



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

#303, 9945-50 STREET, EDMONTON, ALBERTA T6A 0L4

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June 6, 2016

Served Personally  
Administrative Review – 16-04-001

AUTOLIFE GLOBAL CORP.  
10230 176 STREET  
EDMONTON, AB T5S 1L2

Attention: Jean-Paul Demeria

Dear Mr. Demeria:

Re: Autolife Global Corp.  
Automotive Business Licence #B1038152

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 inspection the Supplier held an Automotive Business Licence and carries on business as an automotive sales business in the Province of Alberta. On February 17, 2016, the Supplier added the business activity of automotive business repairs – garage to his AMVIC Business Licence.
- B. The Supplier attended an administrative review at the AMVIC Edmonton office on May 6, 2015, which was adjourned. The review reconvened on July 6, 2015. As a result of the administrative review the Supplier voluntarily entered into an Undertaking with the Director of Fair Trading (as delegated) by voluntarily signing the Undertaking on July 27, 2015. The Director of Fair Trading (as delegated) accepted the agreed upon Undertaking and signed the Undertaking on August 21, 2015. The terms of the Undertaking were:
  1. The Supplier will ensure the mechanical fitness assessments (MFA) are properly completed and provided to the consumer prior to negotiation.
  2. The Supplier acknowledged he understands all records must be fully and accurately completed and maintained for three years pursuant to the FTA and Automotive Business Regulation (ABR).

3. An AMVIC Industry Standards inspection will be completed within 6 months of signing the Undertaking.
  4. The Supplier will obtain the proper AMVIC licence for service repair as they are completing repairs.
  5. Restitution will be provided to the consumers regarding the case files discussed at the administrative review.
  6. The Supplier agreed to pay AMVIC the costs associated with investigating the matter.
- C. The Supplier was provided with notice that an AMVIC inspection would be conducted on February 5, 2016, as per the agreed upon Undertaking. Section 145 of the FTA also has provision for AMVIC to complete an inspection at any reasonable time. The inspection was held on February 5, 2016 by AMVIC Inspectors Nicole L. and Roxy S. The results of the inspection were reviewed by the AMVIC Inspectors with the owner, Jean-Paul Demeria.
- D. The February 5, 2016 inspection identified the following concerns with the business practices:
1. Kijiji advertisements had odometer recordings showing as round numbers rather than the accurate odometer reading;
  2. Facebook and Kijiji advertisements did not include vehicle stock numbers of the used vehicles for sale;
  3. Issues with the MFA's on files including missing MFA's and incorrect or missing information on the MFA's provided;
  4. The Supplier was unable to provide the inspectors fully and accurately completed and maintained records;
  5. A discrepancy in the number of vehicles being reported by the Supplier for their AMVIC levy remittance and the number of vehicle jackets the Supplier was able to provide the Inspectors;
  6. The Supplier is completing repair work without the proper AMVIC licence to do so.
- E. The Supplier has breached the terms and conditions he voluntarily agreed upon in the Undertaking.
- F. Additionally, the Supplier had allowed their AMVIC business licence to expire on May 1, 2016 and failed to remit the January 1, 2016 – March 31, 2016 quarter levies by the due date.
- G. Upon receipt of the Proposed Administrative Penalty on May 6, 2016, the business applied to renew their AMVIC business licence and remitted the overdue levies. The business's AMVIC licence was renewed on May 19, 2016.
- H. The business responded to the Proposed Administrative Penalty in writing on May 18, 2016 via email correspondence.

## **Legislation**

### **Automotive Business Regulation (ABR)**

#### **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.

## **Advertising**

### **Section 11**

(2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services

- (c) does not misrepresent, through statements or omissions, a vehicle's mechanical or structural condition,
- (d) uses descriptions and makes promises only in accordance with actual conditions, situations and circumstances,
- (m) includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed.

## **Vehicle Inspection Regulation (VIR)**

### **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, or
  - (b) in the case of a mechanical fitness assessment of heavy vehicles and equipment, holds a subsisting trade certificate in the heavy equipment technician branch or the truck and transport mechanic branch of the designated trade of heavy equipment technician under the Apprenticeship and Industry Training Act.

