

August 14, 2017

Via email: doug@dhpbusinesscounsel.com

Administrative Review – 16-12-003

Administrative Penalty

L.C. HOLDINGS INC.
o/a CREDIT MASTERS
14605 – 123 AVENUE
EDMONTON AB T5L 2Y6

Attention: Jim Ebbers

Dear Mr. Ebbers:

Re: L.C. Holdings Inc.
Automotive Business Licence #B1043407

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1(1) of the *Fair Trading Act* (FTA) to provide you with written notice of the administrative penalty issued under that section.

Facts

The evidence before me in relation to this matter consists of the material contained in an Application Report prepared by the AMVIC Industry Standards department and dated October 14, 2016 (the "Application Report") and attached as Schedule "A". As well as the correspondence forwarded to AMVIC by L.C. Holdings Inc. on April 20, 2017. Based on that evidence, I find the facts in this matter to be as follows:

Licence Status

1. L. C. Holdings Inc. operating as Credit Masters (the "Supplier") holds a Provincial Automotive Business licence and carries on business as an automotive sales business in the Province of Alberta.

Direct communications with the Supplier and its Representatives

1. On May 8, 2015, a routine AMVIC Industry Standards inspection was completed at the business location of the Supplier. The Supplier was provided with notice that an AMVIC inspection would be conducted and the results of the inspection were reviewed with Mr. Jim Ebbers. In addition, a Findings Letter was prepared and emailed to the business on May 12, 2015. A copy of the May 12th letter is attached as Exhibit 1 to the Application Report.

2. On June 17, 2016, Industry Standards Officer – Advertising forwarded an email to the Supplier regarding the Supplier's advertisements that were not compliant with the Automotive Business Regulation ("ABR"). A copy of this email is attached as Exhibit 2 to the Application Report.
3. On September 19, 2016, Industry Standards Officer – Advertising forwarded another email to the Supplier regarding the Supplier's non-compliance with the advertising codes of conduct as set out in the Automotive Business Regulation (ABR). A copy of this email is attached as Exhibit 2 to the Application Report.
4. The Supplier was provided with further notice that a second AMVIC Industry Standards Inspection would be conducted on October 12, 2016. Again, the results of the inspection were reviewed with Mr. Jim Ebbers and a Findings Letter was prepared and emailed to the business on October 13, 2016. The October 13, 2016 Findings Letter is attached as Exhibit 3 to the Application Report.
5. The October 13th findings letter sets out several concerns regarding the October 12, 2016 inspection:
 - a. Employment of an individual who had allowed their salesperson registration to expire contrary to section 16(1) of the ABR.
 - b. Advertisements on the Supplier's website, Kijiji, and Facebook did not comply with Section 11 of the ABR including advertising vehicles the company did not own and which did not follow all-in pricing requirements.
 - c. Missing or incomplete Mechanical Fitness Assessments (MFA), and incomplete vehicle history reports.
 - d. Fixed credit advertising.
 - e. Inadequate records maintenance.
 - f. General unfair practices and breaches of codes of conduct.
6. Based on the matters outlined above, the AMVIC Industry Standards Department prepared and submitted the Application Report to the Director. It was the recommendation of AMVIC Industry Standards Officer (ISO) that an Administrative Penalty of \$24,000 be imposed and that a follow-up inspection take place within three months to ensure that all compliance concerns had been addressed.
7. The Director advised the Supplier in writing of his intention to impose an Administrative Penalty (the "Proposal") dated March 23, 2017 and provided the Supplier with an opportunity to make representations. On April 20, 2017, received the Supplier's written response to the Proposal from their legal counsel. Attached as Schedule "B" is the Supplier's written representation.

Legislation

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.

Advertising

Section 11

- (1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner
- (b) in the case of print and television advertising, that the business operator holds an automotive business licence under the Act.
- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
- (a) states whether the vehicle pictured in the advertisement is or is not the specific vehicle that is for sale.
 - (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,
 - (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and
 - (m) includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed.

General codes of conduct

Section 12

Every business operator must comply with section 6 of the Act and in addition, must

- (a) not make any representations, statements or claims that are not true or are likely to mislead a consumer,
- (f) not make any representation that savings, price benefits or advantages exist if they do not exist or if there is no evidence to substantiate the representation,

Registration

Section 16

(1) A salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.

