

THE VOLVO BRAND - IS IT A CAUSE FOR CONCERN ?

"The business of business is to acquire and keep customers" - Peter F Drucker.

1. DISCLAIMERS AND CLARIFICATIONS.

1.1. ORGANISATIONS FEATURED IN THIS DOCUMENT.

Volvo Car Company (Sweden).

Manufacturer of Volvo motor cars in Sweden and elsewhere.

Volvo Car Australia Pty Ltd. ACN 004 830 611.

The company distributing Volvo cars in Australia. So far as we know, it is owned by the Volvo Car Company.

Kellow-Falkiner Carriage Co. Pty Ltd. ACN 075 531 681.

Once an authorised Volvo dealer in Sydney and Melbourne. The Melbourne operation has closed down, but it is still a registered company and appears to be operating in Sydney, NSW. It is not known whether it still has a Volvo agency there. There are many Kellow-Falkiner companies listed by the Australian Securities and Investments Commission (ASIC), but when we talk about Kellow-Falkiner, this is the only one that we mean.

Volvo Car Credit Pty Ltd. ACN 071 337 338.

A finance company commissioned to provide finance for the purchase of Volvo motor cars. Their documentation also uses the name Volvo Car Finance. It is not known whether Volvo itself owned this company or had any equity in it. The company name is still registered, but its Volvo contracts have been taken over by Primus Automotive Financial Services under a service agreement.

Esanda Finance Corporation Ltd. ACN 004 346 043.

Finance company and subsidiary of the ANZ bank.

MyFamilyCompany Pty Ltd (a pseudonym).

The family company under which I conducted my business as an IT consultant/contractor. Between 1976 and 1988, I had bought or leased four Volvos, the last being financed by Esanda. The "our" in this paper refers to the company and the "I" to me. As I am a sole practitioner, these terms are used interchangeably except when specifically noted.

Mr. James (a pseudonym for myself).

The proprietor and sole director of the family company listed above. My reason for not giving my real name is not to avoid any responsibility for my actions (I have quite enough paperwork to support anything I say), but rather to see whether publication of this document would prompt any response by any listed party, which might throw further light on the events described.

1.2. ORGANISATIONS NOT FEATURED IN THIS DOCUMENT.

Primus Automotive Financial Services.

A wholly owned subsidiary of the Ford Motor Company, who took over the financing of Volvo car sales in June 2000, after Ford acquired Volvo. Primus also uses the name Volvo Car Finance, but they have no connection (so far as we know) with Volvo Car Credit other than to have taken over their contracts. (Actually, Primus is mentioned very briefly at the end, but in a complimentary way).

Kellow-Falkiner agencies.

When Kellow-Falkiner ceased trading in Melbourne, its agencies were transferred to other companies, one of whom occupies the original Kellow-Falkiner premises. We have been advised that none of these companies took over Kellow-Falkiner as a business enterprise. Also, so far as

we know, none of the persons mentioned in this paper or the documents works for any of these companies.

The companies in question are:

Melbourne City Volvo.

South Yarra Volkswagen

Zagames Rover MG

John Blair Peugeot

2. INTRODUCTION.

I have been a Volvo driver for nearly 25 years and in general, I have been very comfortable with the Volvo brand. That is, the behaviour and the quality of all of those components which defined the brand continually met my expectations, which were quite high. In 1998, however, there came a rude awakening, when a Volvo Dealer and Volvo's own finance arm deprived me of thousands of dollars and in so doing, aborted my plans to make a great deal more by investing that money in the stock market.

As a practitioner in the field of Customer Relationship Management or CRM (I write CRM software and manage CRM databases), I was quite astonished at the blatant way in which this was done and even more so by the response of the Volvo offices in Australia and Sweden, when I brought this matter to their attention. These events, to my mind, exposed a particular mindset or cultural attitude in the Volvo camp, which taken to the limit, leaves its customers vulnerable to significant dissatisfaction, if not to outright loss and I thought it appropriate to bring the matter to public attention. While my focus is on Volvo, who have provided the evidence, this experience perhaps raises a wider concern, arising from the very nature of a motor vehicle brand, which has features not found in any other.

