

January 18, 2022

Administrative Review – 21-11-004
Served via email: [REDACTED]

Administrative Penalty

VARSITY CHRYSLER DODGE JEEP RAM LTD.
665 GODDARD AVENUE NE
CALGARY, AB
T2K 6K1

Attention: Jason Bender and James McManes

Dear Jason Bender and James McManes:

Re: Varsity Chrysler Dodge Jeep Ram Ltd. – Provincial Automotive Business Licence No. B1036471

As the Director of Fair Trading (as delegated) (the "Director"), 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 Alberta Motor Vehicle Industry Council ("AMVIC") investigations department application report (the "Application Report") prepared by the investigator and the senior manager of investigations. A copy of the Application Report is attached as Schedule "A" to this letter. I have taken into consideration the information exchanged during an administrative review held via teleconference call on Dec. 2, 2021. Varsity Chrysler Dodge Jeep Ram Ltd. provided written representations via email on Jan. 10, 2022 (attached as Schedule "B"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

Licencee Status

Varsity Chrysler Dodge Jeep Ram Ltd. (the "Supplier") holds an AMVIC business licence and carries on the business activities of used sales, wholesale, service station, leasing, autobody, garage, new sales and agent or broker in the Province of Alberta.

History

The Supplier has been in business for an extended period and has no previous enforcement history.

Summary of Investigation

Case File 21-03-456

1. In March 2021, AMVIC received a complaint alleging that there was contract issues and a consumer had been misled in his transaction with the Supplier. On Jan. 26, 2021 the consumer ("GH") was informed by the Supplier that his 2015 Ram 1500 (the "Ram") was in need of repairs in the amount of \$404.39. GH indicated he was not happy with the Ram's performance and was looking to trade it in. Specifically, GH was looking for a more fuel efficient, reliable and economical four wheel drive vehicle. On Feb. 3, 2021, GH entered into an agreement with the Supplier to purchase a 2016 Jeep Patriot (the "Jeep").
2. According to GH, he been advised by the Supplier that had to attend the store on Feb. 3, 2021 as it was a time sensitive deal and the vice president of the finance company being utilized was doing him a favour.
3. GH was allegedly told that the Supplier would be taking a loss on the Ram being traded in and that he would need to drive the Jeep for approximately six months as part of their "Credit Rebuilding Program".
4. The bill of sale ("BOS") utilized in the consumer transaction reflects a sale price of the Jeep of \$19,773.68 plus applicable fees and taxes, a trade-in allowance of the Ram of \$22,450 and an extended warranty package of \$4,102 plus GST.
5. On Feb. 8, 2021, during cold weather, GH experienced issues starting the Jeep and had to have it boosted. On Feb. 11, 2021, the Jeep again would not start and when contacted the Supplier directed GH to purchase a new battery. When the Jeep would not start on Feb. 13, 2021 arrangements were made to have the Jeep towed back to the Supplier at no charge to GH. On Feb. 16, 2021, GH picked up the Jeep from the Supplier.
6. On March 10, 2021, GH received a letter in the mail dated Feb. 26, 2021 from Fiat showing enrolment in an oil and tire rotation change service package. GH asserts he thought nothing of this package and believed it was a complimentary gift as part of the vehicle package. GH indicated he did not believe this service package to be the extended warranty package he had purchased.
7. By March 18, 2021, GH had driven the Jeep approximately 5,150 kilometres however, continued to have mechanical issues with the Jeep. Arrangements were made to have the Jeep towed back to the Supplier at their expense and GH was provided with a loaner vehicle.
8. Over the course of the next two weeks, the Supplier identified a number of mechanical issues with the Jeep: the camshaft timing switch had failed, strange loud noises were discovered from the engine, the alternator had failed and the piston cylinder bearing ring had broken off one of the cylinders. When the technician removed the oil pan, parts fell out of the Jeep's engine.

