the BMW Port Macquarie dealership for fault finding of the repeated no-start problem. Our lawyers advise that given that there is legal action pending over the car, that I should not take it to Port Macquarie at this time.

Regards

Ann

John Forsyth & Ann Verschuer  
Dymocks Group of Companies  
GPO Box 1521  
SYDNEY NSW 2001  
Tel: +61 (0)415977177  
[duckmaster@bigpond.com](mailto:duckmaster@bigpond.com)

26 May 2015



**EAKIN  
McCAFFERY  
COX**

LAWYERS

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Mr GA Kinsey  
Koutzoumis Lawyers  
incorporating the practice of GA Kinsey Solicitor  
PO Box 250  
Beverly Hills NSW 2209

Also by facsimile: 02 9585 0096

Dear Mr Kinsey

**Dymocks Book Arcade Pty Ltd –v – BMW Sydney Pty Limited**

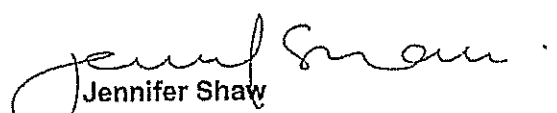
We write further to our letters dated 13 March 2015 and 23 March 2015 and to your letter dated 24 March 2015 in which you stated that you had referred our correspondence to your client for instructions and once you received them you would write to us. We note that we have not received any further letters from you.

We refer to our telephone conversation on 28 April 2015 when we invited your client to participate in a mediation of this dispute to explore whether this matter could be resolved without resorting to litigation. We have not yet heard further from you as to whether your client would agree to attend such a mediation. We have left a message for you today.

Could you please confirm whether your client will attend a mediation with our client and we can then discuss a suitable mediator. It is proposed that the costs of the mediator be split equally between the parties.

We would be grateful to receive your response to this letter within seven (7) days.

Yours sincerely  
**EAKIN McCAFFERY COX**

  
**Jennifer Shaw**  
Partner

1425899

Our Ref: JSIDYM/510/1/JS  
Enquiries: Jennifer Shaw  
Direct Line: 9265 3056  
Email Address: Shaw@eakin.com.au  
Responsible Partner:  
Your Ref:



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Andrew Forsyth

---

From: Wright Jordan B3-AU-A-6 <jordan.wright@bmw.com.au>  
Sent: Monday, 17 August 2015 15:10  
To: Andrew Forsyth  
Subject: BMW650i Registered DUK 700

Mr Forsyth

I refer to you letter dated 22 July 2015 and our subsequent telephone conversation.

Firstly, please allow me to apologise for the delay in this response, your concerns are of great importance to us and have been reviewed in great detail.

We acknowledge your request for a full refund or replacement vehicle and I regret to conform we are unable meet with this request.

Whilst we cannot offer you a full refund BMW Group Australia is willing to offer an agreed buy back taking into consideration that the vehicle in question is now five years of age.

So that we may begin negotiating a mutually agreeable buy back value we kindly request the vehicle is presented to BMW Sydney so that a current value can be ascertained.

Mr Forsyth I apologise if this response does not meet with your expectations, however we believe the above process is the best opportunity to reach an amicable resolution.

Yours Sincerely

Jordan Wright

---  
BMW Group  
Australia  
Jordan Wright  
Customer Relations Executive (B3-AU-A-6)  
783 Springvale Road  
Mulgrave VIC 3170  
Australia

Tel: +61 3 9264 4151  
Mail: [jordan.wright@bmw.com.au](mailto:jordan.wright@bmw.com.au)  
Web: <http://www.bmw.com.au>

---

Andrew Forsyth

---

Subject: FW: BMW650i Registered DUK 700

From: Andrew Forsyth  
Sent: Saturday, 22 August 2015 14:26  
<Wright Jordan B3-AU-A-6' <jordan.wright@bmw.com.au>  
<John Verschuer & John Forsyth <duckmaster@bigpond.com>  
Subject: RE: BMW650i Registered DUK 700

Dear Mr Wright,

Thank you for your email.

The vehicle is garaged at Grassy Head some 450 kilometres north of Sydney and whilst Dymocks agrees to it being inspected by your company's representatives, it does not agree to transport it to Sydney for that purpose.

Dymocks will reluctantly transport the vehicle to your company's dealership at Port Macquarie or else make it available for inspection by appointment at Grassy Head.

I do make the point that the age and current value of the vehicle are irrelevant because it has had a major defect since it was new.

Please let me know how you wish to proceed.

