

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

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

BY: AVENUE MOTORS LTD.
at or near the city of Edmonton, 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 wholesale, used sales and leasing in the Province of Alberta.
- B. In 2020, AMVIC received 11 consumer complaints against the Supplier, in which some alleged business practices were identified. As a result of these consumer complaints, AMVIC initiated investigations (case file 20-12-274 et al.) to look into these matters.
- C. An administrative review was held via teleconference call on May 26, 2021, at 9:45 a.m. Participating in the administrative review was Mr. Nabeel Jessani, owner and director of the Supplier; Mr. Arman Chak, legal counsel for the Supplier; [REDACTED], AMVIC investigator; [REDACTED], AMVIC manager of investigations north; and G. Gervais, Director of Fair Trading (as delegated).
- D. The AMVIC investigations revealed some key issues:

Failing to Respond

- i. In the majority of the complaints, the Supplier failed to respond to either AMVIC's consumer services officer's request or the AMVIC investigator to provide documents/response in the time prescribed or did not respond at all. To the Supplier's credit in the absence of a response, the Supplier was making efforts to resolve the consumer complaints directly with the consumer.

Consumer Protection Act

Duty to maintain records

Section 132

- (1) Every licensee and former licensee must create and maintain
 - (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and

- (b) other records and documents described in the regulations for the period specified in the regulations.
- (2)** Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

Concerns regarding documents

- ii. In ten of the 11 investigations, concerns were identified regarding documents. Bills of sale (“BOS”) were found to be non-compliant. The issues identified included the BOS not containing the consumer’s government issued identification, failing to list the business licence number of the operator, the registration number of the salesperson, the date that the vehicle was to be delivered to the consumer, an itemized list of any items or inducements the business operator agreed to provide with the vehicle at no extra charge. In some instances the deposit was inaccurately recorded on the BOS or was missing on the BOS.

Automotive Business Regulation

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.

Unregistered salespeople

- iii. In five of the investigations (cases 20-01-261, 20-02-239, 20-10-025, 20-11-054 and 20-11-281) it was identified that the salespeople involved in the consumer transactions were not authorized to act on behalf of the Supplier or their salesperson registrations had expired.

Automotive Business Regulation **Acting on behalf of business operator** **Section 20.1**

No business operator may allow a salesperson to act on the business operator's behalf unless

- (a) the salesperson is registered for the class of licence held by the business operator, and

- (b) the business operator authorizes the salesperson to act on its behalf.

Other

- iv. During the administrative review, the Director discussed with the Supplier the importance of ensuring any information known to the Supplier regarding the condition or history of the vehicle must be passed on to the consumer by the Supplier and the legislation was discussed in detail. The Supplier needs to be cognizant of ensuring that they do not mislead or deceive consumers through their actions or words. The consumer complaints received never supported any blatant violations on the part of the Supplier in regards to this legislation, however a lengthy discussion was held with the Supplier nonetheless.

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;
 - (b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer's disadvantage;

Automotive Business Regulation

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:
 - (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
 - (b) whether the vehicle has sustained damage caused by fire;
 - (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
 - (d) whether the vehicle has been used as a police car or an emergency vehicle;
 - (e) whether the vehicle has been used as a taxi cab or a limousine;
 - (f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;
 - (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:
 - i. salvage motor vehicle;
 - ii. on-repairable motor vehicle;
 - iii. unsafe motor vehicle;

- (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. ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
 - iii. (iii) whether the vehicle passed or failed any required inspections.
- E. In advance of the administrative review, the Supplier provided written representations in which they took responsibility for some of the legislative breaches and committed to improving upon their business practices. With respect to having some unregistered salespeople this was an oversight on the part of the Supplier and attributed to moving to a new location. The Supplier fully admits to and regrets engaging in the aforementioned activity.
- F. During the administrative review, Mr. Jessani advised that the Supplier has been in business since 2017 and the complaints received by AMVIC are small in comparison to their volume of sales. The Supplier is committed to resolving consumer complaints with consumers and the regulator.
- G. The Supplier acknowledged and apologized for the general conduct described in the AMVIC investigations, and committed to working with the regulator to be a positive contributor to the local economy and automotive industry.

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 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. Engaging in similar acts or practices may result in a further administrative review of the Supplier's business licence.
2. If a consumer complaint is received, the Supplier will respond to a consumer services officer's or investigator's email request for documentation regarding the complaint as per the guidelines in the email request.
3. 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.

4. The Supplier will undertake not to do or say anything that might reasonably deceive or mislead a consumer during the course of a consumer transaction as per Section 6(4)(a) of the CPA.
5. The Supplier will undertake not to mislead consumers with their opinions if the consumer is likely to rely on that opinion to their disadvantage as per Section 6(4)(b) of the CPA.
6. The Supplier will ensure that all salespeople who act on behalf of the Supplier are registered with AMVIC and attached to the business as designated agents in AMVIC's online portal. Further, the Supplier will ensure all salespeople they employ renew their salesperson registrations prior to their expiry date and will not engage in any designated activity unless properly registered to do so. The Supplier will ensure the salespeople attached to their business in AMVIC's online portal are up to date and advise AMVIC within 15 days if a salesperson is no longer employed by the Supplier as required by Section 21(2) of the ABR.
7. 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**.
8. The Supplier shall pay the sum of **\$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 **30 days** from the date of signing this Undertaking.
9. 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.
10. 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.
11. 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.

12. 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 13 day of June, 2021.

AVENUE MOTORS LTD.

PER: "original signed by"
Nabeel JESSANI

PER: "original signed by"
Hisham CHEMAIT

ACCEPTED by the Director of Fair Trading on the 15th day of June, 2021.

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