
**IN THE MATTER OF THE
CONSUMER PROTECTION ACT (CPA)**

THIS **UNDERTAKING** is made pursuant to Section 152 of the *Consumer Protection Act* ("CPA").

BY: 864653 ALBERTA LTD. operating as COUNTRY AUTO SALES & SERVICE
864653 ALBERTA LTD. operating as AUTO COMPLETE
864653 ALBERTA LTD. operating as COUNTRY AUTO CREDIT
at or near the city of Calgary, in the Province of Alberta
(hereinafter called the "Supplier")

TO: The DIRECTOR OF FAIR TRADING (as delegated)
(hereinafter called the "Director")

WHEREAS:

- A. At the time of the complaint, the Supplier was licensed by the Alberta Motor Vehicle Industry Council ("AMVIC") to carry on the automotive business activity of retail sales, wholesale, garage and auto body in the Province of Alberta.
- B. Three AMVIC investigations (case file 20-11-019, 20-11-482, and 20-11-503) were initiated as a result of one industry tip and two consumer complaints received by AMVIC in November 2020, alleging advertising concerns, and selling motor vehicles with known mechanical failings and or hail damage.
- C. An administrative review was held via teleconference call on May 18, 2021 at approximately 9 a.m. Participating in the administrative review was Mr. Safder Ahmed, owner and sole director of the Supplier; Mark Wittenberg, finance department manager for the Supplier; Mark Cuevas, sales manager for the Supplier; [REDACTED] AMVIC investigator; [REDACTED], AMVIC manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated).
- D. On Nov. 12, 2020 AMVIC received an industry tip that a motor vehicle that was privately purchased in the United States and could not pass an inspection due to needing significant repairs was posted for sale in the online inventory for the Supplier (refer to case file 20-11-482). The United States importer took the vehicle with full disclosure of the vehicle's mechanical failings to an auction business in Calgary, AB to have it sold and shortly thereafter noticed it was posted for sale on the Supplier's website.
- E. The AMVIC investigation revealed that a 1999 Chevrolet Silverado ("the Silverado") requiring an estimated \$15,000 in repairs and deemed to be non-repairable from a subsequent inspection was purchased by the Supplier on Oct. 6, 2020 and the bill of sale ("BOS") shows the auction declarations. The subsequent advertisement posted on the website of the Supplier did not disclose that the Silverado was an imported vehicle from the United States nor did it mention the mechanical failings.

- F. On Oct. 27, 2020 the Supplier sold the Silverado to consumer ("LL") 21 days after it had been purchased by the Supplier from the auction. LL subsequently then filed an AMVIC complaint (refer to case file 20-11-019) as a result of the condition of the vehicle. The AMVIC investigation revealed that the BOS to LL states "*wholesale deal*", however the purchaser is not an AMVIC-licensed wholesaler nor a holder of an AMVIC licence that would allow for the Supplier to sell the vehicle wholesale. The BOS lists the vehicle as being sold as parts only and LL was never given a Mechanical Fitness Assessment ("MFA") prior to the purchase of the Silverado. The Silverado is listed on the BOS in kilometres when in fact the vehicle is in miles and the Supplier had knowledge of this.
- G. Through the Supplier's advertising and onward to the sale of the Silverado to LL, the Supplier failed to fully disclose the Silverado's mechanical failings and as a result breached several sections of the CPA and its associated regulations:

Consumer Protection 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 consumers or potential consumers:

- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

Automotive Business Regulation**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,

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,
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

Vehicle history information**Section 31.1**

(1) A business operator engaged in automotive sales must disclose the following information in accordance with subsection (2), on the basis of information the business operator knew or ought to have known:

- (h) whether the vehicle has been damaged in an incident or collision where the total cost of repairs fixing the damage exceeded \$3000 and, if the repairs were carried out by the business operator, the total cost of the repairs;

- (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
 - i. the name of the jurisdiction in which the vehicle was previously registered,
 - ii. whether the vehicle was required to be inspected prior to registration in Alberta, and
 - iii. whether the vehicle passed or failed any required inspections.

Bill of sale**Section 31.2**

(1) A business operator engaged in automotive sales must use a bill of sale that includes the following:

- (a) the name and address of the consumer;
- (b) the number of the government-issued identification that the business operator uses to confirm the identity of the consumer;
- (c) the name, business address and licence number of the business operator;
- (d) if a salesperson is acting on behalf of the business operator, the name and registration number of the salesperson;
- (e) the make, model and model year of the vehicle;
- (f) the colour and body type of the vehicle;
- (g) the vehicle identification number of the vehicle;
- (h) the date that the bill of sale is entered into;
- (i) the date that the vehicle is to be delivered to the consumer;
- (j) an itemized list of all applicable fees and charges the consumer is to pay, including, without limitation:
 - i. charges for transportation of the vehicle;
 - ii. fees for inspections;
 - iii. fees for licensing;
 - iv. charges for warranties;
 - v. taxes or levies, including GST;
- (k) the timing for payment by the consumer of the fees and charges under clause (j);
- (l) an itemized list of the costs of all extra equipment and options sold to the consumer in connection with the vehicle or installed on the vehicle at the time of sale;
- (m) the total cost of the vehicle, which must include the fees, charges and costs listed under clauses (j) and (l);
- (n) the down payment or deposit paid by the consumer, if any, and the balance remaining to be paid;
- (o) if the consumer is trading in another vehicle to the business operator in connection with the purchase of the vehicle,
 - i. information about the vehicle being traded in, and
 - ii. the value of the trade-in allowance incorporated into the cost of purchase of the vehicle;
- (p) the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle;