I will be overseas from 27 August until 14 September and will have limited access to emails during that period.

Yours sincerely

Andrew Forsyth | Strategy and Business Director

Ph. +61 2 9224 0431 | Mob: +61 414 939 846 | Fax: +61 2 9224 9407

Dymocks Group of Companies  
L6 420 George St Sydney  
NSW 2000 AUSTRALIA

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1



**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700

**From:** Wright Jordan B3-AU-A-6 [mailto:jordan.wright@bmw.com.au]  
**Sent:** Wednesday, 26 August 2015 4:38 PM  
**To:** Andrew Forsyth <andrew.forsyth@dymocks.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster@bigpond.com>  
**Subject:** RE: BMW650i Registered DUK 700

Dear Mr Forsyth

Thank you for your email received 24 August 2015.

BMW Group Australia acknowledges the distance between the location of the vehicle and BMW Sydney. As the purchase of the vehicle took place at BMW Sydney and the subsequent concerns regarding the vehicle have primarily been addressed by BMW Sydney the proposed buy back must also take place through BMW Sydney.

We apologise for any inconvenience caused through presenting the vehicle to BMW Sydney.

Kind Regards

Jordan

---

**BMW Group**  
Australia  
Jordan Wright  
Customer Relations Executive (B3-AU-A-6)  
783 Springvale Road  
Mulgrave VIC 3170  
Australia

Tel: +61 3 9264 4151  
Mail: [jordan.wright@bmw.com.au](mailto:jordan.wright@bmw.com.au)  
Web: <http://www.bmw.com.au>

---

**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700

**From:** Andrew Forsyth  
**Sent:** Wednesday, 26 August 2015 4:44 PM  
**To:** 'Wright Jordan B3-AU-A-6' <jordan.wright@bmw.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster@bigpond.com>  
**Subject:** RE: BMW650i Registered DUK 700

Hi Jordan,

That is fine as long as the appropriate representative of BMW Sydney travels to Grassy Head to carry out the inspection.

Kind regards

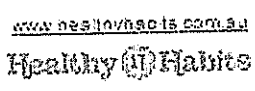
Andrew

Andrew Forsyth | Strategy and Business Director

Ph: +61 2 9224 0481 | Mob: +61 414 969 846 | Fax: +61 2 9224 9407

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NSW 2000 AUSTRALIA

[www.dymocks.com.au](http://www.dymocks.com.au) | [www.healthyhabits.com.au](http://www.healthyhabits.com.au) | [www.patons.com.au](http://www.patons.com.au)



Andrew Forsyth

---

Subject: FW: BMW650i Registered DUK 700



On 9 Sep 2015, at 05:20, Wright Jordan B3-AU-A-6 <[jordan.wright@bmw.com.au](mailto:jordan.wright@bmw.com.au)> wrote:

Good Morning Andrew

I hope you are enjoying your time overseas.

Whilst we cannot have a representative of BMW Sydney attend Grassy Head we have arranged for a representative of BMW Group Australia to attend McGuigan BMW on the 16 September 2015.

We kindly request the vehicle is presented to McGuigan BMW on or before the morning of the 16 of September 2015 so that a valuation can take place.

Kind Regards

Jordan

---

**BMW Group**  
Australia  
Jordan Wright  
Customer Relations Executive (B3-AU-A-6)  
783 Springvale Road  
Mulgrave VIC 3170  
Australia

Tel: +61 3 9264 4151  
Mail: [jordan.wright@bmw.com.au](mailto:jordan.wright@bmw.com.au)  
Web: <http://www.bmw.com.au>

---

**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700



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**From:** Andrew Forsyth [<mailto:andrew.forsyth@dymocks.com.au>]

**Sent:** Friday, 11 September 2015 12:39 PM

**To:** Wright Jordan B3-AU-A-6

**Cc:** Ann Verschuer & John Forsyth

**Subject:** Re: BMW650i Registered DUK 700

Hi Jordan

Thursday 16 September is not convenient because John and Ann will be interstate

John and I can, however, make the vehicle available at McGuigans at 12:30 PM on Friday 25 September

Please confirm this arrangement as soon as possible

Kind regards

Andrew

Sent from my iPhone

**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700



**From:** Wright Jordan B3-AU-A-6 [<mailto:jordan.wright@bmw.com.au>]  
**Sent:** Monday, 14 September 2015 10:22 AM  
**To:** Andrew Forsyth <[andrew.forsyth@dymocks.com.au](mailto:andrew.forsyth@dymocks.com.au)>  
**Cc:** Ann Verschuer & John Forsyth <[duckmaster777@gmail.com](mailto:duckmaster777@gmail.com)>  
**Subject:** RE: BMW650i Registered DUK 700

Hi Andrew

Our representative can only attend McGuigan BMW on the 16 September, as such the vehicle will need to be presented on that day. Alternatively the vehicle can be valued at BMW Sydney on any day agreed with their used vehicle department.