3. THE NATURE OF A MOTOR VEHICLE BRAND.

Any brand has two essential features, which will determine its effectiveness. One is the perception, the image, if you like, of the product or company represented by the brand. The other is the response of the demographic to whom it is intended to appeal. The intention behind the creation of a brand is to promote a positive response, so that people will buy the product or otherwise interact with the company in a manner which will be to its benefit. A neutral response is quite acceptable, because not every product will be liked by every possible purchaser, nor will every service have the same degree of importance in the mind of every consumer. However, what must be avoided at all costs is an adverse response. The reason is quite simple. A really good customer experience will not necessarily result in multiple sales. It will induce the customer to buy the product and it may encourage repeat sales at the intervals over which the customer would normally have bought another example of the product. However, a customer adverse experience, or CAE, can be more easily leveraged to cost the company multiple sales. This is because people are risk-averse in general, and will pay more attention to an adverse story than to a complimentary one. Furthermore, most brand responses are emotional, and an adverse story will provoke an emotional response which will bear no relation to rational argument and will also be more easily received by listeners to the story.

Motor brands are somewhat different from other brands and their successful management requires attention to features that might not be considered important in other industries. I can think of at least four:

1. The expense. After the family home at three or four times annual salary, the car is likely to be a family's biggest single purchase, at about six months salary.
2. The length of time between purchases. Most motorists cannot afford to change cars immediately after a sufficiently traumatic CAE. A car drops in value about 15% the minute it is licensed for the road and that amount of work value (at least) must be retrieved before it is economical to dispose of the car. There is therefore plenty of time to contemplate the real

or imagined damage and for the damage to become magnified in the mind of the driver to the point where every turn of the ignition key may become a reminder and promote a rise in the level of disappointment or anger.

3. The relationship between car and driver. Except for the most utilitarian company car (which is outside the scope of this article anyway) most cars are selected because in some way they contribute to the image of the driver in the outside world. This is certainly true of most men and as more women spend more time outside the domestic sphere, it is becoming increasingly true of them too.
4. The impact of that image on the peers of the driver. A driver who feels that his car lets him down in the projection of his image will not necessarily want to parade his dissatisfaction ad nauseam, but due note of it will be taken by his peer group (this is where the leveraging effect of a CAE really comes into play).

When dealing with transactions which involve substantial sums of money, customers need to believe that their money is safe. They will believe this if the brand they are dealing with can be seen to have a strong ethical foundation. This will only be true if the owners of a brand not only avoid unethical behaviour themselves, but insist on the same standards of behaviour from all agents, dealers and other licensees. These associates must be vetted and selected with care and constantly monitored to ensure that the brand image is never compromised. Of course, it is never possible to be totally successful in these aims, and processes to deal adequately with customer complaints that reflect badly upon the brand (as opposed to the purely contractual relationship) must be put in place. The absence of such a process or the existence of a process which consists solely of denial, signals a potentially dangerous vulnerability for the customer. This, of course, assumes that the customer is aware of these weaknesses and it is interesting to consider whether a designed lack of transparency in these matters is unethical in itself.

I once wrote a letter to an Australian magazine <document 1> commenting on these features and suggesting that car companies would do well to have an explicit risk management process in place to identify possible CAEs and either prevent them or at least mitigate their effects. Unfortunately, when it was published, it was so over-edited that the message was quite lost and what was framed as an invitation to discuss the matter was reduced to a simple tale of woe (based upon the example I quoted in the letter). Companies spend a lot of money building up a brand image which will add substantial value to a successful company. It seems only common sense to have processes in place to counter the erosion of brand value. (Incidentally, I wonder what value Ford placed on the Volvo brand when they bought it).

In fact, I do think that most companies have some sort of process to evaluate and deal with CAEs. Where there are failures, it is usually because the company thinks it has done enough, whereas the customer thinks it should have done more. However, what makes the case I am documenting really, really interesting is that in the Volvo business universe there appears to be absolutely no process at all in place for the management of CAEs ! In pursuing my problem, I very carefully escalated it from the dealer and the in-house finance organisation to the Australian Volvo company and then to the Swedish Volvo company. I did this because I hoped that my previous attachment to the brand would be vindicated, if I could only work my way up the chain to find the person who really cared about the brand. In the end, there was no one and I had to resort to very expensive litigation to make my point. Until very recently, the only response at any level has been to refer me back down the chain to the very people I was complaining about. There has now been another response - a somewhat veiled threat of defamation action from Volvo Car Australia's solicitors, if I said anything about the matter that Volvo did not like.

One can only speculate what are the feelings, if any, of Volvo management towards their own brand. Certainly, I can find nothing in this story that conveys any sense of involvement or pride.