Cost of Credit Disclosure Regulation (COC)

Advertisements

Section 4

Where an advertisement contains information that under section 6, 7(2), 12(1) or 18 requires disclosure of the APR or other information in the advertisement,

- (a) the APR must be as prominent, in relation to looking at it, listening to it, or both, as the case may be, as any of the information that required the APR to be disclosed, and
- (b) any other information required to be disclosed must be conspicuous.

Advertisements

Section 6

- (1) This section applies only to advertisements that offer credit and state the interest rate or amount of any payment.
- (2) The information required to be disclosed for the purposes of section 76(1) of the Act is
 - (a) the APR, and
- (3) In addition to the information required under subsection (2),
 - (a) an advertisement for a credit sale of a specifically identified product must disclose the cash price; and
 - (b) an advertisement for a credit sale in connection with which any non-interest finance charge would be payable must disclose
 - (i) the cash price
 - (ii) the total cost of credit,except that an advertisement on radio, television or a billboard or other media with similar time or space limitations is not required to disclose the total cost of credit.

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.

(2) Subsection (1), does not apply to a used motor vehicle sold by a dealer

(a) to another dealer,

(b) to a person or partnership engaged in the business of repairing, dismantling or wrecking motor vehicles, or

(c) through a sale by public auction within the meaning of section 119 of the Fair Trading Act.

Expiry of mechanical fitness assessment

Section 15

A dealer's mechanical fitness assessment provided under section 15(1) for a used motor vehicle expires 120 days after the date on which it was issued.

Fair Trading Act

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.

(2) It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,

(b) to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction;

(c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;

(3) It is an unfair practice for a supplier

(b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;

(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;

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.

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.

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

The material compiled by AMVIC's ISO's in the Application Report is the evidence submitted by AMVIC and relied upon in relation to this Administrative Penalty:

- At the time of the second inspection, the salesperson registration of one of the Supplier's salespersons had expired (Exhibit 4);
- The Supplier's website and Kijiji advertisements guaranteed financing, even though financing was subject to approval (Exhibit 5 and 6);
- The Supplier's website quoted bi-weekly payments and interest rates, but did not include the cost of borrowing and the term (Exhibit 5);
- The Supplier's website stated that prices were "subject to deposit required by lender" (Exhibit 5);
- The Supplier's website and Kijiji advertisements did not disclose that the operator held an AMVIC licence (Exhibit 5 and 6);
- Kijiji advertisements stated that the Supplier had "wholesale pricing", but this could not be substantiated (Exhibit 6);
- Advertisements for vehicles on Facebook did not provide stock numbers for vehicles (Exhibit 7);
- The Supplier was advertising vehicles that it did not own (Exhibits 8 and 9 and information provided by ISO in Application Report);
- A vehicle that was advertised for \$11,999 was sold for \$13,520 plus a "miscellaneous fee" of \$699 (Exhibit 9);

- Consumers were provided with vehicle history reports that were in the "pending stage", meaning that not all vehicle information was loaded or disclosed (Exhibits 11 and 12);
- Deposit records were incomplete or missing (Exhibits 13 and 14);
- MFA's were inaccurate, not provided to the consumer prior to the bill of sale being signed, or not provided at all (Exhibits 15, 16 and 17);
- Odometer readings on bills of sale did not correspond with advertisements and MFAs (Exhibits 9 and 17).

The Supplier provided responses to these allegations and evidence in its written representations of April 20, 2017 and accordingly I will deal with each of the allegations in turn:

1. At the time of the second inspection, the salesperson registration of one of the Supplier's salespersons had expired (Exhibit 4)

Section 16(1) of the ABR requires a salesperson to be registered for automotive sales. Under section 16(7) of the ABR where a salesperson ceases to act on behalf of a business operator, the salesperson is required to immediately return his or her certificate to the Director. At the time of the second inspection on October 12, 2016 an individual "R.L." was on the premises who was still listed with AMVIC as being a designated agent on behalf of the Supplier, although the registration had expired. According to Exhibit 4, the registration would have expired on April 15, 2016. This means that when the one year registration term ended for R.L. on April 15, 2016 his registration had not been renewed. However, since AMVIC had not been notified that R.L. was no longer acting as a salesperson and his certificate was not returned, his registration was not actually cancelled.

In its written submission, the Supplier provided a copy of an employment agreement with R.L. dated February 1, 2016 for the position of lot attendant. The Supplier took the position that there was no reason to continue R.L.'s registration because he no longer had the authority to act in that capacity and he was not involved in any sales after the expiration of his registration.