9. On March 29 and 30, 2021, GH was informed by the Supplier that the Jeep required a new engine. The Supplier presented GH with two options:
 - 1) GH pay for a used engine at a reduced cost of \$3,000; or
 - 2) GH trade-in the Jeep for a Nissan Rogue however, the financing payments would increase.
10. GH rejected the Supplier's offers and requested that the Supplier reverse the deal and pay off his loan with the finance company. The Supplier refused to reverse the deal as requested by GH and advised GH his Jeep was only worth \$10,000 despite him paying \$19,773.68 for the Jeep less than two months prior.
11. During a conversation with the Supplier's sales manager, GH was advised that the extended warranty package he paid for, at a cost of \$4,102 plus GST, would not cover the engine replacement as he did not in fact purchase an extended warranty but a service contract in which he was entitled to four oil changes and four tire rotations. The sales manager explained to GH that the consumer transaction was structured this way to hide negative equity to allow the bank to approve the deal. GH was informed that the individuals involved in the consumer transaction no longer worked for the Supplier. GH provided the AMVIC investigator with a copy of the audio recording of the conversation between him and the sales manager.
12. GH asserts he bought the Jeep with an extended warranty package for peace of mind and was misled by the Supplier. GH was informed by the sales manager that if he decided to take legal action that was up to him but he needed to return the loaner vehicle right away and inform the Supplier about his intentions as his Jeep was currently dismantled awaiting approval of the engine replacement.
13. On July 22, 2021, the AMVIC investigator spoke with the dealer principal, Jason Bender ("JB"). When the BOS was presented to JB he was unable to determine what GH paid for the Jeep by reviewing just the BOS or the accurate value of the trade-in value of the Ram. When JB reviewed the dealer summary which is not provided to the consumer, he was then able to explain to the AMVIC investigator that GH was paid \$12,000 for his trade-in vehicle and not the \$22,450 as reflected on the BOS. JB admitted that the cost of the Jeep purchased was inflated to make the deal happen. When the investigator pointed out the legislative requirements to be included on the BOS to JB, he stated words to the effect of, "good luck changing this in the industry".
14. On Oct. 18, 2021, the AMVIC investigator spoke with the lender involved in this consumer transaction. The lender advised they were not aware of the negative equity in this deal. The amount of the trade-in value listed on the BOS was the same amount owing on the trade-in vehicle. The conditional sales contract of the finance company also reflects a trade-in allowance of the Ram of \$22,450.
15. GH indicated that he would have never purchased the Jeep had he known the extended warranty was simply an oil change package and had not been misled about the true value the Supplier paid him for the trade-in of the Ram.

16. During the administrative review, the Supplier indicated that this consumer transaction is not a normal practice of how his dealership conducts business. JB advised that the salesperson involved in this consumer transaction is no longer working for his dealership.
17. JB admitted inflating the cost of a service contract was wrong and had he been aware of this he would have never approved it. He has since taken steps with his staff to ensure this does not occur again by having them sign an acknowledging document. He provided clarification with respect to his comments to the investigator of, "good luck changing this in the industry". He explained that dealerships are challenged when financial institutions want numbers in a certain way to fund the contract as it relates to negative equity to meet their parameters. The Supplier has been transparent and forthwith regarding their actions and have assured the Director they will undertake to learn from this matter and work within the legislative requirements with respect to the completion of a BOS.
18. The Supplier advised they want to be compliant and will need to identify a solution to satisfy the legislative requirements and if that affects the ability to secure financing for the consumers, they will look to address that with their consumers.
19. The Supplier wants their customers to be satisfied and taken care of, however the Supplier indicated that GH has been unreasonable with his resolution. The Supplier, as a goodwill gesture, paid for the towing of the Jeep twice as well as the initial repairs. The Supplier also offered to refund GH the cost of the service contract cost of \$4,102 plus GST, honour the four oil changes and tire rotations and split the cost to replace the engine in the Jeep. The AMVIC investigator indicated he was unaware of the Supplier offering to refund the cost of the service contract.
20. At the conclusion of the administrative review, the Supplier emailed their previous verbal resolution offer to GH in writing to demonstrate their commitment of trying to make things right.
21. On Jan. 10, 2022, the Supplier provided their written representations in response to the Proposed Administrative Penalty (see Schedule "B").

Legislation

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.

- (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.

Consumer Protection Act

Interpretation of documents

Section 4

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

- (a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and
- (b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

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,

- (c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;
- (d) to charge a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference;

(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;

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.

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.

Analysis – Did the Supplier fail to comply with the provisions of the CPA and ABR?

The material which formed the Application Report was the result of one consumer complaint received by AMVIC regarding contract issues and a consumer allegedly being misled (Case File 21-03-456).

A. Mislead and Deceive (CPA Section 6(4)(a))

On a balance of probabilities, the Director found that the Supplier misled GH in that he was not made aware of the actual trade-in value of the Ram or that he was purchasing a service contract as opposed to an extended warranty. The audio recording between GH and the sales manager provides evidence to support this.

The Director finds it particularly concerning that not only was the consumer unaware of the negative equity involved in this consumer transaction but also that the finance company utilized by the Supplier was also unaware. The amount of the trade-in value listed on the BOS was the same amount owing on the trade-in vehicle. The conditional sales contract of the finance company also reflects a trade-in allowance for the Ram of \$22,450.

The Supplier's words and actions reasonably misled the consumer therefore, the Supplier did contravene Section 6(4)(a) of the CPA.

B. Non-compliant BOS (ABR Section 31.2)/Using ambiguity, innuendo or ambiguity to a material fact (CPA Section 6(2)(c))

The BOS involved in this consumer transaction has a number of deficiencies and does not reflect a true and accurate depiction of the consumer transaction. When the investigator spoke with JB, he was unable to determine what GH paid for the Jeep by simply reviewing the BOS. When JB reviewed the dealer summary which is not provided to the consumer, he was then able to explain to the AMVIC investigator that GH was paid \$12,000 for his trade-in vehicle and admitted that the cost of the Jeep purchased was inflated and the extended warranty was listed to hide negative equity as the deal did not fit the parameters of the financing company to be approved. By failing to properly itemize a list of all applicable fees and charges to the consumer, the proper and accurate cost of the vehicle, a proper and accurate trade-in value of the vehicle being traded in, and the balance of any outstanding loan that is incorporated into the cost of purchase of the vehicle, the Supplier has contravened Section 31.2 of the ABR and Section 6(2)(c) of the CPA.

