

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

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

BY: ACE AUTO INC.
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 used sales in the Province of Alberta.
- B. An AMVIC investigation (case file 22-03-266) was initiated as a result of a consumer complaint received by AMVIC in March 2022, regarding the condition of a vehicle purchased from the Supplier.
- C. An administrative review was held via teleconference call on May 24, 2022 at 1:30 p.m. Participating in the administrative review was Mr. Ahmed Abdelmoneim, owner and director of the Supplier; [REDACTED], AMVIC investigator; [REDACTED] AMVIC manager of investigations north; and K. Lockton, Director of Fair Trading (as delegated).
- D. In February 2022 the consumer ("KE") reached out to the Supplier in hopes of getting approved for a loan to finance a vehicle. Given KE's credit she was concerned she would not be approved. The Supplier worked with a finance company to determine the loan amount that KE could be approved for before advising KE of any vehicles that she could purchase.
- E. On Feb. 22, 2022, KE sent the Supplier a \$500 down payment. The provision of a down payment could increase her chance of getting approved for the loan. On Feb. 23, 2022, the Supplier advised KE she had been approved for a loan and sent KE photos of a 2016 Mitsubishi Lancer (the "Lancer"). The loan approval did not require the down payment KE had sent to the Supplier. Early in the day on Feb. 24, 2022, KE attended the Supplier's business and entered into an agreement to purchase the Lancer for \$14,500. The Lancer was at another business getting a new windshield at this time. Later the same day the Supplier delivered the Lancer to KE's home.
- F. After the Lancer had been delivered, KE messaged the Supplier stating the Lancer did not have a full tank of gas and asked for \$50 to purchase gas. KE also sent the Supplier stating "*you guys rock*" and to keep the down payment. The Supplier responded that they had sent \$50 and stated

“your downpayment [sic] is your downpayment [sic]”. The Supplier advised that KE also told him over the phone to keep the down payment for getting the loan approval and she would just send the money back if he tried to e-transfer the down payment back to her.

- G. Prior to entering into the agreement to purchase the Lancer, the Supplier advised KE that the Lancer had sustained hail damage. However, there is a discrepancy between the Supplier and KE whether the full extent of the hail damage was disclosed. Ultimately, the Supplier failed to provide KE with a CarFax prior to entering into the contract with KE to purchase the Lancer which would have shown the cost of the hail damage to the Lancer, which was claimed for \$11,192.

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:
- (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;
- H. In addition, the Supplier did not provide KE with a Mechanical Fitness Assessment (“MFA”) prior to entering into to a contract with the consumer to purchase the Lancer.

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.
- I. The Supplier's bill of sale ("BOS") was missing information as required by Section 31.2 of the Automotive Business Regulation ("ABR").

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.
- J. In addition the BOS stated *"this vehicle will be delivered with a safety standards certificate"*, which is not a document that exists in Alberta. Based on this statement KE believed the Lancer had passed a safety inspection.

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;
- K. On Feb. 25, 2022, one day after the purchase, KE took the Lancer back to the Supplier due to a number of issues that were noticed with the Lancer. The Supplier took the vehicle to a third party repair business and paid \$859.64 to have repairs completed on the Lancer.
- L. On March 7, 2022, the Supplier returned the Lancer to KE and provided the CarFax and MFA. According to KE, this was when she first learned the full extent of the hail damage on the Lancer. The MFA provided to KE was dated March 4, 2022, after the Lancer was sold to KE and during the time the Supplier had possession of the Lancer to complete the repairs.

- M. Sometime in March 2022, KE took the Lancer to an automotive repair business due to the condition of the tires and headlights. KE did not get an estimate or have any work completed on the Lancer and therefore there is no paperwork confirming what the automotive repair business advised KE regarding the concerns she had.
- N. On March 25, 2022, the driver's side window fell out of its track allowing snow to blow into the Lancer during a storm. On March 27, 2022, KE messaged the Supplier regarding the issues with the Lancer. The Supplier offered to pick the Lancer up and take it the third party repair business and have all issues fixed at their own cost. KE did not agree and the communication between KE and the Supplier broke down.
- O. During the course of the investigation it was determined there were two MFAs completed on the Lancer. The Supplier advised one of the MFAs had been provided when he purchased the Lancer. The Supplier advised he had a new staff member working with KE and the staff member did not realize the Supplier had not had paid for their own MFA to be completed. The Supplier advised he had the second MFA completed because he did not want to rely on the MFA the seller had provided him as he did not know its validity.
- P. While investigating the consumer complaint, the investigation determined the Supplier's advertising was not in compliance with Section 11 of the ABR. The Supplier indicated during the administrative review that they have made changes to their advertising to ensure compliance.
- Q. During the administrative review, the Supplier discussed at length the procedures put in place to ensure that all consumers are provided the required information prior to entering into a contract as well as ensuring they document everything that has been disclosed. The Supplier advised they are in contact with the company that created their BOS and are looking at alternative companies if their current BOS cannot be altered to be compliant with the legislated requirements in Alberta. The Supplier advised in the meantime they are manually changing each BOS to be compliant.
- R. The Supplier indicated during the administrative review that this was their first consumer complaint and it has been a learning opportunity which has made them a better business. The investigator acknowledged that the Supplier had been very cooperative and open during the course of the investigation.

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 to ensure their BOS is completed in compliance with Section 31.2 of the ABR including removing the term "Safety Standards Certificate" from their BOS.
4. The Supplier will undertake to provide an MFA to the consumer prior into entering into a contract to sell a used motor vehicle as required by Section 15 of the Vehicle Inspection Regulation.
5. The Supplier will refrain from referring to a Mechanical Fitness Assessment as an inspection, AMVIC inspection, or Safety Standards Certificate.
6. The Supplier will undertake to ensure their advertisements are in compliance with Section 11 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 **Dec. 31, 2022**.
8. The Supplier will undertake to work with the consumer to pick up the Lancer and complete the following repairs:
 - Replace the two front tires;
 - Replace the headlights with factory headlights;
 - Repair window to make it operational; and
 - Diagnosis the reason for the check engine light and complete the necessary repairs or maintenance.

The repairs are to be completed within **sixty (60) days** from the date of signing this Undertaking and the Supplier will provide AMVIC with proof that same has been completed.

9. The Supplier will return the deposit of \$500 to KE within **sixty (60) days** from the date of signing this Undertaking.
10. The investigation costs of \$1,100 in completing this investigation will be waived.
11. 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.
12. 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.
13. 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.
14. 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.

ACE AUTO INC.

PER: "original signed by"
Ahmed ABDELMONEIM

ACCEPTED by the Director of Fair Trading on the 31 day of May, 2022.

PER: "original signed by"
Katie Lockton
Director of Fair Trading
(as delegated)