

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

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

BY: **12178052 CANADA INC.**
operating as ZAM ZAM AUTO REPAIR
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 service station, garage, wholesale and used sales in the Province of Alberta.
- B. An AMVIC investigation (case file 22-03-284) was initiated as a result of a consumer complaint received by AMVIC in March 2022, alleging they were misled and deceived by the Supplier's representations and advertising regarding the mechanical condition of a vehicle in which they relied upon when deciding to purchase a vehicle.
- C. An administrative review was held via teleconference call on May 10, 2022 at approximately 9 a.m. Participating in the administrative review was Mr. Suleman Eyale, 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 March 21, 2022, the consumer ("GT") entered into an agreement to purchase a 2013 Nissan Sentra (the "Sentra") in the amount of \$7,500. The purchase was made on a private bill of sale ("BOS") with the seller listed as Suleman Eyale.
- E. GT purchased the Sentra as he believed it was in good condition. This belief stemmed from the advertisement on Facebook and Suleman Eyale stating the Sentra had no mechanical issues. Mr. Eyale is not only a salesperson but also a licensed technician. When GT took possession of the Sentra on March 24, 2022, he immediately noticed issues that he suspected were to do with the transmission. The next day GT took the Sentra to a third party repair business who advised him he would need to replace the transmission at an estimated cost of \$6,585.36. The estimate further recommended to replace a burnt out bulb, the front timing cover, drive belt and the rear shocks. Given the mechanical issues, GT no longer wanted the Sentra and returned it back to the Supplier, where it currently remains. GT was misled regarding the mechanical condition of the

Sentra and is unable to receive any reasonable benefit from the Sentra. The Supplier has contravened Sections 6(3)(a) and 6(4)(a) of the CPA.

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.

(3) It is an unfair practice for a supplier

(a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;

(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;

- F. The AMVIC investigation revealed that Suleman Eyale purchased the Sentra at auction on Aug. 7, 2021 for \$3,255. The BOS for this transaction lists announcements of “*Alberta active hail dmg [sic], Carfax Claim \$7749 (hail)*”. A Carfax pulled by the AMVIC investigator dated April 4, 2022 shows the hail damage of \$7,749 as well as an estimate for accident repair damage in the amount of \$10,368.74. The investigation further revealed that the transmission issues with the Sentra were known to the previous registered owner which is one of the reasons the previous registered owner sold the Sentra at auction. The Sentra was not Mr. Suleman’s personal use vehicle as it had never been registered to him, therefore he did not conduct a private sale of his personal vehicle. In completing this transaction, the Supplier failed to provide GT with the vehicle history information (such as providing a Carfax), a Mechanical Fitness Assessment (“MFA”) and did not disclose the true condition of the Sentra to GT. In doing so, the Supplier breached several sections of the legislation including Sections 12(o), 31.1 and 31.2 of the Automotive Business Regulation (“ABR”), and Section 15 of the Vehicle Inspection Regulation (“VIR”).

Automotive Business Regulation

General codes of conduct

Section 12

Every business operator must comply with section 6 of the Act and in addition must

(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;
- (2)** The business operator must disclose the information required under subsection (1) in a clear and legible manner
 - (a) in any online advertisement for the vehicle,
 - (b) on any sales tag affixed to the vehicle, and
 - (c) in writing to the consumer before purchase.

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.

- G. In the special conditions listed on the private BOS it stated the vehicle as being “sold as is”. A consumer cannot waive their rights as per Section 2 of the CPA.

Consumer Protection Act**Act prevails****Section 2**

- (1) Any waiver or release by a person of the person’s rights, benefits or protections under this Act or the regulations is void.

- H. The Sentra had been advertised on Facebook and the pictures show the Sentra in the Supplier’s parking lot with a dealer plate registered to the Supplier. The advertisement stated, “*very great vehicle ride great well maintained*” and “*Has lil [sic] bit hail damage on hood and roof*”. The AMVIC investigator reviewed the Supplier’s website as well as three other vehicles listed for sale and identified several advertising breaches not limited to the Supplier misrepresenting through statements or omissions a vehicle’s mechanical or structural condition or using false, misleading or deceptive statements as per Sections 11(2)(c) and 11(2)(n) of the 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.

- I. During the administrative review, Mr. Eyale indicated that he bought the Sentra shortly before being granted an AMVIC salesperson registration and believed he could sell it privately.
- J. Mr. Eyale asserts it was not his intent to mislead the consumer, he simply was inexperienced on what he could or could not do. Mr. Eyale stated the Carfax vehicle history information was available to GT however he did not request it.
- K. The Supplier has been in business for almost two years in Alberta however only added the business activity of used sales in the last year. According to Mr. Eyale, this is the only vehicle he has sold to date.
- L. The Supplier has no previous enforcement history and the investigator remarked the Supplier was cooperative during the investigation.

- M. 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, ABR and VIR 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 to ensure their advertising conforms to legislation as per Section 11 of the ABR.
4. 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**.
5. The Supplier will undertake to unwind the deal for the Sentra and will reimburse GT the sum of **\$7,500**. 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.
6. The Supplier shall pay the sum of **\$500** to the Alberta Motor Vehicle Industry Council, 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.
7. 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.
8. 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.

9. 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.
10. 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 30 day of May , 2022.

12178052 CANADA INC.
operating as ZAM ZAM AUTO REPAIR

PER: "original signed by"
Suleman EYALE

ACCEPTED by the Director of Fair Trading on the 7 day of June , 2022.

PER: "original signed by"
Gerald Gervais, Registrar
Director of Fair Trading
(as delegated)