4. THE STORY.

4.1. PROLOGUE.

The story really starts in 1988. I had already owned three Volvos, all assembled in Australia from Swedish parts. However, the assembly facility, rented by Volvo, was being reclaimed by its owner, Nissan, and a run-out sale of locally-made Volvos was announced, prior to the importation of the fully assembled (and considerably more expensive) new models. I arranged with a local dealer to trade in my 360GLT for a 240GL and selected a white one from the row on parade in the forecourt. A few days later, I went to the dealer's premises to exchange cars, only to be told that my new car had been inadvertently sold to someone else. There was one more 240GL available, but this was an unattractive light brown colour and I rejected it. While discussing the matter with the sales team and having great difficulty in finding any solution that did not involve walking away from the deal, the MD of the company, a Mr. Reg Hunt, walked by. He recognised me as having bought another Volvo from him in 1980 (not the 360GLT). When it was explained to him what had happened, he asked "Have we got another white 240 on the premises?" A salesman replied "Only the one in the showroom which came off the boat last week." "Give that one to Mr. James", said Mr. Hunt. This prime example of good customer relations coloured my attitude to Volvo for the next ten years..

Now let us move on to 1998. I wanted to buy some shares in a U.S. company, but my broker advised that I needed more cash to invest economically in the American market. I therefore decided to trade in my trusty but aging 240GL for a new car. In order to get the cash back from the trade-in, the deal would have to be a lease, to limit the risk for the dealer. Given my previous highly satisfactory relationship with Volvo, I did not give any serious consideration to any other marque, but simply rang up the nearest Volvo dealer, a company called Kellow-Falkiner. This company had been in business for about eighty years and at various times had been agents for Rolls-Royce, Jaguar, Volkswagen, Audi and Peugeot. By return of mail, I received a handwritten note from the salesman, one Magnus Ohlsson, setting out some lease terms for an S40 with standard equipment <document 2>. These terms were very similar to figures I had obtained from various finance houses and were quite acceptable.

The following Saturday, 12th December 1998, I went to the dealer's premises to meet Mr. Ohlsson. I wished to buy a dark blue model, but apparently that would not be available for a couple of months. "However,", said Mr. Ohlsson, "we happen to have a white S40 SE with a lot of extra equipment which we prepared for another client, who eventually rejected it in favour of a station wagon. This could be made available at a very attractive price." I inspected the car and was appropriately impressed, though the price was about \$5,000 more than the standard model I had previously considered. I said I would take it, if the trade-in on my old 240 was sufficient to support the deal. In fact, the trade-in price was \$12,000 which at nearly 40% of the new car price was very reasonable for a 11-year-old car, so the deal was done. An application for lease finance was signed on the spot. It all sounded very straightforward at the time, but in reality our troubles were just beginning.

4.2. FINANCING THE DEAL.

Before proceeding with this part of the story I think I should provide some context. I and my family company had (and still have) clear records with the various credit reporting agencies and good histories of credit management and completed financial contracts. The only adverse report (if one can call it that) was from the company which had financed the leasing and eventual purchase of my 240GL. This 60-month contract finished some five months late in 1993, against a backdrop of company failures following the 1987 stock market crash and subsequent recession. Some of our clients went out of business owing us substantial sums of money and our cash flow was under pressure for a while. Fortunately, we always had plenty of work on hand and in the end, all of our creditors received every dollar they were owed, including all penalties and interest. The finance company knew what was going on and that some events were beyond our control. They gratuitously extended the lease by twelve months (we only needed five) and eventually sold the car to us for the contract residual when they could have placed it with a dealer and got twice the price for themselves. The notation on their records was "slow" which we took to mean what any ordinary

person would assume - simply a comment on the late settlement. The finance company, when asked, would only say that it meant what it said. At worst, such a classification should have prompted an inquiry as to the circumstances surrounding the late settlement.

The finance for the current deal was being handled by an energetic and enthusiastic young lady called Lee Music who (it turned out later) was on a temporary assignment from an agency. However, what had appeared to be a routine matter of contract documentation turned out to be anything but. A couple of days after the deal was agreed upon, she rang to say that Volvo Car Credit had declined to finance the lease without explanation and that she was pursuing other avenues. Later, she rang again to say that she had had no success with other companies, but she had established that the problem was caused by an extremely adverse report from a finance company called Esanda. Now Esanda was the company that had financed my 240GL, so this was a great, and unwelcome, surprise. I recounted the history of the contract to Ms Music and advised her that Esanda had even given me a commendatory letter. She thought that this information would make a significant difference. She also suggested (rather cleverly, I thought) that I should apply to Esanda for finance, to see what would happen.