- (q) if, in connection with the purchase of the vehicle, the business operator enters into a credit agreement with the consumer or arranges a credit agreement for the consumer, the disclosure statement required under Part 9 of the Act;
 - (r) an itemized list of any items or inducements the business operator agrees to provide with the vehicle at no extra charge;
 - (s) the odometer reading of the vehicle at the time the bill of sale is entered into, if the vehicle has an odometer and the odometer reading is available to the business operator;
 - (t) the maximum odometer reading of the vehicle at the time of delivery to the consumer if the vehicle has an odometer and
 - i. the odometer reading is not available to the business operator at the time the bill of sale is entered into, or
 - ii. the vehicle is a new, specifically identified vehicle;
 - (u) any mechanical fitness assessment that has been issued under the *Vehicle Inspection Regulation* (AR 211/2006);
 - (v) any disclosure statement or documentation respecting a vehicle's previous use, history or condition, including disclosure statements or documentation required under the laws of another jurisdiction;
 - (w) a declaration that the business operator has disclosed to the consumer the information required under section 31.1.
- (2)** The business operator must ensure that all restrictions, limitations and conditions imposed on the consumer under the bill of sale are stated in a clear and comprehensible manner.

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.

- H. After LL filed his AMVIC complaint, the Supplier subsequently refunded LL the purchase price of the Silverado and took responsibility for its' actions.
- I. On Nov. 29, 2020 AMVIC received a complaint regarding the sale of a 2014 Dodge Ram, ("the Ram"), sold to consumer ("JL") that had hail damage (refer to case file 20-11-503).
- J. The AMVIC investigation revealed that the Ram had significant hail damage and was known to the Supplier yet not disclosed to JL. In addition, JL was falsely assured by the Supplier that a hail claim had been made to insurance and the damage would be repaired with the insurance money. The AMVIC investigation determined that an insurance claim by the Supplier had in fact never been made. JL made the decision, based on false assurances by the Supplier to hold onto the Ram pending the repairs with insurance money. When no action had occurred months later, the Supplier offered to buy back the Ram at a significant loss to the consumer. By the Supplier representing to JL that an insurance claim was filed, when no claim was ever filed, the Supplier breached Section 6(3)(d) of the CPA and Section 12(a) of the Automotive Business Regulations ("ABR").

Consumer Protection Act

Unfair practices

Section 6

- (3) It is an unfair practice for a supplier
(d) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.

Automotive Business Regulations

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,
- K. During the administrative review, the owner and sole Director for the Supplier, Mr. Ahmed expressed that he is not involved in every consumer transaction, but that he had personally contacted JL to discuss the concerns and try and remedy the situation. Mr. Ahmed stated that JL was more interested in cash back and JL's accounts of the conversation to the AMVIC investigation differ from what Mr. Ahmed recalls. Mr. Ahmed believes there was miscommunication between JL and himself. Mr. Ahmed has a licensed autobody repair shop and is agreeable to repair the hail damage of the Ram at no cost to JL if given the opportunity.

- L. The Supplier holds three AMVIC business licences: 864653 Alberta Ltd. operating as Country Auto Sales and Service which has two locations in Calgary, AB and is licensed for used sales, wholesale and garage business activities. 864653 Alberta Ltd. operating as Auto Complete who is authorized for garage and auto body repairs. The AMVIC investigation revealed that Country Auto Credit is also a registered trade name to the legal entity 864653 Alberta Ltd. and their social media page shows Country Auto Credit, however the Supplier does not currently hold an AMVIC licence to operate under this name. During the administrative review, the Supplier sought clarification regarding its' obligations to licence this business with AMVIC and a discussion was held. The Supplier is agreeable to remedy this oversight on their part when it was brought to their attention.

Consumer Protection Act**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.

- M. During the course of the three AMVIC investigations, the AMVIC investigator completed a thorough review of the Supplier's overall business practices and identified some areas for improvement. The applicable legislation was brought to the attention of the Supplier and discussed during the administrative review which consisted of:

- Concerns with whether the Supplier is configuring its levies properly
- Advertising concerns
- A non-compliant BOS being completed
- Vehicle history information not always being declared
- Ensuring liens are being removed within seven days as per legislation
- Ensuring MFAs are completed properly and given to a consumer prior to the sale of a motor vehicle
- Duty to maintain records

Consumer Protection 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 consumers or potential consumers:

- (j) supplier's representation that goods or services have been made available in accordance with a previous representation if they have not;

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.

