



Issue 1 | Volume 14 | Quarter 1 - 2023

UPDATE

NEWSLETTER OF THE MOTOR INDUSTRY OMBUDSMAN OF SOUTH AFRICA



MOTOR INDUSTRY OMBUDSMAN
OF SOUTH AFRICA

THE ROAD AHEAD

NEW VEHICLE SALES AND EXPORTS January 2023

Vehicle sales by segment

Passenger
JAN 2023 | 31,072
JAN 2022 | 30,199



LCV
JAN 2023 | 10,622
JAN 2022 | 9,624



Commercial
JAN 2023 | 1,815
JAN 2022 | 1,680



Total sales

JAN 2023 | 43,509

JAN 2022 | 41,503

Vehicle sales by channel



Top 3 selling vehicles

Passenger



LCV



MESSAGE FROM THE OMBUDSMAN

Engaging consumers to create a positive view of your business

Johan van Vreden
Motor Industry
Ombudsman of
South Africa



It is sometimes necessary to review our perspective with regards to our relationship with consumers. As March is consumer month, I thought it appropriate to relate the thoughts of Jenna Tiffany who is a Fellow at the Institute of Data and Marketing Association.

Engaging consumers to actually build an awareness of your brand and products by applying the so-called "7Ps" strategy.

The first of these is your "core" **Product**, whereby you describe the basic purpose or benefit of your product, but not the product itself. For example, a car's core purpose is transportation. Your "actual product" centres around the perception your consumers have of your product's characteristics and quality. Your "augmented product" refers to the non-physical elements of added value, such as the warranty or service plan.

The second is **Price**. Choose a pricing strategy that reflects your product's positioning and business objectives, while covering your cost per unit. Try to employ methods such as including discount pricing to sell old or excess stock, as well as value-based fees.

A third consideration is the **Placement** of your product. Choose the distribution channel that best serves your target consumers. For example, choose the direct service provider-to-consumer approach.

Promotion is another very important component, and it is considered best to advertise your product to and communicate with your target consumers. It is important to engage in promotion that ensures that your consumers understand what you offer and why it would benefit them, and also how they can purchase it.

The next principle is **People**. Whether directly or indirectly, the attitude and behaviour of your staff have a direct effect on the consumer experience of your brand, so consider everyone involved at all stages of your consumers' journey.

Of course, the **Processes** and systems your organisation employ when delivering your product to a consumer is very important as it has a powerful effect on the consumers' levels of satisfaction on their journey. Consider, for example, how much traffic there is to your website and how long it takes to respond to consumer queries.

Lastly, it is important not to neglect the **Physical** factors that influence your target consumers' experience of your product. This includes, for instance, the ambience of your place of business and the quality of your signage.

I sincerely hope that this little refresher will serve to remind us all of the importance of all the factors that need to be considered when dealing with consumers. ●



PUBLIC AFFAIRS UPDATE

Build-up to World Consumer Rights Day - Creating a fair marketplace

The Consumer Protection Forum (CPF) welcomed a bid by the North West Department of Economic Development, Environment, Conservation and Tourism (dedect) to host the 2023 World Consumer Rights day (WCRD) celebrations. This day is celebrated worldwide every year on March 15th. Usually, Consumers International determines a global theme for the event. However, the CPF felt the need for a theme that resonates with the economic reality of South African consumers (local economic market). As such, it was decided that the 2023 WCRD theme would be "Creating a Fair Marketplace".

It is important to note that under the auspices of the CPF, the WCRD is hosted by provinces on a voluntary and rotational basis. The Motor Industry Ombudsman of South Africa (MIO SA) was asked to assist with the conceptualisation of this year's event and to draw up the concept document. All the members of CPF will descend on the Northwest Province a week before the actual day to participate in the build-up to the events.



Lucious Bodibe
Public Affairs
Manager of the
MIO SA



Though the WCRD is centered around the rights of consumers, it also seeks to conscientise various businesses about their obligations when transacting with consumers. Business is the lifeblood of the economy and thus cannot be excluded from such events. Some businesses are consumers in one way or another as they transact amongst each other in the ordinary course of their business. Therefore, the build-up events to the WCRD will include compliance awareness and education.

During the preparatory meetings, members of the CPF emphasised the importance of making an impact. In order to achieve that, it is important that the messages and educational material be in language that is plain, simple, and easy to understand. The messages must also speak to the daily challenges experienced by both consumers and businesses.

The MIO SA will be deploying a team of consumer educators and compliance inspectors for the duration of this event. The Public Affairs Department will embark on a media campaign prior to the event in order to raise awareness amongst consumers, as well as the automotive and related industries. To build business confidence and maintain a good relationship with the automotive industry, the MIO SA has arranged pre- and post-event awareness information sharing sessions with various automotive groups and individual industry participants in order to highlight its findings and apply corrective measures going forward.