I did approach Esanda, and my proposal was actually accepted by the agent who reviewed it. His comments were that our recent record was very satisfactory and that the information on their file was too stale to influence the decision in any way. Nevertheless, when it was referred to senior management for a routine sign-off, the contract was declined, again without explanation. This information, too, was passed on to Ms Music.

On the 18th December, I rang Kellow-Falkiner to find out how things were going. Ms Music was not there, but I was put through to the Sales Manager, Andy Georgiou, and during our conversation, the subject of a test drive came up. The same day, we went for a drive (in the actual car to be purchased, unregistered but running on trade plates) and at the conclusion, Mr. Georgiou produced a contract already made out in favour of my company. After adding a couple of extras, I signed the purchase contract and handed over a cheque for \$2,000 as a security deposit. I assumed that we had shaken confidence in the Esanda story and standard finance terms that we had originally requested would be made available. After all, if this was not the case, why would Mr Georgiou have been sitting there with a completed contract document in his hand ? It is also significant that he never asked me how I proposed to pay for the car.

Nothing happened until after the New Year and I had begun to think that the whole thing had fallen through. On 8th January, however, I received a call from Mr. Georgiou to say that the car was ready for collection. The next day, I went to the dealer premises, where I was introduced to Mr. Tam Alabassi, who, I was told, handled finance for Kellow-Falkiner. It appeared that Ms Music's services had been dispensed with. Then, the contract was produced - and what a contract it was !

4.3. THE CONTRACT.

Here are the details of the finance contract presented for signature compared with the standard terms (obtained by scaling up Mr. Ohlsson's figures):

Standard Terms:

Monthly repayments:	48 x 901.00	43,248.00
Residual:		29,239.00
Total:		<u>72,487.00</u>

The Contract:

First payment:		7,000.00
Monthly payments:	47 x 853.00	40,091.00
Residual:		29,239.00
Total:		<u>78,330.00</u>
Difference:		<u>5,843.00</u>

The trade-in on the 240GL was \$12,000 and the security deposit \$2,000. None of these funds were to be returned to me, despite the fact that the contract was a lease, with a maximum, but declining risk of \$8,000. The \$7,000 remaining after the first payment was to be applied as payments in advance. In other words, I was subsidising Volvo Car Credit in the amount of \$5,843.00 to buy a car and rent it back to me for four years. In addition, I was lending them \$7,000 interest free, to be paid back over about eight months. At the end of the contract, they might, if they were so inclined sell me the car for the contract residual. However, they could also opt to sell the car on the open market and if the money they got was greater than the residual, they could keep it. If the money was less, I would have to make up the difference.

Of course, I rejected this contract out of hand. But then, Mr Georghiou put in an appearance. He stated that Kellow-Falkiner had already registered the car, spending about \$6,000 on stamp duty, registration and preparation. Although he did not say so, the inference was quite clear. If I did not take the car it was effectively second-hand and Kellow-Falkiner would expect compensation for their loss. Quite by coincidence, I am sure, the costs claimed by Kellow-Falkiner were just a little more than the difference between the two sets of contract terms.

This development left me in a bit of a quandary, but after some consideration, I signed the contract. I had three reasons for doing so. Firstly, I thought at the time that Kellow-Falkiner were innocent parties in this matter and that ethically speaking, I had a duty to complete my contract to them. Secondly, if I had not fulfilled the purchase contract, I would have been in the position of having to defend my reputation, making it more difficult to challenge Volvo Car Credit. Finally, I was convinced that, as a customer who had already bought Volvos worth more than \$200,000, Volvo themselves would move very firmly to put the matter onto a fairer and more ethical footing.

4.4. INTERMEZZO.

For some months following the purchase of the S40, my time was taken up with business matters. I was not able to proceed with the U.S. investment opportunity (which would have provided quite a reasonable return if I had sold out at the right time), but another chance to invest locally soon presented itself. I had \$4,000 to invest and by the time I finally sold out a few months later, I had \$11,000 in my pocket. I then invested \$3,000 in another venture and sold out for \$4,000 after a couple of months. I now had a practical measure of what this contract had cost me (by scaling up the investment figures), and I launched a campaign to have the contract rectified and possibly get some compensation..