Vicarious liability

Section 166

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship

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
 - (a) the name of the business operator as set out in the licence or the trade name of the business operator as set out in the licence, and
 - (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,
 - (i) does not imply a warranty exists with respect to a vehicle or a repair or service unless such a warranty with respect to the vehicle, repair or service exists and is available at the price advertised,
 - (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.
 - (n) does not use false, misleading or deceptive statements, and

- (o) does not advertise a specific vehicle for sale if more than 14 days have elapsed since the vehicle was sold.

Liens**Section 31.5**

If a business operator engaged in automotive sales knows that a vehicle is subject to a lien, the business operator must, within 7 days of the date that the business operator sells the vehicle, pay the amount owing under the lien to the lienholder.

Cost of Credit Disclosure Regulation**Fixed Credit****Section 6**

- (2) The information required to be disclosed for the purposes of section 76(1) of the Act is (a) the APR, and
(b) the term
- (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, and
 - 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

- N. Prior to the scheduled administrative review, the Supplier furnished representations indicating that they have been working tirelessly to address their shortcomings and attached several documents regarding their paperwork that they are trying to correct.
- O. The Supplier has been subject to previous AMVIC inspections for the purpose of education and compliance in 2017 and 2018, however there is no history of any enforcement action with respect to this Supplier.
- P. During the administrative review, the Supplier indicated they have been proactive and have taken steps to re-vamp their BOS to conform with legislation and make use of checklists to ensure the full disclosure of a motor vehicle is being passed on to their consumers. The Supplier acknowledged and took responsibility for the general conduct described in the AMVIC investigations.
- Q. During the administrative review, the Supplier expressed a willingness on their part to work collaboratively with the regulator and stated, "when AMVIC brings them a challenge they would like to find a solution".

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA and ABR, and its associated regulations and undertakes to the Director that the Supplier will make every effort to ensure that it does not engage in acts or practices similar to those described above.
2. The Supplier will undertake to utilize a BOS that meets the legislative requirements and will properly complete the BOS to comply with Section 31.2 of the ABR.
3. The Supplier will undertake not to do or say anything that might reasonably deceive or mislead a consumer as well as not make representations, statements or claims that are not true or are likely to mislead a consumer as per Section 6(4)(a) of the CPA and Section 12(a) of the ABR.
4. The Supplier will undertake that their business provides a consumer with full disclosure at the time of the sales transaction as defined in Section 6 of the CPA and abide by all regulations including the general codes of conduct in Section 12 of the ABR.
5. The Supplier will undertake that all MFAs are completed in full and by a licensed technician as per Section 15 and 16 of the VIR and given to a consumer **before** entering into a contract to sell a motor vehicle.
6. The Supplier will ensure its advertising conforms to the advertising regulations as set out in the ABR.
7. The Supplier will contact AMVIC's licensing department and obtain a business licence for 864653 Alberta Ltd. operating as Country Auto Credit within **thirty (30) days** from the date of signing this Undertaking.
8. To ensure that the Supplier is in full compliance with the CPA and its related regulations, the Supplier agrees to assist AMVIC with an industry standards inspection which will take place before **March 31, 2022**.
9. The Supplier shall pay the sum of **\$1,750** to AMVIC, an amount that represents a portion of the costs AMVIC has incurred investigating the matters herein. Such payment is to be made to AMVIC within **thirty (30) days** from the date of signing this Undertaking.
10. The consumer JL will deliver the 2014 Dodge Ram to the Supplier and **upon receipt of the Ram**, the Supplier will repair the hail damage to the Ram **at no cost** to JL and the **repair will be completed within 30 days**. The Supplier will notify AMVIC when the Ram has been repaired by emailing director@amvic.org
11. This Undertaking will remain in force,

Unless:

- a. Terminated by the Director or varied with the consent of the Supplier;
 - b. Varied by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking; or
 - c. Terminated by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.
12. The Supplier acknowledges the Director may, upon breach of any term of the Undertaking, institute such proceedings and take such action under the CPA as they may consider necessary.
13. The Supplier acknowledges this Undertaking is a public document and will be maintained in the public record by the Director of Fair Trading (as delegated) as required by Section 157.1 of the CPA.
14. The Supplier acknowledges that they were advised by AMVIC, and are aware that they are entitled to seek independent professional advice regarding the signing of this Undertaking, and the Supplier acknowledges they are entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on the 10th day of June, 2021.

864653 ALBERTA LTD. OA COUNTRY AUTO SALES & SERVICE
864653 ALBERTA LTD. OA AUTO COMPLETE
864653 ALBERTA LTD. OA COUNTRY AUTO CREDIT

PER: "original signed by"
Safder AHMED

ACCEPTED by the Director of Fair Trading on the 21st day of June, 2021.

PER: "original signed by"
Gerald Gervais, Registrar
DIRECTOR OF FAIR TRADING
(as delegated)