



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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September 21, 2015

Administrative Review No. 15-03-014

**Served - Personally  
AMENDED**

XTREME TRUCK & TOYS LTD.  
46 BOULDER BLVD.  
STONY PLAIN, AB T7Z 1V7

**Attention: Edward Jayasinghe**

Dear Mr. Jayasinghe:

**Re: Xtreme Truck & Toys Ltd.  
Automotive Business Licence #B1037643**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1 of the *Fair Trading Act* (FTA). This letter will detail the action being taken under section 158.1.

#### Facts

Taking into consideration your representations and the information collected by AMVIC, I find the facts to be as follows:

- A. At the time of the complaint, the Supplier is licensed by AMVIC to carry on the automotive business of retail sales and repairs.
- B. An administrative review was held with Mr. Jayasinghe (owner) on April 2, 2015 at 10:00 a.m. In attendance at the review was Mr. Jayasinghe, [REDACTED] – AMVIC Acting Team Lead, [REDACTED] – AMVIC Investigator and J. Bachinski - Director of Fair Trading (as delegated). Upon attending at the review, Mr. Jayasinghe confirmed that AMVIC did have the correct e-mail address and correct mailing address. In addition to receiving written notice of the review, Mr. Jayasinghe was contacted by telephone to attend the AMVIC review.
- C. On May 27, 2014, the complainant, AJ, purchased a 2006 Ford F350 Truck with 158,857 km from Xtreme Truck & Toys Ltd. The transaction was completed over the phone. AJ indicated the vehicle was advertised as coming with a warranty. The sale price of the vehicle was \$14,850.00. The vehicle was delivered to Grande Prairie by the Supplier.
- D. Mr. Jayasinghe confirmed at the review that the vehicle was advertised as having warranty.
- E. However, the standard Bill of Sale used by Xtreme Truck & Toys Ltd. indicates the following:

*"Sales are final and the purchaser expressly agrees that there are no warranties expressed or implied except as noted herein purchaser agrees that in the event of necessary repairs purchaser will repair at no expense to the dealer."*

AJ indicated to the Investigator that he was led to believe that the vehicle came with a warranty as advertised. AJ also indicated during the negotiation for the vehicle, an allowance of \$850.00 was added into the sale price for the vehicle warranty. Mr. Jayasinghe disputes that claim however he did eventually purchase a third party warranty for the vehicle. Xtreme Truck & Toys Ltd. advertises the following information on their website:

*"Why buy from us? All of our vehicles are thoroughly inspected and tested by our team of Certified Mechanics. Anything that does not meet our strict standards is fixed or replaced with the best factory or aftermarket parts available. Most of the other guys would not dream of taking the measures we do to make sure we are selling vehicles of the highest quality. This process takes time and money. Our thought process is: we sell our customers a great product that lasts, they refer their friends and we sell more vehicles. You might find a truck cheaper elsewhere but remember, cheap does not only mean price."*

- F. The Mechanical Fitness Assessment (MFA) was not completed until June 5, 2014, which is 9 days after the sale was negotiated. The MFA appears not to be signed by the technician and the form was left blank in areas such as the dealers name, address and AMVIC License number which is contrary to the *Vehicle Inspection Regulation (VIR)*.
- G. On June 6, 2014 the truck was delivered to AJ, however AJ did not receive any information regarding the warranty coverage he was expecting. A number of calls were placed by AJ to the Supplier attempting to obtain information on warranty. AJ indicated he was advised by Mr. Jayasinghe that the warranty information would be mailed to him and the warranty would be through Lubrico. The warranty coverage at the time of the original purchase was never received by AJ.
- H. On September 1, 2014, the vehicle started to experience mechanical problems and AJ again followed up with the Supplier as to the warranty and coverage it would provide. AJ indicated to the AMVIC Investigator that he was advised by the Supplier, Mr. Jayasinghe that he had a three month dealership warranty but that warranty did not cover injectors, which appeared to be the problem.
- I. On November 27, 2014 the Supplier purchased a warranty package (Coast to Coast) for the vehicle, however the date on the warranty indicated the vehicle was sold in November 2014 rather than the correct sale date which was May 2014. The warranty information also indicates that it was purchased by way of a third party - AAA Auto Wholesale Ltd., dealer code 1130. The Supplier indicated at the review that he has a business arrangement with AAA Auto Wholesale Ltd.
- J. On November 26, 2014, the vehicle was stolen from the lot where it was parked. The vehicle was retrieved on December 8, 2014 with some body damage that had occurred during the theft. The body damage does not impact this complaint. It is important to note however, the warranty company canceled its coverage when they became aware that the vehicle had been stolen.

