

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

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

BY: **LEGEND AUTO SALES & FINANCE LTD.**
at or near the city of Lethbridge, 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 22-07-240) was initiated as a result of a consumer complaint received by AMVIC in July 2022, regarding the condition of a vehicle soon after purchase and subsequent warranty.
- C. An administrative review was held via teleconference call on Dec. 7, 2022 at approximately 9 a.m. Participating in the administrative review was Mr. Balal Shakory, owner and director of the Supplier; [REDACTED], AMVIC investigator; [REDACTED], AMVIC manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated).
- D. On March 3, 2022, the consumer ("HT") entered into an agreement to purchase a 2011 GMC Terrain (the "GMC") for the total cost of \$8,700 inclusive of taxes and fees. Within a few days of taking possession of the GMC, HT experienced mechanical issues.
- E. HT returned the GMC to the Supplier who purchased parts and completed some repairs to the GMC. The AMVIC investigation revealed that the Supplier is not licensed for repairs contrary to Section 104(1) of the CPA. Additionally, the individual who completed some of the repairs is not a licensed technician. The Supplier further failed to keep any work orders or records regarding the completed repairs contrary to Section 132 of the CPA and Section 9 of the Automotive Business Regulation ("ABR").

Consumer Protection Act

Licence required - designated businesses

Section 104

(1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

Duty to maintain records**Section 132**

- (1) Every licensee and former licensee must create and maintain
- (a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and
 - (b) other records and documents described in the regulations for the period specified in the regulations.

Automotive Business Regulation**Records****Section 9**

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

- F. As the GMC was still not running well after the repairs were made, the Supplier requested HT take the GMC to a third party repair facility for a diagnostic and estimate and advised he would cover the costs to repair the GMC. When the estimate from the third party repair facility came back at \$5,406.40, the Supplier offered to pay repair costs in the amount of \$700-\$1,000.
- G. HT states that he was verbally offered a six month warranty, however this was not indicated on the bill of sale ("BOS"). HT asserts the Supplier then denied any warranty was offered. HT provided the AMVIC investigator with an audio recording that a warranty was offered. It is an offence for a Supplier to do or say anything that might reasonably deceive or mislead a consumer as per Section 6(4) of the CPA.

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;
- H. The AMVIC investigation revealed that the Supplier failed to disclose the vehicle history information of the GMC and specifically that it had been involved in an accident claim totalling \$3,505 contrary to Section 31.1 of the ABR.

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:
- (a) whether the vehicle has been bought back by the manufacturer under the Canadian Motor Vehicle Arbitration Plan;
 - (b) whether the vehicle has sustained damage caused by fire;
 - (c) whether the vehicle has sustained damage caused by immersion in liquid to at least the level of the interior floorboards;
 - (d) whether the vehicle has been used as a police car or an emergency vehicle;
 - (e) whether the vehicle has been used as a taxi cab or a limousine;
 - (f) whether the vehicle has been previously owned by a rental vehicle business or used as a rental vehicle on a daily or other short-term basis;
 - (g) whether the vehicle has, at any time, been assigned a status in one of the following categories under the Vehicle Inspection Regulation (AR 211/2006) or an equivalent status under the laws of another jurisdiction:
 - (i) salvage motor vehicle;
 - (ii) non-repairable motor vehicle;
 - (iii) unsafe motor vehicle;
 - (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;**
 - (i) whether the vehicle was registered in any jurisdiction other than Alberta immediately before it was acquired by the business operator and, if so,
 - (i) the name of the jurisdiction in which the vehicle was previously registered,
 - (ii) whether the vehicle was required to be inspected prior to registration in Alberta, and
 - (iii) whether the vehicle passed or failed any required inspections.
- (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.
- I. The AMVIC investigation identified a number of deficiencies in relation to the Supplier's BOS contrary to Section 31.2 of the ABR. Specifically the government issued identification is missing; the business licence number is missing, the salesperson's name and registration number is missing; the body color and body type of the vehicle are missing; the delivery date of the vehicle is missing; an itemized list of all fees and charges to the consumer is missing; an itemized list of any items or inducements the Supplier agrees to provide at no extra cost is missing, including the warranty mentioned above; the odometer reading of the vehicle at the time of sale has been rounded off; any disclosure statement or documentation respecting a vehicle's previous use, history or condition is missing; and a declaration that the business has disclosed to the consumer under Section 31.1 is missing.

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. On Nov. 18, 2022 in advance of the administrative review, the AMVIC investigator provided evidence that the Supplier had reversed the deal and bought back the GMC from HT for the full amount of \$8,700.
- K. During the administrative review, Mr. Shakory advised that he has been in business for approximately one year and is the only salesperson/employee for the Supplier and regrettably made some errors in this sale. This consumer transaction was one of his first initial sales and he was trying to do a favour for a friend of a friend. He further stated it is not a reflection of his business practices and he takes his role seriously not only as a salesperson but a business owner as well.
- L. Mr. Shakory stated there was no intent to mislead the consumer and some of the information HT provided to the AMVIC investigator was not accurate. He tried to resolve this matter with HT unsuccessfully and when communication broke down he encouraged HT to make a complaint to AMVIC. Regardless of their disagreement, Mr. Shakory reversed the deal and bought back the GMC from HT for the full amount HT paid. Even with HT having had use of the GMC for nine months and accruing in excess of 10,000 kms on the GMC.
- M. Mr. Shakory stated since becoming aware of this administrative review he has taken steps to improve his BOS to bring it into compliance and this was confirmed by the AMVIC investigator.
- N. 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 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 make representations or do anything that could reasonably mislead or deceive a consumer as per Section 6(4)(a) of the CPA.
3. The Supplier will undertake to ensure their BOS properly itemizes what is required and included, and is completed in compliance with Section 31.2 of the ABR.
4. The Supplier will not engage in designated business activities without holding the appropriate AMVIC business licence that authorizes that business activity as per Section 104(1) of the CPA.
5. The Supplier will undertake to ensure any individual or automotive repair business they utilize or any automotive business they refer their customers to are AMVIC licensed for the appropriate business activities.
6. The Supplier will undertake to ensure they properly disclose a vehicle's history information as per legislative requirements contained in Section 31.1 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 **May 31, 2023**.
8. 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.
9. 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 King'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 King'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.
10. 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.

11. 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.
12. 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 6 day of January, 2023.

LEGEND AUTO SALES & FINANCE LTD.

PER: "original signed by"
Balal SHAKORY

ACCEPTED by the Director of Fair Trading on the 10 day of January, 2023.

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