The MIO SA has no doubt that once the curtain falls on this important event, businesses will be fully compliant with the law and consumers will be well informed and ready to transact with confidence. ●

A CASE IN POINT



COMPLAINT

The consumer purchased a used vehicle from a dealership. The vehicle's gearbox started to fail two weeks after purchase and the dealership was informed of the issue. However, the dealership decided not to assist the complainant as it believed its sales agreement included a clause stating that it would not warrant the vehicle for any period of time and the consumer agreed to it. The consumer then approached the MIO SA with the complaint.



RECOMMENDATION

The MIO SA found that the dealership did not comply with the requirements of Section 49 and Section 55 (6) of the Consumer Protection Act (CPA) by limiting its responsibility regarding the gearbox of the said vehicle, and that Section 56 of the CPA would still apply. This means that the dealership had infringed on the consumer's rights in terms of Section 48 and Section 51 of the CPA, by limiting the recourse the consumer might have in terms of the Act. The dealership was directed to assess (no external damage) and repair/replace the vehicle's gearbox at no cost to the consumer.



COMPLAINT

The complainant contacted the respondent and requested that he be supplied with a power steering pump for his vehicle. The part supplied was allegedly incorrect, as determined by the complainant's preferred mechanic upon installation. Once the respondent was informed of this issue about two weeks after purchase, it was requested that the component be returned for inspection and a possible warranty claim, out of goodwill.



RECOMMENDATION

The respondent's supplier inspected the component and found it to be free of faults and suitable for the vehicle in question. The Motor Industry Ombudsman of South Africa (MIO SA) made reference to the provisions of Section 20 of the CPA, which relates to a consumer's right to return goods. Subsection 2 (d) states that the consumer may return

goods to the supplier and receive a full refund of any consideration paid for those goods, if the supplier has delivered goods intended to satisfy a particular purpose communicated to the supplier, and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose. In his own submission, the complainant confirms he was aware of the notices displayed at the respondent's business premises entrance as well as on the sales invoice, pertaining to the time limitation during which goods could be returned for a refund. The office of the MIO SA determined that the respondent had acted in line with provisions of Section 20 and Section 49 of the CPA by declining the return of the part for a full refund. The MIO SA therefore could not find in the complainant's favour



COMPLAINT

The consumer purchased a truck at a dealership and during a test drive a few concerns were raised. The vehicle was returned to the dealership and the consumer requested that the sales agreement be cancelled. The dealership returned the vehicle, stating that the concerns raised had been remedied. The consumer became aware that the vehicle could not be legally registered as there was a clearance discrepancy. The consumer again notified the dealership of his intention to have the sales agreement cancelled.



RECOMMENDATION

The MIO SA made reference to the provisions of Section 55 Subsection 2 (d) of the CPA, which relates to a consumer's right to receive goods that comply with any applicable standards set under the Standards Act No. 29 of 1993 or any other public regulation. The dealership stated that the clearance discrepancy was due to the vehicle's engine that had been replaced a few years prior to the date of delivery. The dealership was unable to procure a police clearance certificate for the current engine. As a result the vehicle could not legally be utilised on the road. The MIO SA therefore found in the consumer's favour to have the sales agreement cancelled. ●

PEOPLE, PUNS AND PRODUCTS

Five-door Suzuki Jimny on the cards

Having been revealed in India recently, word is that the five-door Suzuki Jimny will be launched in South Africa in the second half of 2023. It will go on sale in India in May 2023, before being introduced in other markets around the globe. The five-door measures 3 985mm in length, 1 645mm in width and 1 720mm in height, and rides on a 2 590mm wheelbase, which is 340mm longer than that of the three-door. In India it will use the same 1.5-litre engine as its smaller sibling, but gains mild hybrid technology, to produce 78kW of power and 134Nm of peak torque. The engine can be paired with either a four-speed automatic or a five-speed manual gearbox.



Kia aims to empower women

Kia South Africa kicked off 2023 with a focused mission to include and empower women in the automotive industry by actively promoting and recruiting to include more women into a variety of positions across its operations. This is the brand's next step to attract more women to the

motoring business and is in keeping with Kia's goal of becoming a top gender-empowered employer. To this end, Kia has embarked on a nationwide project to recruit at least 65 female sales executives to join its business. However, the opportunity is also open to female sales executives who have more experience in order to grow skills and capacity across all levels.

