

Our Ref JLS 180383
Your Ref

10 April 2018

Kenneth and Wendy Knox
2 Boomi Street
BOOMI NSW 2405

And also by email: kenwenknox@gmail.com

**TAIT MOTORS PTY LTD T/A TAIT HOLDEN GOONDIWINDI
YOUTUBE VIDEO – “KENS OIL GUZZLING COLORADO” AND OTHER MATTERS**

We act for:-

1. Tait Motors Pty Ltd trading as Tait Holden Goondiwindi; and
2. David Tait, Dealer Principal;

We refer to the Youtube video titled “Kens Oil Guzzling Colorado” (Video) which we was published on Youtube on or about 12 March 2018.

We also refer to the Facebook page titled “Kens Oil Guzzling Colorado”.

Our clients consider the content of the Video and Facebook publication to be highly defamatory, misleading and deceptive, and constituting an injurious falsehood.

The Video has caused considerable stress not only to our clients, but our clients' loyal and hardworking employees, and has also caused a significant amount of unfavourable and again, highly defamatory and misleading social media comments to be made about our clients, which has significantly added to the detriment caused to our client's business.

Our clients respect everyone's right to freedom of speech, but of course that freedom should be exercised in a fair and balanced manner. Regrettably, the content of the Video is a very clear and blatant abuse of the right to freedom of speech.

The purpose of this letter (among others) is to:-

3. inform you of our clients' intention to commence legal proceedings against you for damages as a result of the defamatory publications made about them in the Video and Facebook publication; and
4. provide you with an opportunity to alleviate the damage our clients have sustained as a result of your behaviour.

The Publications against our clients, and the content is grossly incorrect, misleading and false. It is defamatory of them.

In December 2015 you purchased a new LS Holden Colorado SCC4x4NY15 (**Colorado**). You took delivery of the Colorado on or about 23 December 2015.



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The first 3,000km (complimentary) service was carried out on 19 February 2016, two months after purchase, and the 15,000km/9 month service was carried out on 17 August 2016, 9 months after purchase. No issues relating to oil consumption were reported at either of these services.

Approximately 16 months after you purchased the Colorado, on 4 April 2017, the 30,000km/18 month service was carried out, with an odometer reading of 34,887km.

Ken reported to the service manager that he had to fill the engine with two-three litres of engine oil. This was the first time when Tait Holden became aware that there was an issue in relation to oil consumption with your vehicle. Tait Holden, having become aware of this issue, immediately commenced an oil consumption test. Also, at this service, it was noted that the Colorado was 4,887km overdue on the service schedule and it was explained to Ken by the service manager that oil life towards the end of the service period can deteriorate rapidly and that by not having the service undertaken on schedule would contribute significantly to increased oil consumption.

On a date subsequent to 4 April 2017, but prior to 18 July 2017, Ken returned the Colorado to Tait Holden for an oil check as part of the oil consumption test, and the Colorado has travelled 3,830kms since the service on 4 April 2017. The oil level was checked and 0.38l of oil was added. The oil use calculation was 0.99l/10,000km, which was within specification, and this was explained to Ken. However, Ken appeared unhappy with that result and our client agreed to continue the oil consumption testing through to 45,000km in order to gain further data on the oil consumption usage. Ken agreed to return the vehicle for further testing at the next service.

On 18 July 2017, Ken was demonstrating out the front of our client's dealership with "Lemon" signs. Our client's service manager spoke to Ken who advised that the Colorado had now travelled 42,000kms and that 2 days earlier the oil level had been checked and was on the "low mark". Ken remarked to the service manager that he (Ken) had not topped up with oil. The service manager asked Ken if he would mind popping up the bonnet and allow the service manager to check the oil level accurately. The service manager said to Ken that he wanted to do this because it would only take 5 minutes and the information could help Ken's case with Holden. Unfortunately, Ken refused to allow the service manager to check the oil level on that occasions and Ken stated that he was "over the whole issue" and that he was sick of waiting to get a result. The service manager explained to Ken what Holden's protocol was for gathering information about oil consumption to determine if a repair was required, namely to undertake the oil consumption tests. The service manager further said to Ken that whenever Ken was ready for the vehicle to be checked, our client would be happy to do so. Ken then left the dealership.