Kind Regards

Jordan

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**BMW Group**  
Australia  
Jordan Wright  
Customer Relations Executive (B3-AU-A-6)  
783 Springvale Road  
Mulgrave VIC 3170  
Australia

Tel: +61 3 9264 4151  
Mail: [jordan.wright@bmw.com.au](mailto:jordan.wright@bmw.com.au)  
Web: <http://www.bmw.com.au>

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**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700



**From:** Andrew Forsyth  
**Sent:** Monday, 14 September 2015 12:13 PM  
**To:** 'Wright Jordan B3-AU-A-6' <jordan.wright@bmw.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster777@gmail.com>  
**Subject:** RE: BMW650i Registered DUK 700

Hi Jordan,

John and Ann cannot present the vehicle to McGuigan BMW on 16 September and are not prepared to drive it 450 kilometres to Sydney.

I do not really understand why the vehicle needs to be valued in circumstances where the claim is based on the fact that it was not fit for its intended purpose and was not of merchantable quality but if you insist upon a valuation then it is incumbent upon you to make arrangements that are acceptable to your customer.

I look forward to hearing from you.

Kind regards

Andrew

Andrew Forsyth | Strategy and Business Director

Ph: +61 2 9224 0481 | Mob: +61 414 969 846 | Fax: +61 2 9224 9407

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**Andrew Forsyth**

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**Subject:** FW: BMW650i Registered DUK 700

  
**From:** Wright Jordan B3-AU-A-6 [mailto:jordan.wright@bmw.com.au]  
**Sent:** Tuesday, 15 September 2015 2:06 PM  
**To:** Andrew Forsyth <andrew.forsyth@dymocks.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster777@gmail.com>  
**Subject:** RE: BMW650i Registered DUK 700

Hi Andrew

As previously advised in our email of 17 August 2015, BMW Group Australia cannot meet with your request for a full refund. As such, our offer of resolution is an agreed buy back. In order for there to be a negotiation on the agreed buy back price, both parties need to understand the current value of the vehicle.

We maintain that this offer is the best opportunity to resolve your concerns.

Therefore, the first step in this process is to have the vehicle valued by BMW Sydney and the responsibility to arrange transporting the vehicle lies with the owner of the vehicle.

We look forward to the vehicle being presented to BMW Sydney at your convenience or alternatively to McGuigan BMW on the 16 September.

Kind Regards

Jordan

---  
**BMW Group**  
Australia  
Jordan Wright  
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Australia

Tel: +61 3 9264 4151  
Mail: [jordan.wright@bmw.com.au](mailto:jordan.wright@bmw.com.au)  
Web: <http://www.bmw.com.au>

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**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700

**From:** Andrew Forsyth  
**Sent:** Tuesday, 15 September 2015 2:28 PM  
**To:** 'Wright Jordan B3-AU-A-6' <jordan.wright@bmw.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster777@gmail.com>  
**Subject:** RE: BMW650i Registered DUK 700

Hi Jordan,

I have stated repeatedly that we are not prepared to drive the vehicle 450 kilometres to Sydney so it appears that our discussions with BMW Group Australia are at an end.

We will now pursue other avenues.

Kind regards

Andrew

Andrew Forsyth | Strategy and Business Director

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PROPERTIES

**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700



**From:** Wright Jordan B3-AU-A-6 [mailto:jordan.wright@bmw.com.au]  
**Sent:** Wednesday, 23 September 2015 2:48 PM  
**To:** Andrew Forsyth <andrew.forsyth@dymocks.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster777@gmail.com>  
**Subject:** RE: BMW650i Registered DUK 700

Good afternoon Andrew

I understand you are currently in the processes of postal correspondence with my colleagues in Germany.

Please be aware that this matter has been and will continue, to be handled by BMW Group Australia.

In an effort to progress this matter BMW Sydney has agreed for McGuigan BMW to carry out an inspection and valuation of the vehicle so that negotiations can begin.

I have taken the liberty of speaking with Mr Carl Evens at McGuigan BMW to bring him up to speed. He will be the point of contact at McGuigan BMW for you to arrange a time for the vehicle to be inspected.