4.5. CORRESPONDENCE WITH VOLVO CAR CREDIT.

I began with quite a gentle letter <document 3> explaining our concerns and, in effect, inviting an amicable renegotiation of the contract. The response was a fairly brusque brush-off <document 4>. I countered with a short letter <document 5> asking the fundamental question - Why ? Before Volvo Car Credit could answer, I followed it up with a much more detailed letter <document 6>. The reply to these two letters <document 7> was very interesting. In paragraph 2, they state that they were matching an offer from another financier. In paragraph 3 they say that the loan was structured in line with my wishes. These statements are not supported at all by my account of the circumstances, the truth of which has never ever been challenged by any of the other parties.

As this line of communication was getting us nowhere, I tried another tack. I wrote another letter <document 8> setting out all of the possible interpretations of the situation and invited them to say which ones were true or false. They did not bother to reply to this, so I wrote a reminder <document 9> which invited them to tell me what Esanda had told them (potentially a much more

valuable avenue for compensation) and signalled my intention of escalating the matter to Volvo Car Australia. The reply <document 10> (showing some exasperation, I was pleased to note) referred me back to the dealer (why, I cannot imagine - the finance contract is the sticking point and this was with Volvo Car Credit) and in effect told me simply to go away.

4.6. CORRESPONDENCE WITH VOLVO IN AUSTRALIA AND SWEDEN.

My letter to Volvo Australia <document 11> was accompanied by copies of all the documentation relating to the case. It did not repeat in great detail what was set out in earlier letters, but it did ask the fundamental question "Why was I charged \$6,000 more than any other Volvo customer?". The reply, from the Managing Director, Mr Jan Eriksen himself <document 12>, did not answer the question but unequivocally endorsed the contract as being a fair one. This is an absolutely crucial point, to which I shall refer later.

Such an unqualified answer left me with nowhere else to go but to the very top. Accordingly, I wrote to the Managing Director of Volvo A.B. in Sweden <document 13>, at an address I got from their web site. This letter, too, was accompanied by copies of all preceding documentation. I received no reply to the letter, nor to my faxed reminder which, according to my logs, was safely received in Sweden. Later, it was claimed that my letter had been sent to the Volvo Truck Company in error. Perhaps so. However, it is difficult to imagine that in a small country like Sweden that the address of the Volvo Car Company was not known to the Volvo Truck Company. Even in this unlikely event, the recipient of my fax would surely have responded, if only to say they had no idea what I was talking about. I have several Swedish friends who all agree with my reading of the situation.

4.7. LEGAL ACTION.

My efforts to keep the matter in-house were now exhausted and legal action became inevitable.

It started unpropitiously, as my shop-front solicitor sent my papers to a specialist, who left them on her desk for several months while she holidayed in Europe. I did eventually get a very non-committal opinion for which she had the grace not to charge me. I then took my papers to one of the most famous law firms in Australia, Slater and Gordon <www.slatergordon.com.au/>. The lawyer I spoke to there spent an hour going through my papers and eventually said that I had a good case. He also pointed out that his firm specialised in class actions which required large numbers of research and other staff and that the fees they would have to charge would be more than the case was worth. He was able to point me to some other law firms, one of whom, Lewis Holdway <www.lewisholdway.com.au/> was exactly the type of firm I was looking for. Incidentally, Slater and Gordon made no charge for the time given to my case.

As it happens, I cannot say much about the preliminary phase, because this involved a process called "discovery". This is where each side tries to find out what story the other side will be bringing to court and what documents will be used to support it. All documents exchanged in this way, or referred to in correspondence are "privileged" until they are actually produced in court. That is, they remain private. I think I can go so far as to say, however, that the documents we saw offered no substantive counter to our claim <document 14> and we were very confident of success.

The only other communications between us and the defendants consisted of offers from them to pay paltry amounts towards my legal costs (which already added up to several thousand dollars). They were obviously not meant to be taken seriously.

Eventually, our day in court arrived. I, my barrister and my solicitor sat in one room, the defendants and their legal representatives sat in another. From time to time, the lawyers would leave the room and meet in the hallway outside, before returning with another question or offer. Finally, within minutes of going into court, the other side capitulated completely, agreeing to pay me \$5,843.00 and all of my court costs. Unfortunately, these last are calculated on a scale laid down in legislation and only covered about half of the amount I had actually spent. I was keen to go into court and seek damages to cover the rest, but my legal counsel advised otherwise, as in the particular jurisdiction that we were fighting the case in, the manner in which damages are

considered just might have let the defendants escape on a technicality. We therefore accepted the terms, which were duly set out in a settlement document <document 15>.