### **Fair Trading Act**

#### **Unfair practices**

##### **Section 6**

- (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more potential consumers:
- (h) a supplier’s representation that goods have or do not have a particular prior history or usage if that is different from the fact;

#### **Licence required - designated businesses**

##### **Section 104**

- (1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

#### **Duty to maintain records**

##### **Section 132**

- (1) Every licensee and former licensee must create and maintain
- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
  - (b) other records and documents described in the regulations for the period specified in the regulations.
- (2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

#### **Administrative Penalties**

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

#### **Section 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.

#### **Right to make representations**

##### **Section 158.2**

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it,
- and
- (b) provide the person with an opportunity to make representations to the Director.

#### **Non-compliance with orders, etc.**

##### **Section 163**

Any person who

- (d) fails to comply with an undertaking under this Act
- contravenes this Act and is guilty of an offence.

#### **Analysis – Did the Supplier fail to comply with the provisions of the ABR, Vehicle Inspection Regulation (VIR), and FTA?**

The Supplier was informed at an AMVIC administrative review held in 2015 of the requirements mandated to operate an automotive business pursuant to the relevant legislation that regulates the



automotive industry. That administrative review identified the issue with MFA's being improperly completed and not presented to the consumer in advance of the vehicle being sold to the consumer. As well, the review covered non-compliance issues with regards to lack of proper documentation and the need to keep business records for a period of three years. The Supplier voluntarily entered into an Undertaking, acknowledging he understood that he was not in compliance with the legislation and would undertake to comply with the legislative requirements stated in the Undertaking. The Supplier is aware of the legislative requirements and has acknowledged in his response that he was not in compliance in many areas but has invested considerable monies to become compliant. The Supplier has indicated that he has experienced some unique challenges with one employee who allegedly stole a number of files from the business which had an impact on the inspection. However, the Supplier made a commitment after the previous administrative review to become compliant but has continued to follow non-compliant business practises that are clearly identified in the relevant legislation including the FTA, Traffic Safety Act (TSA) and related regulations. The Supplier was provided with more than reasonable time after the last review to make the necessary changes to his business practises to become compliant. The Supplier has now responded in writing stating he has made further improvement to his business practises to ensure compliance with the legislation.

The automotive industry is a regulated industry in Alberta. A Supplier who chooses to enter into a regulated industry must be knowledgeable in the legislation which governs the industry. In a recent decision of the Supreme Court of British Columbia, the following comment was made by Justice Skolrod\*:

*"In my view it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including obligations under the regime, as well as the obligations, and the authority, of the regulator."*

#### **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Autolife Global Corp. to pay an administrative penalty. This is based on my decision Autolife Global Corp. contravened sections 9 and 11(2)(c)(d)(m) of the ABR, section 15(1) of the VIR, and sections 6(4)(h), 104(1), 132, and 163(d) of the FTA.

Taking into consideration all of the representations made by Nicole L. - AMVIC Manager of Industry Standards, Roxy S. - AMVIC Industry Standards Officer, and the written response received by Mr. Jean-Paul Demeria, the administrative penalty amount is \$4,000.00. The amount of the penalty takes into consideration that the Supplier had previously entered into an Undertaking with similar compliance concerns and that the conditions of that Undertaking were not complied with.

Additionally, a follow up AMVIC Industry Standards inspection will be scheduled within three (3) months of the date of this administrative penalty.

**The amount of the administrative penalty is \$4,000.00**

**If the Supplier chooses, he can utilize a payment plan of:**

July 6, 2016 - \$1,000.00

August 6, 2016 - \$1,000.00

September 6, 2016 - \$1,000.00

October 6, 2016 - \$1,000.00

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 (if the Supplier chooses not to utilize the above payment plan). Payment may be made to the Government of Alberta and sent to AMVIC at:

Suite 303, 9945 – 50th 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  
103 Legislature Building  
10800 - 97 Avenue NW  
Edmonton, AB  
Canada 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 \$1,000.00.

Yours truly,

"original signed by"

John Bachinski  
Director of Fair Trading (as Delegated)

JB/kl

cc: Nicole L. [REDACTED], Manager of Industry Standards, AMVIC  
\*Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903