I look forward to discussing this matter further once the vehicle has been inspected.

Kind Regards

Jordan

---  
**BMW Group**  
Australia  
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Australia

Tel: +61 3 9264 4151  
Mail: [jordan.wright@bmw.com.au](mailto:jordan.wright@bmw.com.au)  
Web: <http://www.bmw.com.au>

---

**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700

**From:** Andrew Forsyth  
**Sent:** Wednesday, 23 September 2015 3:22 PM  
**To:** 'Wright Jordan B3-AU-A-6' <jordan.wright@bmw.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster777@gmail.com>  
**Subject:** RE: BMW650i Registered DUK 700

Hi Jordan,

I thank you for your email and advise that John and Ann will make arrangements with Mr Evens for the vehicle to be valued as soon as conveniently possible.

I hope that this matter can be resolved between us but if it can't be, my next step will be to acquaint Herr Reithofer and Herr Kruger with all of the circumstances concerning the two vehicles because I suspect that they will be appalled by the damage being done to the reputation of BMW in Australia by the failure of BMW Group Australia to accept a return of a vehicle which is not fit for its purpose and is not of merchantable quality.

I look forward to hearing from you after the valuation has been carried out.

Kind regards

Andrew

Andrew Forsyth | Strategy and Business Director

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**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700

**From:** Wright Jordan B3-AU-A-6 [mailto:jordan.wright@bmw.com.au]

**Sent:** Thursday, 29 October 2015 13:25

**To:** Andrew Forsyth <andrew.forsyth@dymocks.com.au>

**Cc:** Ann Verschuer & John Forsyth <duckmaster777@gmail.com>

**Subject:** RE: BMW650i Registered DUK 700

Dear Andrew

Thank you for arranging for the BMW 650Ci to be inspected by McGuigan BMW on the 19 October 2015.

Based on the report provided by McGuigan BMW, BMW Sydney has been able to provide a current trade in value of the vehicle not taking into consideration the history of the vehicle. With natural depreciation over the past five and half years the vehicle has been valued at \$60,000.00

In hope of reaching an amicable resolution BMW Group Australia offer to buy back the vehicle at an agreed price of \$75,000.00. We believe the increased contribution on top of the current value of the vehicle reflects the experience and any inconvenience caused during ownership.

Thank you for your patience throughout this process, we look forward to your response.

Kind Regards

Jordan

---

**BMW Group**

Australia

Jordan Wright

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Australia

Tel: +61 3 9264 4151

Mail: [jordan.wright@bmw.com.au](mailto:jordan.wright@bmw.com.au)

Web: <http://www.bmw.com.au>

---

**Andrew Forsyth**

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45

**Subject:** FW: BMW650i Registered DUK 700

**From:** Andrew Forsyth  
**Sent:** Thursday, 29 October 2015 15:25  
**To:** 'Wright Jordan B3-AU-A-6' <jordan.wright@bmw.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster@bigpond.com>  
**Subject:** RE: BMW650i Registered DUK 700

Hi Jordan,

I have now spoken to John and Ann and they cannot believe that your company places a value of \$15,000 upon the incredible inconvenience to which they have been put as a consequence of these two vehicles of unmerchantable quality stranding them repeatedly and spending extended periods in the workshop.

John and Ann believe that your company ought to refund the total amount of approximately \$280,000 paid for the two defective vehicles but would be prepared to accept the a buy-back price of \$180,000 in order to resolve this issue.

Kind regards,

Andrew.

Andrew Forsyth | Strategy and Business Director

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**Andrew Forsyth**

---

**From:** Wright Jordan B3-AU-A-6 <jordan.wright@bmw.com.au>  
**Sent:** Monday, 2 November 2015 3:35 PM  
**To:** Andrew Forsyth  
**Cc:** Ann Verschuer & John Forsyth  
**Subject:** BMW650i Registered DUK 700

Dear Andrew

After further consideration and review of John and Ann's request BMW Group Australia will increase its offer to \$80,000.00. Please be advised this is our full and final offer and will remain open for acceptance until close of business Friday 6 November 2015.

BMW Group Australia truly believes this is a fair and amicable resolution and apologise if it does not meet with your expectations.