The Director accepts the evidence from the Supplier that at the time of the second inspection R.L. was not acting as a salesperson. Accordingly, there was no breach of section 16(1) of the ABR. However, there was a breach of section 16(7) of the ABR on February 1, 2016 when the salesperson did not return his certificate to the Director, but this was not raised by the Industry Standards Officer and will not form the basis of any Administrative Penalty. As a matter of best practices, and in order to ensure that there is no potential confusion as to which employees are registered salespeople, it is important that the list of salespersons on AMVIC's online portal be kept current, and that Supplier should ensure that individuals who are no longer designated to act as salespersons on behalf of a Supplier be removed rather than simply letting registrations expire.

2. The Supplier's website and Kijiji advertisements guaranteed financing, even though financing was subject to approval (Exhibit 5 and 6);

Attached as Exhibits 5 and 6 to the Application Report are advertisements that indicate (1) the Supplier has its own private lenders that guarantee financing and (2) the Supplier will finance a purchaser itself with no credit checks. AMVIC inspections considered these advertisements to be untrue on the basis that the Supplier could not make its finance companies grant financing and therefore could not guarantee financing to all purchasers.

In its written submission, the Supplier indicated that the advertising is true because the Supplier can finance any vehicle through internal finance channels if the consumer wishes to take that route. The Supplier provided a copy of a letter that it says it provides its customers. That letter states that if the Supplier's lenders refuse credit, the Supplier can still supply financing through its in-house financing program that requires no credit check and no income verification. While this letter does not prove that no consumer has been refused financing, there is no evidence from the AMVIC Industry Standards Department that any consumer has been refused financing. Accordingly, I accept that there is no evidence before me of a breach of section 12(a) of the ABR.

3. The Supplier's website quoted bi-weekly payments and interest rates, but did not include the cost of borrowing and the term (Exhibit 5);

The advertisement attached as Exhibit 5 for a 2008 Chevrolet Impala priced at \$9,499 states that payments on the vehicle start at \$75 bi-weekly and that rates start at 3.9%. The AMVIC Industry Standards Department took the position that under section 6 of the COC, advertisements that offer credit and state the interest rate or amount of any payment must disclose the cost of credit and the term.

In its response, the Supplier says that there is no legislation that requires this information in its advertising because the cost of borrowing and term is determined later and the information is not available at the advertising stage. Furthermore, where the Supplier does its own internal financing, its cost of borrowing and term limits also cannot be determined until it meets with the consumer.

Section 6 of the COC states that where any information required to be disclosed under section 6(2) and 6(3) of this regulation would not be the same for all credit agreements, to which, the advertisement relates, "the information must be for a representative transaction and must be disclosed as such." Accordingly, it is my conclusion that a Supplier who advertises by providing reference to an interest rate or amount of payment, must also provide the other information required under section 6 by advising what that information would be for a representative transaction (for example, in this case the Supplier could indicate what the cost of borrowing would be in relation to a payment of \$75 bi-weekly at 3.9%). The purpose of requiring cost of credit disclosure in advertising is to ensure that consumers have some understanding of the cost of credit and have time to consider what the actual cost of a purchase will be when they are being encouraged to consider some sort of financing. Giving sample payment amounts and interest rates without this additional information is precisely the type of activity the legislation is aimed against.

Accordingly, in my view advertisements such as the one in question do not comply with section 6 of the COC.

4. The Supplier's website stated that prices were "subject to deposit required by lender" (Exhibit 5).

Attached as Exhibit 5 to the Application Report is a website advertisement that contains the statement "price is subject to deposit required by lender". It was the position of the AMVIC Industry Standards Department that this was contrary to the all-in pricing requirements in section 11(2)(l) of the ABR. The Supplier has advised that some of its lenders may require an upfront deposit or charge a fee, *ultimately changing the price of the vehicle*. It is the Supplier's position that this statement is made in an effort to be forthcoming with the customer at the outset. Regardless of the Supplier's intentions, the statement

is potentially misleading to consumers. The term "deposit" generally refers to an amount that is paid as an installment or a pledge for completion of a contract and not an added fee which would change the price of the subject of the contract.

5. The Supplier's website and Kijiji advertisements did not disclose that the Supplier held an AMVIC license (Exhibits 5 & 6)

The Supplier does not dispute this lack of disclosure, but states that they were not aware that "there was any legislation or regulation" that required them to disclose that they held an AMVIC business licence, and that upon becoming aware of this, they complied with this requirement.