4.8. AFTER THE BATTLE.

I wrote again <document 16> to Volvo Car Company in Sweden, sending them all of the correspondence and legal papers, still hoping for a positive response. This time, I sent it by courier with a request for a delivery certificate. The courier service reported that they had difficulty in getting anyone at Volvo to sign for the package (perhaps they thought it contained anthrax germs!), but eventually it was handed to Volvo's customer service department. As seems to be a habit in the Volvo camp, their reply simply referred me back down the chain to Volvo Australia <document 17>. Well, Volvo Car Australia had a new MD by this time, so I thought it might be worth while to write to them <document 18>. They did not reply, but their legal representatives, with the somewhat Dickensian sounding name of Letherbarrow Lawyers, did <document 19>. Essentially, they repeated the Volvo line that they were not legally liable and made somewhat vague remarks about defamation. My reply <document 20> made it quite clear that this matter was not about legal liability but about customer relationships and stated that I felt justified in publicising their client's behaviour.

No further communications from or to the relevant parties have been made from this point on, although our offer to include in this document any justification they choose to give remains open.

5. ANALYSIS.

5.1. METHODOLOGY.

It is not my intention in this paper simply to vent my spleen on Volvo and its associates because their behaviour has cost me a lot of money. Rather, I am trying to analyse what they have done, so that potential customers can be forewarned of the possible (but not inevitable) consequences of doing business with such people. My original approach was to examine the actions of the various parties in the story and for each, to write down all of the hypothetical reasons I could think of as to why they did what they did. However, I was persuaded that I should not attempt to lead the reader towards any particular point of view, but allow himself or herself to assess the likelihood of whatever hypothesis they could formulate for themselves. Nevertheless, I also invite the reader to consider the ramifications of the possibility that there is no particular reason for the Volvo behaving as they did and that their behaviour is simply a reflection of their attitude to all their customers.

5.2. THE CONTRACT.

There is a concept called unconscionable conduct. When such conduct results in a contract which is unfair, a court may order that the contract be set aside, with or without compensation for damages suffered. However, fairness can be defined in various ways and is sometimes subjective. Nevertheless, one can make a few generic statements as to what is legally unfair. For instance, at the very least, one should be able to walk away from a potentially unfair contract. Also, before a contract is signed, the parties are entitled to all information that may affect their execution and fulfilment of the contract.

When I signed the contract to purchase the car, it was against the background of certain facts which I believed to be true.

1. I had reason to believe that we had been able to cast doubt on the report from Esanda (whatever it was) and that standard finance would be forthcoming, based on our excellent credit record and substantial annual revenues.
2. The car to be purchased was used for the test drive and not a standard demonstrator. One would assume that the sales manager was aware that there was a finance problem with this particular vehicle, but he never mentioned it.

3. The contract documentation was already filled out, clearly indicating the expectation of a sale.
4. The sales manager never asked how we were going to pay for the car.

In the absolutely worst case, our liability would be the forfeiture of the security deposit.

The car was actually registered in the name of my company by the dealer a few days after the test drive and about two weeks before I was advised that the car was available (the Christmas and New Year holidays intervened). It is well-known that cars begin to decline in value as soon as they have been registered for the road. For this reason, no dealer will register a car until the payment has been secured, by the transfer of cash or the signing of a finance contract. This is often set out explicitly in the trade agreement between dealer and finance company. At the time the car was registered, the finance company might have told the dealer that they were prepared to approve the contract, but the terms had not been made known to me and they would have no way of knowing whether I would accept them. One is entitled to assume that the dealer departed from normal practice only in order to lock in the situation where I would have to accept the more expensive contract proposed by Volvo Car Credit, or pay the dealer a penalty several thousand dollars more than the two thousand I had been prepared to commit.