- K. On December 5, 2014 repairs were made to the vehicle at a cost of \$627.64. At that time, the vehicle was identified as having a "head gasket or cylinder head cracked".
- L. On January 16, 2015 the vehicle engine was repaired. At the time of repair the vehicle has 163,970 km on it. During his period of ownership, AJ will have had the use of this vehicle for approximately 5,000 km over a period of 6 months. The total cost of repairs was \$8,571.89 and included a cylinder head, head gasket. Mr. Jayasinghe indicated the warranty purchased in November for the vehicle may have covered some of the repairs done.
- M. Both the consumer AJ and the AMVIC Investigator indicated that it was very difficult to contact the Supplier in spite of numerous phone calls. The Supplier also failed to provide a response to AMVIC when the initial complaint was received.

## Legislation

### *Vehicle Inspection Regulation*

#### **Sale of used motor vehicle**

##### **Section 15**

- (1) Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:
- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
  - (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
  - (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
  - (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;
  - (e) a statement certifying that at the time of sale the motor vehicle
    - (i) complies with the *Vehicle Equipment Regulation* (AR 122/2009), or
    - (ii) does not comply with the *Vehicle Equipment Regulation* (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the *Vehicle Equipment Regulation* (AR 122/2009);
  - (f) the signature of the technician who conducted the mechanical fitness assessment;
  - (g) the date the mechanical fitness assessment was issued.

**(1.1)** Despite section 1(1)(r), for the purposes of subsection (1), “technician” means a person who,

- (a) in the case of a mechanical fitness assessment of passenger vehicles and light trucks, holds a subsisting trade certificate in the designated trade of automotive service technician under the *Apprenticeship and Industry Training Act*,

### ***Automotive Business Regulation***

#### **Records**

##### **Section 9**

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

### ***Fair Trading Act***

#### **Interpretation of documents**

##### **Section 4**

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee’s business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
  - (b) a provision of the document is ambiguous,
- the provision must be interpreted against the supplier or licensee, as the case may be.

#### **Unfair practices**

##### **Section 6**

**(1)** In this section, “material fact” means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.

**(1.1)** It is an offence for a supplier to engage in an unfair practice.

**(4)** Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:

- (a) a supplier’s doing or saying anything that might reasonably deceive or mislead a consumer;
- (b) a supplier’s misleading statement of opinion if the

consumer is likely to rely on that opinion to the consumer's disadvantage;  
(j) a supplier's representation that goods or services have been made available in accordance with a previous representation if they have not;

### **Administrative Penalties**

#### **Notice of administrative penalty**

**158.1(1)** If the Director is of the opinion that a person

(a) has contravened a provision of this Act or the regulations,  
or

(b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

**(2)** Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

**(3)** The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

**(4)** Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

**(5)** Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

#### **Analysis – Did Xtreme Truck & Toys Ltd. engage in an Unfair Practice contrary to the *Vehicle Inspection Regulation, Automotive Business Regulation and Fair Trading Act*.**

1. The Supplier has acknowledged during the review that MFA was completed after the sale had taken place. The VIR is very clear that the MFA must be completed before entering into a contract. This is not a mere technicality but an important step in informing the consumer about the mechanical condition of the vehicle. The MFA was completed 9 days (May 27 to June 6) after the Bill of Sale was dated and completed. AJ did not see the MFA until the vehicle was delivered to him in Grande Prairie, which places the consumer at a distinct disadvantage as opposed to reviewing the MFA prior to the sale being completed. The Bill of Sale prepared by

the Supplier and signed by both parties is dated May 27, 2014. The Supplier has indicated that the Bill of Sale may not have been signed until June 6, 2014, a day after the MFA was completed. However, the onus is upon the Supplier to ensure the contract accurately reflects the dates upon which it was entered into. Section 4 of the FTA is clear that the onus is upon the Supplier to ensure there is clear and accurate documentation.