The fact that the Supplier was not aware of a legislative requirement does not constitute a defence to a breach of the requirement. Suppliers are expected to be aware of the FTA and relevant legislation. Furthermore, the material in the Application Report demonstrates that the Supplier was informed of this requirement in the AMVIC Findings Letter of May of 2015, by email on June 17, 2016 and by email on September 19, 2016, but made no changes to its advertising.

6. Kijiji advertisements stated that the Supplier had "wholesale pricing", but this could not be substantiated (Exhibit 6)

Section 11(2)(h) of the ABR requires any Supplier who uses the word, or words similar to "wholesale" must be able to demonstrate that the claims represented by the words are objectively and demonstrably true. Again, the Supplier does not dispute that this breach occurred, but says that it was corrected immediately after it became aware of the problem. The Supplier does say that it could have provided evidence to substantiate the claim with respect to "most of the wholesale pricing" had it been asked. However, the Supplier did not include any of this evidence in its response.

7. Advertisements for vehicles on Facebook did not provide stock numbers for the vehicles (Exhibit 7)

Section 11(2)(m) of the ABR requires a Supplier to include the stock number of a specific vehicle that is advertised as being available for sale at the time the advertisement is placed.

The Supplier again states that it was not aware of this requirement, but corrected it immediately. For the reasons stated previously, lack of awareness of regulatory requirements is not a defence. In addition, the material in the Application Report noted the Supplier indicated they were unaware of the requirement to include the stock number of the specific vehicle being advertised. However, the Supplier had been informed of this in the Findings Letter provided to him in May of 2015 and by email on September 19, 2016 and so did not correct the issue immediately as suggested in the Response.

8. The Supplier was advertising vehicles it did not own (Exhibits 8 & 9 and information provided by ISO in Application Report)

According to information in the Application Report, certain stock numbers that were advertised on Kijiji and the dealer's website related to vehicles that were not owned by the Supplier and so not actually available for sale at that time. The Industry Standards Officer indicated that in discussions with the Supplier, she was advised that the Supplier could not provide any documentation and that the vehicles

"were returned to the wholesaler and never purchased". Presumably these discussions took place in October of 2016 at the time of the second inspection.

In its Response, the Supplier advised that the three vehicles in question had in fact been purchased from by the Supplier from a wholesaler before the advertisements, but that the vehicles had been sold back to the wholesaler because of certain deficiencies. The Supplier attached a "Returned Bill of Sale" to its Response. The "Returned Bill of Sale" appears to be a wholesale agreement between a wholesaler and the Supplier dated June 3, 2016 referencing 4 vehicles. Two of those vehicles correspond by serial number to the vehicles shown in the advertisements attached to the Application Report. A third vehicle corresponds to the advertisements in terms of year, make and mileage. There is handwriting on the wholesale agreement indicating that the sales relating to the three relevant vehicles were voided and returned. There is no date indicated as to when that occurred, nor is the date provided in the Supplier's response.

The first advertisement attached as Exhibit 8 shows the vehicle was listed on Kijiji on June 24, 2016, which is after the date on the wholesale agreement. The advertisement appears to have been printed out on June 27, 2016. There does not appear to be any dates on the other two advertisements. Given the evidence now provided by the Supplier of a wholesale agreement dated June 3, 2016 in relation to these vehicles on June 3, 2016, and the lack of evidence as to when the vehicles were returned and when the advertisements ran, there is insufficient basis for me to conclude that a breach has occurred in relation to this particular matter.

9. A vehicle that was advertised for \$11,999 was sold for \$13,520 plus a "miscellaneous fee" of \$699 (Exhibit 9)

The Application Report attached as Exhibit 9 contains an advertisement showing a 2012 Mazda for sale at a price of \$11,999. It is unclear when the advertisement ran, but the advertisement indicates that the vehicle was listed on August 20, 2016. Also attached as Exhibit 9 was a copy of a document showing that a vehicle of the same description had been sold on May 3, 2016. The Industry Standards Officer took the position that the advertisement in August was misleading and contrary to sections 11 and 12 of the ABR because the mileage shown was inaccurate and also because the Supplier was advertising a vehicle that was no longer in its possession and therefore not actually available for sale. Advertising a vehicle that is not available for sale is of concern to AMVIC because this tactic can be used deliberately as a lure to bring in a customer into a business so that they can be pressured into purchasing a higher-priced vehicle instead. The Supplier in this case acknowledged that the vehicle had been sold, but said that the advertisement was a mistake by the advertisers and not the Supplier. The Supplier did not provide any substantiation of that statement.

