

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

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

BY: 2122507 ALBERTA INC. OPERATING AS 1st CHOICE MOTORS
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 and used sales in the Province of Alberta.
- B. An AMVIC investigation (case file 21-10-086) was initiated as a result of a consumer complaint received by AMVIC in October 2021, alleging they were misled and deceived by the Supplier's representations and a compliant Mechanical Fitness Assessment ("MFA") which they relied upon when deciding to purchase the vehicle.
- C. An administrative review was held via teleconference call on April 19, 2022 at 9:55 a.m. Participating in the administrative review was Mr. Jaswinder Dhothar, owner and director of the Supplier; [REDACTED], AMVIC investigator; [REDACTED], AMVIC manager of investigations north; and G. Gervais, Director of Fair Trading (as delegated).
- D. On Sept. 24, 2021, the consumer ("RR") entered into an agreement to purchase a 2012 Mini Cooper (the "Cooper") in the amount of \$8,000 with all fees and taxes included.
- E. The Cooper had to be boosted prior to RR taking the Cooper for a test drive. During the test drive, it was identified that the air conditioning was not functioning. When this issue was brought to the attention of the Supplier, RR was told the air conditioning likely only needed to be recharged. The bill of sale ("BOS") reflected that the Cooper had been discounted \$1,280.95 and RR was to be responsible for a battery and air conditioning recharge even though both of these items were marked compliant on the MFA that was provided to the RR prior to the purchase.
- F. The MFA provided to RR was held out to be a safety inspection. In purchasing the Cooper, RR relied on the MFA and the fact they were told that the Cooper was "sound" and had passed an "inspection".

Consumer Protection Act

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.

(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;

(e) a supplier’s representation that goods or services are of a particular standard, quality, grade, style or model if they are not;

- G. On Sept. 25, 2021, RR changed the battery in the Cooper and noticed the hood would not latch and was not lining up with the body of the vehicle.
- H. On Sept. 28, 2021, RR took the Cooper to an independent repair facility who deemed the Cooper to be unsafe to drive and in need of almost \$11,000 in repairs.
- I. On Dec. 17, 2021 an AMVIC investigator who is also a red seal journeyman automotive technician attended the repair facility and inspected the Cooper on a hoist. The investigator identified numerous issues not limited to the fact that the air conditioning condenser hose was not connected and hanging down.
- J. The automotive technician who completed the MFA was spoken to by the AMVIC investigator on Dec. 20, 2021. The technician indicated he completed the MFA at the Supplier’s lot but did not put the Cooper up on hoist. The Supplier is vicariously liable for the actions of any employee or agent performing duties 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.

- K. On Feb. 18, 2022, the Cooper was taken to a second independent repair facility who deemed the Cooper to be in need of repairs totaling approximately \$7,000.
- L. The MFA completed on the Cooper shows the licence plate lamp, front and rear brakes, ball joints, hood latch, tires, battery and structural integrity as all being compliant. The two independent repair

facilities and the AMVIC journeyman technician who inspected the Cooper found these components were not compliant and require repair for the Cooper to be deemed safe to drive.

- M. During the administrative review, Mr. Dothar indicated that he relied on the MFA that was completed by the third party technician who completed it. It was not his intention to mislead RR in any way. When RR brought the mechanical concerns to him he asserts he offered to repair the issues and assist them but they never showed up with the Cooper.
- N. The Supplier has been in business for almost four years with no previous enforcement history.
- O. The Supplier acknowledged the general conduct described in the AMVIC investigation and regrets engaging in the aforementioned activity.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

- 1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA 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 during the course of a consumer transaction as per Section 6(4)(a) of the CPA.
- 3. The Supplier will undertake not to make representation that goods or services are of a particular standard, quality, grade, style or model if they are not as per Section 6(4)(e) of the CPA.
- 4. The Supplier will refrain from referring to a Mechanical Fitness Assessment as an inspection or an AMVIC inspection.
- 5. 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 **Dec. 31, 2022**.
- 6. The Supplier will undertake to unwind the deal of the Cooper and will reimburse RR the sum of **\$8,000** when the consumer returns the Cooper back to the Supplier. The consumer will be responsible for any cost associated with returning the Cooper to the Supplier. The deal is to be unwound within **thirty (30) days** from the date of signing this Undertaking and the Supplier will provide AMVIC with proof that same has been completed.
- 7. The investigation costs of \$2,885 in completing this investigation will be waived.
- 8. 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.
9. 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.
10. 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.
11. 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 5 day of May, 2022.

2122507 ALBERTA INC. o/a 1st CHOICE MOTORS

PER: "original signed by"
Jaswinder DHOTHAR

ACCEPTED by the Director of Fair Trading on the 10 day of May, 2022.

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