Kind Regards

Jordan

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**BMW Group**  
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Web: <http://www.bmw.com.au>

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**7 BMW 650i Convertible Cars For Sale in Australia**

Page 1 of 1

Ad Type  
3 selected

2014 BMW 650i F12 Auto MY14

Already have an account? [Sign in](#)

Keyword

8cyl 4.4L  
Automatic  
Convertible  
19,938 km

**\$134,500\***  
Excl. Govt. Charges

Dealer Used Car  
Distance from me?

Cars

24

VIC

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BMW Group

FINANCE FINANCE AVAILABLE! \$1000 deposit financing to include On Road Costs. Consumer Finance fees apply. Finance with Loan Originator. Rep.

6 Series (3)

650i

Badge (No Badge) Sport (1)

2012 BMW 650i F12 Auto MY12

8cyl 4.4L  
Automatic  
Convertible  
22,803 km

**\$124,900**  
Drive Away  
**\$119,779\***  
Excl. Govt. Charges

Dealer Used Car  
Distance from me?

Series E64 (1) F12 (6)

State

Postcode

Certified / Approved

2011 BMW 650i F12 Auto MY11

Body Type

8cyl 4.4L  
Automatic  
Convertible  
51,000 km

**\$99,880\***  
Excl. Govt. Charges

Dealer Used Car  
Distance from me?

Convertible

39

Size Large (1)

\*\*\* FINANCE FINANCE AVAILABLE! \$1000 deposit financing to include On Road Costs. Consumer Finance fees apply. Finance with Loan Originator. Rep.

Save Enquire

Price

2013 BMW 650i F12 Auto MY13

Year 2011-2016

Clear

8cyl 4.4L  
Automatic  
Convertible  
14,956 km

**\$115,988\***  
Excl. Govt. Charges

Dealer Used Car  
Distance from me?

Transmission

32

Kilometres

THIS LONG LIST INCLUDES US 4.4L 37 FEATURES INCLUDE 16 INCH SP RIMMERS ADAPTIVE DRIVE DYNAMIC DAMPER CONTROL EXHAUST DRIVE SOFT CLOSE DOOR\*

Colours

Fuel Type

Fuel Economy

2011 BMW 650i F12 Auto MY11

8cyl 4.4L  
Automatic  
Convertible  
83,000 km

**\$110,980\***

Private Seller Car  
Distance from me?

Drive Type

Lifestyle

15

Seats

\$11,000 worth of trading stamp and a credit 22 fuelly wheels. Excludes freight and on road costs. Includes 22 inch wheels and 22 inch wheels.

Doors

Engine Size

Cylinders

Engine Type

Induction / Turbo

Power

15

8cyl 4.8L  
Automatic  
Convertible  
30,188 km

**\$89,990\***  
Excl. Govt. Charges

Dealer Used Car  
Distance from me?

Tow (Braked)

Green Star Rating

Only Show Cars With

Reset

2011 BMW 650i F12 Auto MY11

8cyl 4.4L  
Automatic  
Convertible

**\$125,990\***  
Private Seller Car

Get NRMA Comprehensive Car Insurance starting from just \$1.65 a day

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[www.etrade.com.au](#)

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2010 BMW 650i Sport E64 Auto MY10

8cyl 4.8L  
Automatic  
Convertible  
30,188 km

**\$89,990\***  
Excl. Govt. Charges

Dealer Used Car  
Distance from me?

NSW



**Andrew Forsyth**

---

**Subject:** FW: BMW650i Registered DUK 700



**From:** Andrew Forsyth  
**Sent:** Monday, 2 November 2015 4:08 PM  
**To:** 'Wright Jordan B3-AU-A-6' <jordan.wright@bmw.com.au>  
**Cc:** Ann Verschuer & John Forsyth <duckmaster@bigpond.com>  
**Subject:** RE: BMW650i Registered DUK 700

Dear Jordan,

This offer is not acceptable.

We will now pursue other avenues starting with letters addressed to Herr Reithofer and Herr Kruger alerting them to the damage being caused to the fine BMW brand by the refusal of the Australian branch to provide proper redress for the sale of two vehicles which were neither of merchantable quality nor fit for their purpose and which caused enormous inconvenience and distress to those unfortunate enough to drive them on the odd occasions upon which they were operable.

By the way, a search of the internet shows a 2010 BMW Sport 650i E64 auto for sale at \$89,990 so that your offer was contemptuously low even if the vehicles had not caused the inconvenience and distress that they did.

Kind regards

Andrew

Andrew Forsyth | Strategy and Business Director

Ph: +61 2 9224 0481 | Mob: +61 414 969 846 | Fax: +61 2 9224 9407

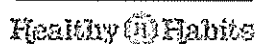
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