

1 May 2013

 **NORTON ROSE**

Norton Rose Australia  
ABN 32 720 868 049  
Level 15, RACV Tower  
485 Bourke Street  
MELBOURNE VIC 3000  
AUSTRALIA

Tel +61 3 8686 6000  
Fax +61 3 8686 6505  
GPO Box 4592, Melbourne VIC 3001  
DX 445 Melbourne  
nortonrose.com

Direct line  
+61 3 8686 6672

The Director/s  
QB Industries Pty Ltd  
7 Margaret Street  
CLIFTON QLD 4361

Our reference:  
2786244

Email  
peter.cash@nortonrose.com

Dear Sir/s

**“Quadbar” – misleading or deceptive conduct**

We act for Honda Australia Motorcycle and Power Equipment Pty Ltd.

As you know, our client is the Australian distributor of Honda products, including All Terrain Vehicles. We are instructed that you are both the manufacturer and the distributor and/or retailer of a device marketed under the name “Quadbar”.

Our client recently became aware that, at the time of their sale, these devices have attached to them a sticker on which the following appears:

**COMPLIANCE PLATE**  
**Certification/ fitment contact**  
**Manufacturer QB Industries**

www.quadbar.com  
7 Margaret St Clifton, Qld Aust.

**MAXIMUM VEHICLE WEIGHT 300kg**  
**Model/ Serial Number**  
**401-IS/0004**

The intended purpose of this self-styled “compliance plate” is not obvious. Be that as it may, our client is concerned that members of the public and, in particular, prospective purchasers of your device (potentially including purchasers of its own ATVs) are likely to be misled or deceived by it, having regard to the following circumstances.

As you are most probably aware, “compliance plate” has a particular (and singular) usage in Australia, resulting from the following legislative history.

Prior to 1995, the term “compliance plate” was defined in the *Motor Vehicle Standards Act 1989* (C'th) to describe the plate required to be placed on every road vehicle (and associated equipment) to indicate that the vehicle complied with national standards, generally known as the Australian Design Rules. Notwithstanding that this expression was replaced in the Act in 1995 by the term “identification plate”, it continued to be used in the Motor Vehicle Standards Regulations 1989 until 2005. Even now, and notwithstanding the change in reference to “identification plate”, relevant government publications continue APAC-#18338371-v1

to refer to “compliance plates” rather than to “identification plates”. For example, the Department of Infrastructure and Transport’s website still states that:

*When a new vehicle has been certified as meeting the ADRs it can be fitted with a compliance plate. The fitment of a compliance plate is mandatory under the Act, and it indicates to the registering authority that the vehicle meets all the required ADRs.*

(<http://www.infrastructure.gov.au/roads/motor/standards/certification/index.aspx>)

As this quotation confirms, even within and by government, the expression “compliance plate” continues to be used widely in reference to the means by which compliance by a motor vehicle or associated equipment with an applicable Australian Design Rule is physically evidenced, particularly to end-users. In fact, we are not aware of any use in Australia of the expression “compliance plate” in any other legislative, regulatory or other context.

As a result, the application to a device of a “compliance plate” will inevitably convey to any person who observes it that the device in question has been tested against and has satisfied the requirements of the Australian Design Rules or, if not those, then at least some other statutory or regulatory scheme against which the device’s design and manufacture safety and/or efficacy can be assessed and either accepted or rejected.

In the case of your device, however, there is no relevant Australian Design Rule, and nor is there any other rule or requirement – legislative or otherwise – against which it has been, or might have been, assessed.

Accordingly, in our client’s opinion, the “compliance plate” affixed to your device is misleading or deceptive, or likely to mislead or deceive, in that it represents to consumers (and others) that:

1. there *is* an Australian Design Rule or some other mandatory requirement which, if satisfied, denotes that a (so-called) “crush protection device” such as your Quadbar is effective and/or safe for use; and
2. the Quadbar to which it is affixed in fact complies with that Australian Design Rule or other mandatory requirement,

whereas neither of these representations is true.

If you believe that any of the matters set out above are incorrect, we invite you to advise us of the points upon which you disagree, without delay.

Our client is concerned that your conduct in affixing these “compliance plates” to your devices is in breach of provisions of the Australian Consumer Law, in particular sections 18 (which proscribes misleading or deceptive conduct in trade or commerce) and 29 (which proscribes, amongst other things, false or misleading representations that goods have an approval).

In our client’s view, in order to avoid further breaches of those provisions, and in order to address past breaches, it is incumbent upon you immediately to take the following action:

1. Desist from the affixing of these “compliance plates” on your devices;
2. Remove all such “compliance plates” from all devices that are now within your possession or your control;
3. Instruct each and every retailer of your devices that these “compliance plates” were affixed without legal basis, are misleading or deceptive and must be removed from any of your devices remaining within their possession or control;
4. Obtain from each of your retailers details of each purchaser from them of your device and inform each of those purchasers, in writing, that the “compliance plate” affixed to their device has no legal basis, is not referable to any Australian Design Rule or other regulatory scheme (the precise form of

that communication is to be agreed by our client in advance) and that it should immediately be removed from the device (at your expense); and

5. Communicate with each end-user who has purchased a device direct from you in the same terms as in 4 above.

Unless within 7 days you provide us with your undertaking that you will take each of these steps within a further 14 days and that you will thereupon provide us with appropriate evidence that you have done so, our client will take such action as it may be advised in relation to the matters specified above including, without limitation, referring these matters to the Australian Competition and Consumer Commission or commencing legal proceedings against you and each other person who may have been involved in contravening the Australian Consumer Law (including by aiding or abetting those contraventions) in the manner outlined.

Please contact the writer if you have any queries regarding the contents of this letter.

Yours faithfully

Peter Cash  
Partner  
Norton Rose Australia