

March 1, 2019

Served Personally

Administrative Review – 18-10-013

Administrative Penalty

AUTOCANADA CALGARY C MOTORS GP INC.
O/A COURTESY CHRYSLER DODGE JEEP RAM
125 GLENDEER CIRCLE SW,
CALGARY, AB T2H 2S8

Attention: Christopher Burrows and Steven Landry

Dear Sir(s):

**Re: Autocanada Calgary C Motors GP Inc. o/a Courtesy Chrysler Dodge Jeep Ram
Automotive Business Licence B1041835**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* ("CPA") 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 investigations department (the "Application Report") and attached as Schedule "A". AMVIC did not receive any written representations from the Supplier. Based on all the evidence, I find the facts in this matter to be as follows:

Licensee Status

Autocanada Calgary C Motors GP Inc. o/a Courtesy Chrysler Dodge Jeep Ram (the "Supplier") holds an 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 3, 2017, a routine AMVIC Industry Standards inspection was completed at the business location of the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter was completed and sent to the business on May 15, 2017. The Findings Letter outlined the following concerns:
 - a) One salesperson was engaging in selling vehicles while they were not registered to do so contrary to Section 16(1) of the Automotive Business Regulation ("ABR").

- b) Seven of the eight used sales deal jackets had incomplete and/or errors with the Mechanical Fitness Assessment ("MFA") contrary to Section 15(1) of the Vehicle Inspection Regulation ("VIR").
 - c) During the inspection six deals were reviewed by the inspector and of those six deals, three of the deals did not reflect all-in pricing contrary to section 11(2)(l) of the ABR.
 - d) Online advertisements (Facebook) did not include the AMVIC licensed logo or equivalent wording contrary to section 11(1)(b) of the ABR.
 - e) Advertisements make claims such as "No payments for 90 days", however the advertisement does not include the fine print such as: terms and conditions, the eligibility requirement, whether or not interest accrues. A licensed business must disclose fees, costs and details of all promotions, contest and sales where applicable as per Section 12(a) of the ABR.
 - f) Online advertisements (Facebook) did not include the vehicle's stock number contrary to Section 11(2)(m) of the ABR.
 - g) Discrepancies were found between the information provided by the consumer and the information the dealership provided to the financial institution regarding employment and salary. This is contrary to section 6(2)(c) and 6(3)(b) of the CPA.
2. On March 2, 2018, a follow up AMVIC Industry Standards inspection was completed on the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter dated March 20, 2018 was completed and sent to the business on April 12, 2018. The follow up inspection found:
- a) Two salespersons were engaging in selling vehicles while not registered contrary to section 16(1) of the ABR.
 - b) Online advertisements (Facebook) had odometer readings shown as rounded numbers, which does not indicate an accurate odometer to consumers contrary to Section 11(2)(d) of the ABR.
 - c) Online advertisements (Facebook) did not include the vehicle's stock number contrary to Section 11(2)(m) of the ABR.
 - d) Advertisements make claims such as "You're Approved", however cannot make guaranteed approval claims or make representations, statements or claims that are not true or are likely to mislead a consumer, or if there is no evidence to substantiate the representations as per Section 12(a) and 12(f) of the ABR.
 - e) Four of the seven used sales deal jackets that were reviewed had various issues with the completion of and/or disclosure of the MFAs contrary to sections of Section 15(1) of the VIR.
 - f) During the inspection 12 deals were reviewed by the inspector and of those 12 deals, four of the deals did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - g) Two deals had discrepancies between the information provided by the consumer and the information the Supplier provided to the financial institution regarding mortgage/rent. This is contrary to section 6(2)(c) and 6(3)(b) of the CPA.

3. There were several issues found during both inspections. The legislative breaches that were found during both inspections were:
- a) Various issues with the completion of and/or disclosure of the MFAs in the deal jackets breaching various and numerous sub-sections of Section 15(1) of the VIR.
 - b) Salespersons were engaged in automotive sales despite not being registered as required by Section 16(1) of the ABR.
 - c) The Supplier is not complying with all-in pricing requirements contrary to Section 11(2)(l) of the ABR.
 - d) Discrepancies were found between the information provided by a consumer and the information the Supplier provided to the financial institution. This is contrary to Section 6(2)(c) and 6(3)(b) of the CPA.

A Proposed Administrative Penalty was served personally (Attached as Schedule "B") to the Supplier on January 30, 2019, requesting that Autocanada Calgary C Motors GP Inc. o/a Courtesy Chrysler Dodge Jeep Ram provide their written representations to AMVIC no later than February 15, 2019. To date AMVIC has not received any written representations from the Supplier.

Legislation

Automotive Business Regulation

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
 - (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 representations that savings, price benefits or advantages exist if they do not exist or if there is no evidence to substantiate the representation.
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

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.

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.

Expiry of mechanical fitness assessment**Section 16**

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.

Consumer Protection Act**Unfair practices****Section 6**

- (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
 - (a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;
 - (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;
 - (l) where credit is extended,
 - (i) a statement of any security taken for payment, and
 - (m) where there is a trade-in arrangement, a description of and the value of the trade-in;
 - (n) the signatures of the consumer and the supplier.

Duty to maintain records**Section 132**

- (1) Every licensee and former licensee must create and maintain
 - (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 CPA, ABR, and VIR?

A routine AMVIC Industry Standards inspection was completed on May 3, 2017. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The inspector concluded that a follow-up inspection was required due to the legislative breaches found during the inspection.