2. Section 4 of the FTA and section 9 of the *Automotive Business Regulation* (ABR) places the onus on the Supplier to keep complete records and in the absence of complete records the consumer receives the benefit of the doubt. The responsibility is clearly on the Supplier to properly document the sale. The consumer has indicated that he paid \$850.00 for an extended warranted and received verbal promises that he had such warranty coverage. The warranty for the vehicle appears to have been promised but not delivered. Mr. Jayasinghe did purchase a warranty for the vehicle in November approximately five months after the original sale took place. However that warranty would not have covered the repairs that the vehicle required. The lack of clarity on the warranty and the delay in obtaining the warranty information resulted in the repairs to the vehicle not being done. Had the Supplier responded to the consumer in a timely fashion, the consumer may have been able to follow up on the repairs prior to the vehicle being stolen. The consumer and the AMVIC Investigator both have indicated that the Supplier was unresponsive to all attempts to contact him. Once the vehicle was stolen all the warranty coverage was canceled. The AMVIC Investigator has indicated that he is in possession of a recorded phone call between the consumer and an employee of the Supplier where there was a discussion between them regarding what the warranty would and would not cover.
3. The Supplier suggests a warranty is present on all vehicles through their advertisements and the Supplier's website further suggests their vehicles are of the "highest" quality. Notwithstanding this suggestion, the vehicle in question experienced mechanical difficulties shortly after it was purchased.
4. Shortly after the vehicle was purchased the consumer paid \$8,571.89 to a garage in Grande Prairie to have the vehicle repaired. These repairs were completed January 16, 2015. Prior to the repairs being completed the consumer would have had limited use of the vehicle.

### Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Xtreme Truck & Toys Ltd. pay an administrative penalty. This is based on my opinion that Xtreme Truck & Toys Ltd. contravened sections 4 and 6 of the FTA, section 9 of the ABR, and section 15.1 of the VIR.

The business responded to the proposed administrative penalty on July 15, 2015. However the response was directed to AMVIC Investigator [REDACTED] and was not sent to the Director of Fair Trading (as delegated). As a result the response was not made available to the Director until after the final Administrative Penalty had been issued. The Director has now reopened the administrative penalty and reviewed the Supplier's response dated July 15, 2015. As well the Supplier sent in an additional response dated September 5, 2015 and that information was also reviewed and taken into consideration by the Director of Fair Trading (as delegated). All of the representations made by Investigators [REDACTED] and [REDACTED] have been taken into consideration. It is the decision of the Director of Fair Trading (as delegated) that the administrative penalty amount is **\$10,000.00**. This amount takes into consideration

the significance of the repairs, falsely advertising, failure to provide an MFA prior to negotiation, the failure to mitigate the complaint and the lack of responsiveness by the Supplier.

**The amount of this administrative penalty is \$10,000.00.**

Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, **this administrative penalty must be paid within 30 days of service of this notice. Payment may be made to the Government of Alberta and sent to AMVIC at:**

Suite 303, 9945 – 50 Street  
Edmonton, AB T6A 0L4.

Section 179 of the FTA allows a person who has been served a notice of administrative penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta

Minister of Service Alberta  
Room 204 Legislature Building  
10800 - 97 Avenue  
Edmonton, AB T5K 2B6

with a notice of appeal within 30 days after receiving the notice of administrative penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to section 180(4) of the FTA, service of a notice of appeal operates to stay the administrative penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under section 4 of the *Administrative Penalties (Fair Trading Act) Regulation*, the fee for appealing an administrative penalty is the lesser of \$1000 or half the amount of the penalty. As such, the fee for an appeal of this administrative penalty, should you choose to file one, would be \$1000.00.

Yours truly,

"original signed by"

John Bachinski  
Director of Fair Trading (as Delegated)

JB/kl

cc: [REDACTED], Sr. Manager of Investigations, AMVIC