Ford Ranger exports commence

Ford has commenced exports of the new Ranger to more than 100 global markets from its manufacturing plants in South Africa. In 2022 the Silverton Assembly Plant in Pretoria became Ford's third manufacturing hub across its International Markets Group (IMG) to start production of the new global model, which went on sale in South Africa in mid-December 2022. Monthly export volumes from South Africa operations are expected to be around two-thirds of total production, through the Durban and Gqeberha ports, with Europe being the largest export market. This makes Ford one of South Africa's highest-volume vehicle exporters and a leader in the light commercial vehicle export category.



Chery targets fleet sales

Chery is expanding its corporate head office in Gauteng with the addition of a dedicated Fleet Sales Division. The new division was created in response to an increasing demand for Chery SUVs from fleet, rental and public sector buyers. It will be headquartered in Johannesburg, with dedicated team members supporting customers in all provinces. The new division is headed by Lazola Qungwana, an automotive specialist with over 15 years' experience in fleet sales and customer support. He joins Chery from Stellantis, where he looked after regional sales for the company. He is also an alumnus of Jaguar Land Rover, Volkswagen and Audi.



Play along with Citroën

The legendary Citroën 2CV – first unveiled in 1948 – lives on, thanks to a partnership between Citroën and Playmobil. This newcomer boasts technical specifications that are vastly different to those of the model it pays homage to. For obvious reasons it has zero emissions and weighs only 302 grams. It's only 283 mm long but it will be able to transport young and old alike to a time when living was easy. Designed to be accessible and robust, intended for the countryside but equally at ease in the city, the 2CV symbolised a colourful and vibrant era and was even a film star on occasion. This good cheer is evidenced in the sky-blue colour of the Playmobil 2CV and in the accessories that complement it: a farmer with his geese, his pig and his milk jugs evoking the countryside, a driver in a sailor's outfit with a laid-back hippie look, and a policeman. Thanks to a sheet of repositionable stickers, everyone can customise their 2CV Playmobil.



New MD for Continental Tyre

Continental Tyre South Africa (CTSA) has welcomed its new managing director, Matt Livigni, who brings a wealth of experience to the company, thanks to his 33-year career with Continental. Livigni succeeds Martin Buday, who headed up the South African operations from 2020. He has held various roles at Continental, including sales, marketing and product management, with a particular emphasis on the commercial vehicle tyre segment. Between 2008 and 2013 he was Northern Region manager in the United States for commercial vehicle tyres, followed by three years as the commercial vehicle tyre manager for Canada before being appointed MD in 2017. Having moved to South Africa in January this year, Livigni's main objectives for his local tenure are focused on sustainability.



Supplier obligations are non-negotiable

By Darren Smith, Head of the Case Management Department of the MIOSA

The Motor Industry Ombudsman of South Africa (MIOSA) has become aware of a growing popular trend where – in the sale of new vehicles – general terms and conditions on an offer to purchase are being used, listing components of vehicles which the dealer claims carry no warranty. These clauses make reference to the suppliers' obligations being met in terms of Section 55 Subsection 6 of the Consumer Protection Act no.68 of 2008 (CPA), by generalising the conditions of used vehicles being sold, and declaring that the vehicles sold carry no warranty.

The MIOSA follows the National Consumer Tribunal's ruling in *A Maharaj vs We Buy Cars (Pty) Ltd* NCT/144806/2019/75(1)(b). This decision was also discussed at length in Suppliers, consumers and redress for defective vehicles – The reach of the National Consumer Tribunal: *Tshehla vs Aucamp Eiendoms Beleggings*, as published in the *South African Law Journal*, Volume 137/Part 2: 229-245 by Barnard, J. (2020).

As pointed out by Barnard: "... although compliance with Section 55 (6) can allow for the standard of goods to be of a lower quality, it can never be equated with an exclusion of implied warranty in Section 56. Even if the standard of quality of the goods is lowered in terms of Section 55 (6), the implied warranty of quality will continue to apply to

those particular goods in that particular condition. Thus, despite the applicant having been expressly informed of the condition of the vehicle, the respondent would still have been bound by Section 56 of the Act."

The ruling also stated, as emphasised by Barnard (2020)12: "... that Section 55 (6) of the Act is not an endorsement of the voetstoets (selling goods "as is") clauses that were prevalent to these types of agreements prior to the promulgation of the Act and that any attempt to exclude liability when transacting, goes against the letter and spirit of the Act.

"Contracting parties will not be able to lower the quality or standard, unless the actual detail of the poor quality of goods is stipulated and the implications of the lack of safety or poor-quality goods are detailed in the agreement."

According to this judgement, attempting to exclude the implied warranty in terms of the CPA amounted to prohibited conduct. More importantly, the manner in which this was done, and the contents of the term expressing this, resulted in the supplier also being guilty of unconscionable conduct (Section 40 of the CPA) – making false, misleading and deceptive representations (Section 41 of the CPA). ●