On Oct. 31, 2018, new legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018 AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the new legislation, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

C. Charge a price for goods or services that grossly exceeds the price (CPA Section 6(2)(d))

The BOS lists an extended warranty purchased by GH for the cost of \$4,102 plus GST in the amount of \$205.10 when in fact the consumer purchased a service contract. The AMVIC investigation revealed the oil change service contract, code 421 C-4, purchased by GH covers four oil changes, four tire rotations and a two year/40,000 kilometre roadside assistance. The actual service contract application lists a plan description of "24 months 40,000 km serv cont" but no other details or information is listed or provided and is ambiguous. The cost of this service contract to the Supplier as listed on their dealer summary is \$250, giving the Supplier a profit of over \$3,850 on the sale of the service contract. In one of the boxes as listed on their dealer summary it is listed as a warranty. GH believed he was purchasing an extended warranty not a service contract. This is supported by the audio recording between GH and the sales manager, on March 30, 2021. In the opinion of the Director, the amount the consumer was charged for the service contract grossly exceeds the price of similar goods and services and GH was not informed what he was purchasing nor the reason for the difference in the price. Therefore the Supplier has contravened Section 6(2)(d) of the CPA.

D. Other Considerations

AMVIC follows a progressive enforcement model when enforcing consumer protection laws. Administrative action may include a written warning, condition(s) added to the licence, charges under the legislation, Administrative Penalty, Director's Order, Undertaking, and suspension or cancellation of a licence as outlined in Section 127 of the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making his decision to ensure what level of enforcement is appropriate to the contravention.

At the administrative review, the Supplier took responsibility for the legislative breaches and stated a willingness to work with the regulator and improve upon their business practices. On average, the Supplier sells approximately 90 - 100 motor vehicles on a monthly basis. The Director considered the representations from the Supplier in particular regarding the initial remedial steps they have taken to address what occurred as well as their goodwill gestures of covering the cost of towing the Jeep, the initial repairs completed and proposed resolutions offered to GH. The Supplier did not have any representations regarding an appropriate Administrative Penalty. An Administrative Penalty must be sufficient in that the Supplier and other Suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the law.

The Director also considered whether entering into a voluntary Undertaking with the Supplier as recommended by the AMVIC investigator would be appropriate, however the Director is not satisfied that the Supplier has ceased the contraventions as per Section 152(1)(b) of the CPA to date. JB explained that dealerships are challenged when financial institutions want numbers in a certain way to fund contracts as it relates to negative equity to meet their parameters. The Supplier has expressed a willingness to become compliant and identify a solution to satisfy the legislative requirements even if that affects the ability to secure financing for the consumer, however the Director is not convinced that the Supplier has stopped engaging in the above mentioned contraventions.

The aggravating factors in this matter include the degree of willfulness or negligence in the contraventions and resulting impact adversely affecting the consumer including but not limited to the deception of trying to hide negative equity in the consumer transaction, failing to itemize accurate numbers depicting a true and accurate consumer transaction, charging a grossly inflated amount for a service contract, misleading the consumer and finance company, loss of use of the vehicle from the mechanical deficiencies and in general failing to comply with the rather straight forward requirements of the legislation relating to the completion of a BOS despite education provided by AMVIC since 2018.

The mitigating factors in this matter include the remedial steps the Supplier has taken including the salesperson no longer employed with the Supplier, the education and follow up of their employees pertaining to not overcharging for a service contract, covering the cost of towing the Jeep as well as the initial repair costs, the resolution offer of refunding the total cost of the service contract of \$4,102 plus GST but still honoring the four oil changes and tire changes, and an approximate reduced cost of \$3,000 (50 per cent saving) towards a used or remanufactured engine to GH which was committed in writing. The Supplier also has no previous enforcement history with the regulator.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.

This Administrative Penalty is taking into account the number and seriousness of the breaches of the legislation found during the investigation as well as the cost of investigating the Supplier's activities (\$2,303), the aggravating and mitigating factors listed above, and the fact that the Supplier has been in the automotive industry for an extensive period of time and they ought to have known the legislation which cannot be ignored.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Varsity Chrysler Dodge Jeep Ram Ltd. pay an Administrative Penalty of **\$3,500**. This is based on my opinion that Varsity Chrysler Dodge Jeep Ram Ltd. contravened Sections 6(2)(c), 6(2)(d), and 6(4)(a) of the CPA and Section 31.2 of the ABR.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigation department, the amount of the Administrative Penalty is **\$3,500**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection 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 seriousness of the contraventions or failure to comply;
2. The impact on the person adversely affected by the contravention or failure to comply;
3. The degree of willfulness or negligence in the contravention or failure to comply;
4. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
5. The deterrent effect of the penalty.

The amount of the Administrative Penalty is \$3,500.

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection 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 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 **thirty (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 Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 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"

Alberta Motor Vehicle Industry Council (AMVIC)
Gerald Gervais, Registrar
Director of Fair Trading (as Delegated)

GG/kl
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC