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

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

BY: 388010 ALBERTA LTD. o/a GARY MOE VOLKSWAGEN
at or near the city of Red Deer, 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 new and used sales, leasing, garage and service station in the Province of Alberta.
- B. An AMVIC investigation (case file 21-03-102) was initiated as a result of a consumer complaint received by AMVIC in March 2021, alleging they were misled and deceived by a Supplier's advertisement which caused them to purchase a vehicle.
- C. An administrative review was held via teleconference call on July 15, 2021 at approximately 9 a.m. Participating in the administrative review was Mr. Elie Mettri – general sales manager of the Supplier, Eric Moe – general manager and partner for the Supplier, [REDACTED] – AMVIC investigator, [REDACTED] – AMVIC manager of investigations south, C. Z [REDACTED] – administrative assistant to the Director, and G. Gervais – Director of Fair Trading (as delegated).
- D. On March 5, 2021, consumers ("MD" and "RD") entered into an agreement to purchase a 2021 Tiguan United 4Motion (the "Tiguan"). MD and RD responded to an advertisement as seen on the Supplier's website that listed upgraded options on the Tiguan including a remote starter and heated steering wheel. MD and RD allege they relied on the advertisement's accuracy as well as representations by their salesperson in making their decision to purchase the Tiguan. MD and RD learned hours after taking delivery of the Tiguan that it was not equipped with the remote starter and heated steering wheel options as listed in the advertisement.
- E. The Supplier uses a third party online advertising business for their advertising needs. The Supplier enters the vehicle identification number ("VIN") of their inventory into their database system, the fields populate and the information is sent to the third party online business who controls the website. The Supplier acknowledges that the advertisement was in error, however it was unintentional on their part or their third party supplier. All of the additional/upgraded options that were listed on the advertisement are included on the Tiguan with the exception of the remote starter and heated steering wheel. This is the first year for the trim level of this Tiguan model. By misrepresenting an advertised vehicle, the Supplier has breached Section 11 of the Automotive Business Regulation ("ABR").

Automotive Business Regulation

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,
 - (b) identifies vehicles that have been used as taxi cabs, police cars or emergency vehicles or that have been recertified when the previous use or condition of the vehicles is known to the business operator, (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,**
 - (e) does not use a font that due to its size or other visual characteristics is likely to materially impair the legibility or clarity of the advertisement and, without limiting the generality of the foregoing, in no case uses a font size smaller than 8 points,
 - (f) does not use the words, or words similar to, "demonstrator vehicle" or "demo vehicle" unless the vehicle in question was purchased new by the business operator and used solely for the normal business of the business operator,
 - (g) does not use the words, or words similar to, "savings", "discount", "percentage off the purchase price", "free", "invoice price", "below invoice", "dealer's cost", "at cost" or a price that is a specified amount above or below invoice or cost unless the claims represented by the words can be substantiated,
 - (h) does not use the words, or words similar to, "wholesale", "take over payments" or "repossession" unless the claims represented by the words are objectively and demonstrably true,
 - (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,
 - (j) does not make comparisons or claims of superiority unless the results of the comparisons or the claims can be substantiated,
 - (k) does not offer a guaranteed trade-in allowance for any vehicle regardless of make, year or condition, (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,

- (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.

- F. The Supplier understands they are vicariously liable for any act or omission by any of their employees or agents acting on their behalf as per Section 166 of the CPA.

Consumer Protection Act

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

- G. The AMVIC investigation identified that when MD and RD enquired with their salesperson regarding whether or not the Tiguan had a remote starter and a heated steering wheel, the salesperson did not know but would take a video and get back to them. The salesperson subsequently sent MD and RD a video of the Tiguan's features and options. MD and RD received no indication from the salesperson that the advertisement was incorrect or their enquiries about the upgraded options were not answered throughout the buying process. MD and RD were led to believe the Tiguan was as advertised. The AMVIC investigator spoke with the salesperson involved in the consumer transaction who confirmed he did check the Tiguan for the heated steering wheel and remote starter and it did not have the options listed however he failed to inform MD and RD of this fact. By not informing MD and RD of the missing options when directly asked, the Supplier misled the consumers as per Section 6 of the CPA.

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

- H. During the administrative review, the Supplier acknowledged its shortcomings and took responsibility for the general conduct described in the AMVIC investigation.

- I. The Supplier expressed that the breaches of legislation were unintentional and have taken a number of steps to rectify the concerns. Mr. Mettri advised that the salesperson who was involved in the consumer transaction has been spoken to and been placed on probation.
- J. During the administrative review, the Supplier was very forthcoming and indicated that when they were made aware of the advertising error, they tried to remedy the situation with MD and RD to no avail. The Supplier offered to buy back the Tiguan at the full asking price minus the kilometres driven on the vehicle or provide full trade in value on another vehicle. The Supplier made an additional offer to MD and RD to purchase and install an aftermarket remote starter, however MD and RD would no longer speak to them once an AMVIC complaint was made. The Supplier indicated that unfortunately the installation of a heated steering wheel is not possible on this Tiguan model.
- K. The Supplier regrets that this matter was not resolved during the early case resolution stages of the AMVIC complaint process but the consumers were simply unwilling to communicate with them.
- L. The Supplier commits to working with the regulator and 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.
2. The Supplier will undertake not to do or say anything that might reasonably deceive or mislead a consumer as per Section 6 of the CPA.
3. The Supplier will ensure its advertising conforms to the advertising regulations as set out in the ABR.
4. The Supplier agrees to arrange through their preferred third party supplier either in Red Deer, AB or Calgary, AB to install an aftermarket remote starter on the Tiguan at a cost of approximately \$600.00. MD and RD can make arrangements for the installation by contacting Elie Mettri directly. Reasonable efforts on the part of the Supplier and MD and RD are to be made to have the installation completed prior to **September 30, 2021**.
5. 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.

6. 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.
7. 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.
8. 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 16 day of July, 2021.

388010 ALBERTA LTD. o/a GARY MOE VOLKSWAGEN

PER: "original signed by"
Gary Moe

PER: "original signed by"
Susan Moe

ACCEPTED by the Director of Fair Trading on the 20 day of August, 2021.

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