



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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

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July 2, 2015

Administrative Review No. 14-12-004

Served - Personally

1292709 ALBERTA LTD.  
5540 - 184A STREET  
EDMONTON AB T6M 1Y5

Attention: Martin Hausner

Dear Mr. Hausner:

Re: **1292709 Alberta Ltd. (o/a Edmonton Imports)**  
**Automotive Business Licence #1022490**

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.

Thank you for responding to the proposed Administrative Penalty by fax dated June 8, 2015 and email dated June 23, 2015. The documentation has been reviewed and after considering all of the information, I have assessed an administrative penalty accordingly.

#### Facts

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

- A. The Supplier holds an Automotive Business license and carries on business as an automotive sales business in the Province of Alberta.
- B. An administrative review commenced on January 20, 2015 with Martin Hausner (owner of Edmonton Imports), [REDACTED] (AMVIC Team Lead Investigations), Nicole L. (AMVIC Sr. Industry Standards Officer), Gina M. (AMVIC Team Lead of Consumer Services) and John Bachinski, Director of Fair Trading (as delegated) in attendance. The review was completed on March 5, 2015 with the same individuals in attendance.
- C. The consumer (CW) indicated that they did not receive a mechanical fitness assessment when they purchased a Mercedes Benz smart car from the Supplier on June 13, 2014. The Director notes that the Supplier failed to show evidence that he had provided the consumer a completed Mechanical Fitness Assessment (MFA) prior to the sale of a vehicle (Smart Car) as required under the *Traffic Safety Act* (TSA), *Vehicle Inspection Regulation* (VIR) Section. 15(1):

*Sale of used motor vehicle Section 15(1) of the Vehicle Inspection Regulation:*

*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*

- D. The consumer experienced mechanical problems with the Smart Car immediately after buying it on June 13, 2014. CW lives in Calgary and by the time the consumer arrived back in Calgary with the vehicle, there was a large oil leak from the vehicle on the driveway.
- E. The Supplier did respond quickly to the mechanical problems by traveling to Calgary on June 15, 2014 with his mechanic. The vehicle was taken back to Edmonton and repaired at no cost to CW. The Supplier indicates they test drove the vehicle for approximately one week to determine if there were any other mechanical issues and they were unable to detect any. However, when CW picked up the vehicle on July 8, 2014 she again experienced mechanical issues with the car overheating and another oil leak on the driveway back in Calgary. As the mechanic for Edmonton Imports was away at the time, CW was advised to take the vehicle to a Mercedes Benz (MB) dealer for an inspection. The MB inspection indicated additional repairs were required. Edmonton Imports offered to do the repairs at their cost and ordered the part. The required part (\$400) is still located at Edmonton Imports, however CW has decided to get the mechanical work completed elsewhere. The consumer had lost confidence in the Supplier and wanted the mechanical work completed by the MB store. The Supplier should be able to return the part as it will not be required.

**Legislation**

**Vehicle Inspection Regulation**

**Sale of used motor vehicle**

**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.

### **Fair Trading Act**

#### **Interpretation of documents**

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.

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

**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**

**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.

### **Automotive Business Regulation**

#### **Records**

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.

### **Analysis – Did 1292709 Alberta Ltd. o/a Edmonton Imports engage in an Unfair Practice contrary to the Fair Trading Act.**

1. This transaction took place by fax where various documents were transferred back and forth between the Supplier and the consumer. The Supplier has indicated that he was confident that the MFA had been sent however was unable to provide any evidence that the consumer had received the MFA. Section 4 of the FTA and section 9 of the ABR places the onus on the Supplier to keep complete records and the benefit of the doubt goes to the consumer.
2. The Supplier has experienced AMVIC compliance issues in the past with maintaining complete automotive records for his automotive business.
3. The vehicle required significant repairs and inconvenience to the consumer while those repairs were completed. While the Supplier attempted to repair the vehicle, those repairs were unsuccessful and the consumer lost confidence in the Supplier.

#### **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring 1292709 Alberta Ltd. pay an administrative penalty. This is based on my opinion that 1292709 Alberta Ltd contravened section 132 of the FTA, section 9 of the ABR, and section 15.1 of the VIR.

After taking into consideration all of the representations made by Investigators [REDACTED], Nicole L. and Gina M. and documentation received from Mr. Hausner on behalf of 1292709 Alberta Ltd., the administrative penalty amount is **\$1500**. This amount takes into consideration the significance of an automotive store to reflect a code of conduct that ensures full disclosure.

**The amount of this administrative penalty is \$1500.00.**

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 my attention.**

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 appeal 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 \$750.00

Yours truly,

"Original signed by"

John Bachinski  
Director of Fair Trading (as Delegated)

JB/rv

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