Even if the mistake was made by the advertiser, ultimately each Supplier is responsible for the content of any advertising on its behalf. In the absence of any explanation from the Supplier as to how the error occurred or any acknowledgement of the error by the advertiser, I consider this advertisement in breach of the ABR.

10. A Mechanical Fitness Assessment (MFA) was completed on a 2009 Chrysler. The assessment was missing the Supplier's address (Exhibit 10).

The Supplier does not dispute that the MFA was not in compliance with the requirements of the VIR. Its position is that the error was corrected once it was brought to its attention. The information in the

Application Report shows that MFA deficiencies were brought to the Supplier's attention as an issue in 2015. The fact that a deficiency is corrected once a Supplier is made aware of it does not change the fact that there was a deficiency in the first place.

11. Consumers were provided with vehicle history reports that were in the "pending" stage, meaning that not all vehicle information was loaded or disclosed (Exhibits 11 and 12)

Exhibit 11 is a CarProof report that was given to a consumer. The report indicates that information was required from additional data sources before the report was complete. Information from Nova Scotia was still listed as pending. The Supplier says that the vehicle history of the vehicle showed that it had never been owned, registered or even in Nova Scotia. The Supplier says that the consumer was anxious to complete the sale and since the Nova Scotia information was irrelevant, the deal was completed.

Exhibit 12 is another CarProof report given to a consumer. The report claims information from Saskatchewan was shown as pending. The Supplier says that the front page of the report makes it clear there were no damage records found. The Supplier also says that the consumer signed the form which indicates they had no concern with the one pending item.

Suppliers should ensure that any reports that they provide to a customer representing the status of the vehicle are complete and accurate or a consumer may be misled. Suppliers are much more familiar with these forms than consumers and should not assume that consumers understand the significance of information items that are still pending. However, there is no evidence in the materials that in these two instances the status of the vehicles was other than as indicated on the report, so I do not find that any misrepresentations were made.

12. Deposit records were incomplete or missing (Exhibits 13 & 14)

Attached as Exhibit 13 to the Application Report is a Motor Vehicle Order with respect to a 2009 Chevrolet. The Order shows a \$1,000 deposit, but the dealer could only provide a copy of a receipt for a \$500 deposit. In its response, the Supplier attached as Exhibit 4 copies of two receipts which it says it has located since the Industry Standards Officer's inspection and request for documentation. The second receipt is a receipt for \$500 dated June 30, 2016. Together with the receipt that was provided initially, the Supplier has now provided documentation relating to the \$1,000 deposit indicated on the Motor Vehicle Order.

Similarly, the Supplier has attached a copy of a receipt for \$1,000 relating to the sale of a 2013 Dodge Caravan documented in Exhibit 14 to the Application Report.

13. MFAs were inaccurate, not provided to the consumer prior to the bill of sale being signed, or not provided at all (Exhibits 15, 16 & 17)

Issues with MFAs were raised with the Supplier following the initial inspection in 2015. Exhibit 16 is an MFA on the Supplier's files which was completed in the name of a completely different dealership. Exhibit 17 relates to a vehicle which the Supplier says it sold for parts value only, so no MFA was provided. However, Exhibit 17 shows that the Supplier had serviced the vehicle for the consumer prior to the vehicle being sold and that the vehicle was registered in the consumer's name. Exhibit 18 is an MFA relating to a Chevrolet Silverado which is dated after the date of the bill of sale relating to that vehicle.

In its response, the Supplier does not dispute that the first MFA was not properly completed, simply indicating that it was supposed to be filled out in the Supplier's name and was corrected when the matter was brought to the Supplier's attention. The Supplier also does not dispute that it did not provide an MFA in relation to the vehicle that it sold for parts value. The Supplier says they were advised previously that they could sell vehicles for parts value only, but does not make it clear who advised them of this. The Supplier says it no longer engages in this practice. In terms of the third MFA, the Supplier says that the deposit was taken and sale documents completed on the same day the MFA was signed, and the customer was not affected or harmed in any manner.

Based on the material in the Application Report and the Supplier's response, the Supplier was not compliant with the VIR requirements relating to MFAs in the first two transactions.

In relation to the third transaction, the MFA is acknowledged as having been received the day after the bill of sale was signed, so it is unclear how the sale documents could be said to have been completed the same day. In any event, the VIR requires that the MFA be provided *before entering into a contract to sell a motor vehicle*. The purpose of this requirement is to ensure that the consumer has complete information before any paperwork is completed and before a Supplier could take the position there is a legally binding agreement relating to the vehicle therefore the VIR was breached in relation to this transaction as well. Whether or not a consumer was affected or harmed may be relevant to the amount of the Administrative Penalty, but it is not relevant to a determination of whether or not the VIR was breached.

