



Ultra Tune Kingsway

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9TH October 2020

ACCC

23 Marcus Clarke Street

Canberra ACT 2601

Adjudication@acc.gov.au

Dear Sir/Madam

RE : MITSUBISHI MOTORS AUSTRALIA LIMITED – EXCLUSIVE DEALING NOTIFICATION RN1000043 – INTERESTED PARTY CONSULTATION

We are the Franchisee's for Ultra Tune Kingsway, established in 2004 at Kingsway City Shopping Centre, in one of Perth's northern suburbs. We employ four mechanics and an apprentice, on the workshop floor.

Our family have been in the car industry since 1987, having been involved in earlier years with other Ultra Tune Franchises including at Whitfords, Warwick, Joondalup, and Mirrabooka.

Our personal interests have involved us with friends and trade colleagues in motor sports, Car Clubs, and motoring enthusiast activities in general.

This involvement was directed at the mechanical level of the motoring world, in order to extract the best possible performance from standard vehicles. As you could imagine, this process of looking for improvement involves the discovery of manufacturing and design flaws as well as hidden characteristics in many makes and models. It was, and still is, part of the everyday business of many independent operators and enthusiasts in the motoring industry.

The general principle is well known, that improvements in the motor sports world eventually trickle down to the benefit of the everyday motorist, and while that idea is heavily promoted by the major manufacturers, it works out equally as well for the domestic consumer when applied by independent operators.

Equally well known in the motoring industry, is that close examination in many cases uncovers hidden operating characteristics in the vehicle. These discoveries by independent operators are essentially the manufacturer's departure from their published specifications. They are often communicated by the manufacturer as technical notes only to the dealers, and that gives them a commercial advantage in time spent in fault diagnosis and the cost of repairs and service. The hiding of this data is exacerbated by the proliferation of computerised control and data storage systems in modern cars, together with sophisticated systems which can feedback information to the manufacturers and dealers without the knowledge of the owner.

Generally, the free trade of information, goods, and services underpins a balanced market. Any contract or deal whether it involves vehicle characteristics or contract conditions cannot be considered fair or equitable when they are hidden from one of the parties. Mitsubishi's actions in this case amount to an attempt to place an obscure condition on a primary 5 year warranty by introducing a secondary contract for a 5 year warranty extension which limits the customers rights

under the primary warranty. This basic action of the secondary contract could be easily described as hidden in plain sight to many consumers. It appears to offer a benefit to the purchaser, but instead imposes a burden.

Mitsubishi effectively attempts to exclude the customer from seeking a combination of scheduled service with maintenance and repairs in any one visit to an independent provider. While the condition does not force the consumer to use Mitsubishi for non-warranty repairs, it places the consumer at a disadvantage because repairs cannot be undertaken concurrently with servicing by an independent provider.

The other confusion which can arise in the mind of the consumer is the difference between a warranty repair and a non-warranty repair and a scheduled service and a non-scheduled service. As a vehicle ages, and the list of non-warranty items grow, the confusion can also grow.

Whatever the facts of the matter in consumer law, it is likely to create the fear and uncertainty in the minds of many consumers, that it will allow Mitsubishi to void responsibility for warranty repairs if they do use an independent provider for non-warranty repairs.

In a normally competitive market, a motorist would seek repairs of non-warranty items, and advice from their own trusted provider. If the service is unsatisfactory the motorist is free to choose another from the many usually available. Although the warranty conditions proposed by Mitsubishi only apply to a specified servicing schedule, it could create a false belief in the motorist that they do not have the freedom to seek alternative advice.

Mitsubishi have a long held reputation for providing a high quality product and there is no reason to believe they would not continue in the same manner provided they remain with their current ownership. Indeed, any government backed trading advantage they can gain over their competitors in local markets makes them more attractive in the overseas world of cross continental corporate takeovers.

A change of ownership of the Mitsubishi supply chain outside the control of Australian regulators could change the situation to the further detriment of the local market. The number of approved dealers is limited and under the control of the manufacturer. If a dealer provides unsatisfactory service, a consumers options can be greatly limited by that restriction of dealerships.

The Mitsubishi dealerships are ultimately under overseas control, unlike the locally owned independent service providers. Being under overseas control is entirely different from reliance on overseas sources, as independent providers we are at liberty to source parts from within Australia or overseas according to conditions that suit the Australian market.

While we wish every success to Mitsubishi in our local market, and otherwise approve of their ten year warranty we submit that it should not be conditional on their exclusive service and thus be to the detriment of Australian consumers and workers.

As a final comment, if this submission appears overly complicated on first reading, just think of the hapless consumer trying to decipher the Mitsubishi Warranty.

Regards
Angelo Strano
Helen Strano
Michael Strano
Ultra Tune Kingsway