The nett result was that I had been denied essential information (the contract terms) and my right to walk away from the contract without penalty had been taken away by the deliberate actions of the other parties. Therefore, the contract was, in my eyes at least, unconscionable and deserving of compensation. Unfortunately, the other parties were not brave enough to allow this to be tested in the courts, but their retreat was surely a tacit admission that we were right. They preferred to pay me more than \$12,000 and carry their own considerable legal costs rather than argue their case. As the contract was never pronounced unconscionable by the courts, we cannot use the term, so we must invent our own. So, let us say that it is a Nasty contract, defined as one which the man-in-the-street (also known as the customer) would perceive as being manifestly unfair and which, if brought to a court of law, would stand a very good chance of being declared unconscionable.

At no time in this entire saga has Kellow-Falkiner or any of the Volvo companies ever offered any arguments to counter those set out above. They have confined themselves to general comments such as "the contract is fair and reasonable" or that the terms "were necessary for our comfort", but never justified their use of these phrases..

5.3. ACTIONS OF VOLVO CAR AUSTRALIA.

Suppose that when I wrote to Volvo Car Australia originally, they had written back and said simply "Mr James, we hear what you are saying, but it is our policy not to get involved in arguments between our customers and our dealers or financiers". My complaint would be still the same and I might feel that Volvo ought to do something, but really, the only substantive criticism would be that Volvo exercises very poor control over the use that its dealers make of its brand. However, this is not what happened. What Mr Eriksen said was that "we believe this contract to be fair". In so doing, he crossed a line in endorsing a Nasty contract at a point where he had the opportunity to intervene and rescue the situation. As Managing Director, he is presumably the voice of Volvo in Australia. This view is strengthened by the fact that no one in the entire Volvo organisation who is aware of this statement has made any effort to repudiate it, despite the evidence placed before them.

5.4. ACTIONS OF VOLVO CAR COMPANY (SWEDEN).

The Swedish management of Volvo have said that they did not receive the first set of documents which we sent them. Well, we must take their denial at face value, I suppose, thought it does fly in the face of common sense. If what they say is true, they too, missed an opportunity to intervene, should they have chosen to do so. However, they did receive the second set, which included the evidence that licensees of the Volvo name forced a Nasty contract on a long-standing customer and that the behaviour of those licensees was endorsed by Volvo management in Australia. They also knew that we had it in mind to publicise the story. Despite all of this, there has been no real reaction at all.

Now, what would one expect to happen in a company which values its brand when a serious complaint is received from a customer ? If it has been anticipated (because it has happened before or the company has foreseen that it might happen), a public relations process will swing into action to deal with it. If it has not been anticipated, the first question will be "What does it mean for the brand if this matter becomes public". This is because brands are largely created and destroyed by positive or negative stories circulating in the public domain. The matter will be investigated and an evaluation of the consequences made. This is a very imprecise art. Generally speaking, It is hard to see how this can be done without speaking to the customer. Counter-arguments must be prepared to negate the damage caused by the story and these may be communicated to the customer to try and defuse the situation. There may be activity going on behind the scenes in this case, but so far no one has spoken to us about it. Until they do, my argument that Volvo has no process to manage CAEs remains sound.

Most of the foregoing discussion has centred around the actions of Volvo management. However, an ongoing puzzle in this case is exactly why Volvo have taken the stance that they have. We have been completely vindicated, not only in our legal action, but in the exemplary conduct of the lease contract itself, yet they have continued to be uncommunicative and unhelpful. One would very much hope that there is an arguable reason, because if there is none, we must conclude that it is implicit in the Volvo culture to ignore its customers concerns in all non-trivial CAEs.

There is another facet here. Australian privacy laws insist on customers being told what a vendor knows about them, precisely so that misinformation can be corrected. This is very important, because customer information is constantly being exchanged and traded and it is quite vital that customers know what is being said about them. If the attitude of Volvo management is dictated by information they have in their possession, erroneous or not, we are entitled to know what it is. Does their silence mean that they are complacent about taking advantage of erroneous information and then hiding its existence from the customer ?

6. THE CAR AND THE DRIVER.

6.1. THE CAR.

The Volvo S40 which I own will never become a minor classic like the 240 did before the end of its run, but it is not a bad car either. If the contract had been conducted properly, I would have been quite happy to keep it for my retirement. Of course, it is now carrying too much emotional baggage and I will be exchanging it for another make in due course.

My particular car is extremely well equipped with cruise control, DSA anti-skid mechanism, trip computer, sport option, internal and stacker CD players, air conditioning, four airbags, leather seats, foldaway child seats, engine immobiliser, tow bar and so on. It also has two cupholders (not found in the corresponding BMW and Audi models) !