On 15 September 2017, our client carried out the 45,000km/27 month service (odometer reading 45,576km). The oil consumption test was reset and Ken was advised to return to the dealership in 3,000km for a further inspection. This service was provided free of charge.

On 6 November 2017 the vehicle was returned to the dealership and the oil consumption test was carried out (odometer 48,465km). One litre of oil was added and the oil usage calculation was 3.4l of oil per 10,000km, which was outside the Holden specification and our client determined that an engine replacement was required.

The following day, on 7 November 2017, the service manager contacted Holden Warranty with the results of the oil consumption test and the vehicle service history. Holden Warranty replied to our client with authorisation to replace the engine in your vehicle. Our client's service manager rang and spoke to Wendy on the phone to advise her that the latest oil consumption test had satisfied Holden's protocol to replace the engine under warranty at no cost to you. The service manager informed Wendy that the repair would take approximately 1 week and a loan vehicle would be supplied to you at no cost while the repair was being carried out. Our client's service manager further advised Wendy that he would order the parts, which would take approximately 3 days to arrive, and a booking for the repair could be made at any time after that at your convenience.

On 8 November 2017, the service manager received a call from Holden Customer Care informing him that Ken apparently did not want the repair to be carried out by our client but instead Ken would prefer Kensells Holden at Tamworth to carry out the repair. After discussions with Holden, Kensells Holden agreed to undertake the engine replacement, and the service manager called Ken's mobile and left a message for Ken to call Kensell's Holden and arrange a time with them to carry out the engine replacement.

In late November 2017, the engine replacement for your vehicle was undertaken by Kensells and to this date your Colorado vehicle has never been returned to Tait Holden for repair or complaint of any kind, which would indicate that the issue concerning oil consumption has been fully rectified

Our client wishes to acknowledge, very clearly and without reservation, that there was an oil consumption issue with your Colorado. However, that issue only became evident (to our client) for the first time in April 2017, some 16 months after you purchased the vehicle. Upon becoming aware of your concerns about oil consumption, two oil consumption tests were carried out. As the above facts clearly reveal, within two days of our client determining that the oil usage was outside the Holden specification, the necessary repair work, involving an engine replacement under warranty was approved by Holden Customer Care.

Further, as far as our client is aware, there have been no issues with your Colorado since the engine was replaced by Kensells Holden in late November 2017.

However, notwithstanding these facts, it has been asserted by Ken in the Video published in March this year that:-

1. you have had problems with the vehicle over the last 2 years;
2. the situation has not got any better;
3. you have been trying to get something done about the vehicle;
4. our client has left you to be "hung out to dry"; and
5. that our client refused to help you or fix the problem with your vehicle.

The above factual circumstances clearly show that the above statements as published in the Video are misleading, false and untrue and highly defamatory of Mr Tait.

Further, statements made by you in the Video suggest that our client quite deliberately deterred you away from purchasing a Toyota and that you were "actually skewed towards the Colorado".

In fact that position is that when you were looking for your vehicle in December 2015 you were provided with quotes for 5 vehicles, including a Toyota Hilux, and you chose the Colorado. The suggestion that our client deterred you away from a Toyota and "skewed" you towards a Colorado is rejected. The sales representative who sold you the vehicle has denied this allegation outright and has stated that the decision to buy the Colorado was your decision.

In the Video it is asserted that our client was aware, when the Colorado was sold to you in December 2015 that there was an oil consumption fault with the vehicle, and reference is made in the Video to a document dated 4 December 2015. The position is that the document dated 4 December 2015 referred to in the Video relates to the model year 2014 vehicles, whereas the Colorado sold to you is model year 2015, and so this document has no relevance to your vehicle.

It is asserted in the Video that our clients' were "lying to their customers" and that our client was "knowingly selling our customers faulty vehicles". That allegation is again clearly misleading, false and deceptive and highly defamatory of Mr Tait.