A second inspection was completed on March 2, 2018. The inspection findings were not discussed with the Supplier as the spokesperson for the Supplier was not available, therefore the Findings Letter was sent to the business on April 12, 2018. The inspection found legislative breaches consistent with those that had been previously identified in the initial inspection, as well as additional legislative breaches. Details of the breaches that are currently under consideration are identified in the March 20, 2018 Findings Letter and the supporting documents are attached as Schedule "A". Based on the facts outlined by the Inspector and the documents, there is evidence to support the breaches as alleged.

During both inspections it was identified that the Supplier was in breach of Section 11(2)(l) of the ABR, the legislative requirement regarding all-in pricing was discussed with the Supplier during the first inspection for educational purposes. During the second inspection, the ISO reviewed vehicles sold by the Supplier and compared them to their advertised price and identified that four vehicles were sold above the advertised price contrary to Section 11(2)(l) of the ABR. Furthermore, during both inspections it was identified that the Supplier's online advertisements do not include the vehicle's stock number contrary to Section 11(2)(m) of the ABR. Additionally, during the second inspection it was identified that not only are the stock numbers not listed on the online advertisements, but that the odometer readings have been rounded up or down contrary to Section 11(2)(d) of the ABR. During the first inspection, the inspector indicated that the Supplier was using advertisements such as "No payments for 90 days". However, the Supplier failed to include the fine print such as: terms and conditions, the eligibility requirement, whether or not interest accrued contrary to Section 12(a) of the ABR. During the follow up inspection, the inspector identified that the Supplier's advertisements, "You're Approved", still did not include the fine print and is a contravention of Section 12(a) and 12(f) of the ABR because a Supplier cannot make guaranteed approval claims or make representations, statements or claims that are not true or are likely to mislead a consumer, or if there is no evidence to substantiate the representations.

On May 3, 2017, the inspector indicated that the Supplier had one salesperson engaging in sales that was not AMVIC registered to do so. During the follow-up inspection, the inspector identified that the Supplier had two salespersons who had been engaging in sales that were not AMVIC registered contrary to Section 16 of the ABR.

Both Finding Letters discussed the legislative requirements regarding MFA compliance pursuant to Section 15 of the VIR. In the second inspection, the inspector reviewed seven used sales and of the seven used vehicle sales, four MFAs did not comply with the MFA requirements. Four MFAs were missing the date the consumer signed the MFA, indicating the consumers were not provided the MFAs prior to entering into a contract to purchase contrary to Section 15(1) of the VIR, one MFA was missing the vehicle's VIN number contrary to Section 15(b) of the VIR, and two MFAs were missing the consumer's name as required by Section 15(c) of the VIR. Section 12(o) of the ABR requires automotive businesses to comply with all legislation regarding the sale of vehicles, therefore by breaching Section 15 of the VIR the Supplier has further breached Section 12(o) of the ABR.

During both inspections, the Supplier was advised that there were discrepancies between the information the consumer had provided to the Supplier and the information the Supplier provided to the financial institution. The Findings Letter indicates that during the first inspection the Supplier misrepresented the applicant to the financial institution on two occasions. In the second Findings Letter, the inspector identified that the Supplier had discrepancies on the credit application on two separate sales transactions. No supplier should enter into a consumer transaction if there is no reasonable probability that the consumer is able to afford the automotive vehicle given the information they have provided contrary to Section 6(2)(c) and 6(3)(b) of the CPA.

The AMVIC Industry Standards department has been conducting inspections and providing education to the industry about the legislative requirements expected to be met by automotive businesses. After the first inspection, the Supplier had been given the opportunity to implement changes to ensure business practices were brought into compliance with the legislation. Based on the Finding Letters from the second inspection, the business has clearly not brought all their business practices into compliance.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Autocanada Calgary C Motors GP Inc. o/a Courtesy Chrysler Dodge Jeep Ram pay an Administrative Penalty. This is based on the evidence presented by Inspections and contained in the Application Report that Autocanada Calgary C Motors GP Inc. o/a Courtesy Chrysler Dodge Jeep Ram contravened Sections 11(2), 11(2)(d), 11(2)(l), and 12(a), 12(f), 12(o), 16 of the ABR, Section 15(1) of the VIR, and Sections 6(2)(c), 6(3)(b) of the CPA.

Taking into consideration the representations made by AMVIC's industry standards department, I am imposing an Administrative Penalty to Autocanada Calgary C Motors GP Inc. o/a Courtesy Chrysler Dodge Jeep Ram in the amount of **\$7,500.**

1. The seriousness of the contravention or failure to comply;
2. Whether or not the person who receives the notice of Administrative Penalty has a history of non-compliance;
3. Absence of intent of the business to become compliant: the previous history of non-compliance identified by AMVIC Inspectors.
4. The degree of wilfulness or negligence in the contravention or failure to comply;
5. The maximum penalty under section 158.1(3) of the CPA of \$100,000.

The amount of the administrative penalty is \$7,500.

Pursuant to section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation ("APR"), you are required to submit payment within 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 CPA and further disciplinary action will be considered.

Section 179 of the CPA 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 CPA, 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 APR, 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.

Yours truly,

"original signed by"

AMVIC
Gerald Gervais, Registrar
Director of Fair Trading (as Delegated)

cc: [REDACTED], Senior Manager of Investigations, AMVIC