Its good features are its seating and driver ergonomics (which are possibly the best I have ever encountered), the small turning circle and the tight, high-g geared steering. I also get occasional pleasure surprising my passengers by turning on the Sport Option and putting my foot down. Its bad features are some serious blind spots (due to the heavily raked windscreen pillars), poor access to the boot (the dimensions of the rear opening make it almost impossible to load a second standard suitcase) and an understeer that can give the unattentive driver a nasty fright on a tight corner. It is not as economical as its publicity declares, but it does not use as much fuel as the trip computer calculates. Apart from these shortcomings, it is a perfectly ordinary, comfortable car.

The only adverse event has been the need to replace the front tyres prematurely (at less than 20,000 km) due to a wheel alignment problem. My attention was not drawn to it by Volvo mechanics but by another mechanic who used to look after my old 240.

6.2. THE DRIVER.

I have always enjoyed driving and in my younger days did quite a lot of rallying. With our previous Volvos, we toured around Victoria and travelled interstate quite frequently (and the point-to-point

distances in Australia can be huge). The current car is more than four years old and yet has done less than 30,000 km. Its use is almost entirely utilitarian. There seems to be little incentive to use it for pleasurable activities, which I feel sure is a consequence of this sad case.

I mentioned earlier that the front tyres had worn out prematurely. Now, of course, front-wheel drive cars are known to have wheel alignment problems occasionally and this is the most likely cause. However, I also said that we are all risk averse, and will tend to believe the worst possible explanation even if the odds are long. So, I no longer trust Volvo to service my car and take it to the mechanic who looked after my old Volvos. He does an excellent job, but there is only one thing he cannot do. So, I am constantly reminded of the trouble this car has caused me when I look at the dashboard and see the "Service required" light. My mechanic has not got the franchised software that will allow him to turn it off !

7. EPILOGUE.

The contract has been completed without incident. The behaviour of Primus Automotive Financial Services (the Ford subsidiary which took over our contract) could not have been more different from that of Volvo Car Credit. At the conclusion of the lease, they arranged a commercial hire purchase contract so that we gained title to the car and it would appear that they waived the fortnight's interest payable on the residual pending the signing of the new contract.

While the Volvo matter remains static, there have been developments in other directions. In accordance with Australian privacy legislation, we asked Esanda for a copy of all information they held about us. After much prevarication, they eventually produced a printout of several pages in which so many facts were incorrect and so much information missing that we suspect a substitution of the record that was there originally. We have also gone back to all of the finance houses who refused us credit and asked them what they know but they have all advised that they no longer have any records. They all declined to discuss any aspects of their policy on credit research.

One interesting detail which came to light after the court case, is that a major credit reference institution was the only one which mentioned our previous connection with Esanda. According to its records, an inquiry was made by Volvo Credit for information after they had declined our proposal. Volvo Car Credit claimed that the adverse report from Esanda had governed their decision, but at that time they could have had no idea that we had ever done business with Esanda ! So, we believe that the information they relied on had to have come from another source, concealed from the public, but available to many finance houses. In view of this and the number of inconsistencies exposed in the story, we have finally decided to turn the whole sorry business over to the Australian Competition and Consumer Commission (ACCC).

8. CONTINUING ACTIVITIES.

We will update this site with any developments that directly affect our case. The ACCC site <www.accc.gov.au/> may be checked for more general information.

We are also prepared to make space available to any Volvo customer who has endured a Nasty contract or has a complaint of similar magnitude to air. However, this will not become a flame site and any offerings must be fully documented in the same way our case has been. We will also offer Volvo an opportunity to respond.

Finally, we would like to get some feedback from those whose reading of this account has prompted them to respond to the Volvo brand with a greater degree of caution. We have arranged with our service provider to count all emails to the address <**TBA**> bearing the header <**TBA**>. Add the phrase "Sweden Forever", if you come from Sweden. Don't bother with a message, the emails will be deleted afterwards. If you still think Volvo's behaviour was quite acceptable, send them emails and let them count them. Material for serious discussion may be sent to <**TBA**>. If there is enough interest, we are prepared to manufacture some bumper stickers with the message <**TBA**>

and make them available for a very modest sum (plus delivery, of course). A web address for orders will be published in due course.

Note: In the event, I never had the time or the resources to set up the web site. However, the appearance of the web log (blog) has offered new opportunities for the presentation of this material and (hopefully) the conduct of some useful discussion.