The following defamatory imputations about our clients can clearly be drawn from the publication of the Video:-

1. that our clients have knowingly mislead or deceived you;
2. that our clients are dishonest and are not to be trusted;
3. that our clients have breached their obligations under the Australian Consumer Laws;
4. that our clients are dishonourable and deceitful in their business dealings;
5. that our clients have behaved in a devious way and that one needs to be cautious and dealing with them;
6. that our clients have utilised sharp practice in order to sell the Colorado vehicle to you.

Clearly these defamatory imputations are extremely serious and damaging.

Concerns Notice under the Defamation Act 2005 (NSW)

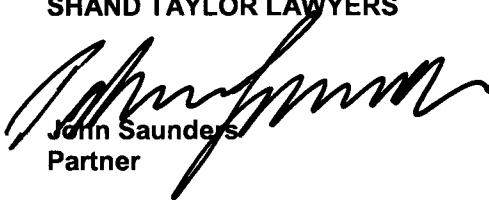
We put you on notice that if you do not provide our client with an offer to make amends within 28 days from the date you receive this letter, you will be prevented by statute from making any further offer to make amends to our client by the operation of the *Defamation Act*.

If you do make an offer to make amends, you must ensure that it complies with Section 15 of the *Defamation Act*, a copy of which is **attached**.

The matters referred to in this correspondence are extremely serious and we would urge you to promptly seek legal advice.

We reserve our clients' rights generally.

Yours faithfully
SHAND TAYLOR LAWYERS



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Defamation Act 2005 No 77

Current version for 8 January 2018 to date (accessed 5 April 2018 at 08:43)

Part 3 ► Division 1 ► Section 15

15 Content of offer to make amends

- (1) An offer to make amends:
 - (a) must be in writing, and
 - (b) must be readily identifiable as an offer to make amends under this Division, and
 - (c) if the offer is limited to any particular defamatory imputations—must state that the offer is so limited and particularise the imputations to which the offer is limited, and
 - (d) must include an offer to publish, or join in publishing, a reasonable correction of the matter in question or, if the offer is limited to any particular defamatory imputations, the imputations to which the offer is limited, and
 - (e) if material containing the matter has been given to someone else by the publisher or with the publisher's knowledge—must include an offer to take, or join in taking, reasonable steps to tell the other person that the matter is or may be defamatory of the aggrieved person, and
 - (f) must include an offer to pay the expenses reasonably incurred by the aggrieved person before the offer was made and the expenses reasonably incurred by the aggrieved person in considering the offer, and
 - (g) may include any other kind of offer, or particulars of any other action taken by the publisher, to redress the harm sustained by the aggrieved person because of the matter in question, including (but not limited to):
 - (i) an offer to publish, or join in publishing, an apology in relation to the matter in question or, if the offer is limited to any particular defamatory imputations, the imputations to which the offer is limited, or
 - (ii) an offer to pay compensation for any economic or non-economic loss of the aggrieved person, or
 - (iii) the particulars of any correction or apology made, or action taken, before the date of the offer.
- (2) Without limiting subsection (1) (g) (ii), an offer to pay compensation may comprise or include any one or more of the following:
 - (a) an offer to pay a stated amount,
 - (b) an offer to pay an amount to be agreed between the publisher and the aggrieved person,
 - (c) an offer to pay an amount determined by an arbitrator appointed, or agreed on, by the publisher and the aggrieved person,
 - (d) an offer to pay an amount determined by a court.

- (3) If an offer to make amends is accepted, a court may, on the application of the aggrieved person or publisher, determine:
 - (a) if the offer provides for a court to determine the amount of compensation payable under the offer—the amount of compensation to be paid under the offer, and
 - (b) any other question that arises about what must be done to carry out the terms of the offer.
- (4) The powers conferred on a court by subsection (3) are exercisable:
 - (a) if the aggrieved person has brought proceedings against the publisher in any court for defamation in relation to the matter in question, by that court in those proceedings, and
 - (b) except as provided in paragraph (a), by the Supreme Court.