14. Odometer Readings on the Bills of Sale did not correspond with advertisements and MFA's (Exhibits 9 & 17)

The Industry Standard Officer noted a discrepancy between the odometer reading on the Bill of Sale attached as Exhibit 9 (40,012 km) and the advertisement for that vehicle (38,000 km) and a discrepancy between the odometer reading on the Bill of Sale attached as Exhibit 17 (167,223 km) and the MFA (170,233 km).

With respect to the first discrepancy, the Supplier advised that mileages can often vary by a slight amount from advertisements if the vehicle has been taken for test drives in the interim. I do not understand this explanation since the vehicle was sold on May 3, 2016, which is before the date the advertisement says the vehicle was listed. Based on the Supplier's explanation, the mileage in the advertisement would have been higher, not lower.

With respect to the second discrepancy in odometer readings, the Supplier does not explain the reason for the difference in readings. It cannot be that the vehicle was test driven because the mileage on the MFA is higher than on the Bill of Sale, and the MFA must be completed before the Bill of Sale is signed, so the mileage would have to be higher on the Bill of Sale. In relation to this transaction the ISO also speculated that the mileage might have been lowered on the Bill of Sale with a view to assisting the consumer in obtaining loan approval, but the ISO does not provide any basis for that speculation. The Supplier says that the mileage number made no difference to the Lender. The Supplier attached a program booking chart from a finance company which shows potential finance rates for 2008 to 2017 vehicles as evidence that the mileage number in this case made no difference. The chart appears to show that with respect to a 2012 vehicle, mileage between 130,001 and 170,000 leads to a vehicle being considered "clean" and mileage between 170,001 means a categorization as "rough". The chart appears

to validate the ISO's concerns about this transaction because the odometer reading from the Bill of Sale would put the vehicle into the "clean" category and the odometer reading from the MFA would put the vehicle into the "rough" category.

While I am satisfied that there were differences between the odometer readings in these two cases as noted by the ISO, and while it appears there may be some basis for the ISO's concerns with respect to the second transaction, I do not have any information to demonstrate what the actual mileage was at the time of sale or that any misrepresentation was made to the consumer that would constitute a breach of the FTA.

The Supplier's Response also responded to an item numbered 15. The concerns with this transaction, the Suppliers response and my findings in relation to that transaction have been dealt with under items 13 and 14 above.

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring L. C. Holdings Inc. operating as Credit Masters pay an administrative penalty. This is based on my decision that L. C. Holdings Inc. operating as Credit Masters has contravened section 6 of the COC, sections 9, 11(1)(b), 11(2)(d), 11(2)(h), 11(2)(l), 11(2)(m), 12(a), 12(f) and of the ABR, section 15 of the VIR, and sections 6(4)(h) and 132 of the FTA

Taking into consideration the representations made by AMVIC's Industry Standards department and the representations made by the Supplier the administrative penalty being imposed is **\$10,000.00**. This penalty amount takes into consideration the factors outlined in section 2 of the *Administrative Penalties (Fair Trading Act) Regulation*, AR 135, 2013 and the principles referenced in *R. v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular, the Director took into account:

1. The previous history of non-compliance identified in the first inspection which was not rectified by the time of the second inspection;
2. The potential harm to the public of the types of conduct outlined;
3. The maximum penalty under section 158.1(3) of the FTA of \$100,000;
4. The deterrent effect of the penalty;
5. The administrative penalties issued in similar circumstances.
6. Absence of intent of the business to become compliant: the Supplier was informed about the advertising requirements and continued to violate the FTA and the related legislation regarding the advertising rules.

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

Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, you are required to submit payment within thirty (30) days of the date of service of this notice. Failure to pay the administrative penalty will result in a review of the licence status. Payment may be made payable to the "Government of Alberta" and sent to AMVIC at:

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

If payment has not been received in this time period, the Notice may be filed in the Court of Queen's Bench and enforced as a judgement of that Court pursuant to section 158.4 of the *Fair Trading Act* and further disciplinary action will be considered.

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"

Brenda Chomey
Director of Fair Trading (as Delegated)

/kl
Enclos.

cc: Evelyn L-J., Manager of Industry Standards, AMVIC