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

THIS **UNDERTAKING** is made pursuant to Section 152 of the *Consumer Protection Act*.

**BY: AUTOCANADA XTOWN MOTORS GP INC.**  
**operating as CROSSTOWN CHRYSLER DODGE JEEP RAM**  
in 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 one or more of the following automotive business activities: buying, selling as a retailer, a wholesaler, or as an agent or broker, leasing, consigning, installing parts or equipment, repairing or the servicing of motor vehicles in and around the province of Alberta.
- B. An administrative review was held on May 3, 2022 at approximately 9:00 a.m. via teleconference call. Participating in the administrative review were Mr. Jerry Ziniak – general sales manager for the Supplier, Mr. Tanner DeVries - Associate General Counsel for the Supplier, Mr. Joe Medina – general manager, Mr. Sam Yassin – store controller, S. Sorensen – AMVIC investigator, C. Packer – manager of investigations north, and G. Gervais – Director of Fair Trading (as delegated).
- C. As a result of a consumer complaint made to AMVIC in January 2022 regarding a consumer being misled and overcharged, an AMVIC investigation (case file 22-01-288) was completed.
- D. The AMVIC investigation revealed that on Nov. 15, 2021, a consumer ("BB") purchased a used 2018 Dodge Ram 1500 truck (the "2018 Dodge") for a purchase price of \$74,012.69 which included GST, cash back, various insurances, warranties and fees. BB did not take possession of the 2018 Dodge nor did he register the 2018 Dodge.
- E. On Nov. 17, 2021, BB returned to the Supplier and instead of taking possession of the 2018 Dodge he decided he wanted a new 2022 Dodge Ram. The salesperson for the Supplier told BB he would accommodate this and "take care of" the deal on the 2018 Dodge. BB relied on the statement of the salesperson and purchased the 2022 Dodge Ram (the "2022 Ram").
- F. A month later, in reviewing his Bill of Sale ("BOS"), BB noticed the 2022 Ram had cost him over \$134,000 and that the 2018 Dodge was used as a trade in on the 2022 Ram. The negative equity from the 2018 Dodge that was rolled into the transaction for the 2022 Ram was over \$20,000. BB

had only purchased the 2018 Dodge two days prior to the transaction for the 2022 Ram and had never taken possession or registered the 2018 Dodge.

- G. BB relied on the words of his salesperson that the Supplier would take care of it and unwind the first deal on the 2018 Dodge. Relying on those words BB purchased the 2022 Ram. As per Section 166 of the CPA, the Supplier is vicariously liable for the representations made to consumers by their employees or designated agents. Although it was not the intention of the Supplier to mislead the consumer their actions resulted in the consumer being disadvantaged financially. The evidence supports that there has been a breach of Section 6(3)(c) and 6(4)(b) 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
  - (c) to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided;
- (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:
  - (b) a supplier’s misleading statement of opinion if the consumer is likely to rely on that opinion to the consumer’s disadvantage;

#### **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.

- H. The AMVIC investigation revealed that both bills of sale from the consumer transactions completed by the Supplier failed to properly list the cash back, tires and brakes purchased by the consumer, the negative equity or the work being completed on either vehicle. The AMVIC investigator reviewed the bills of sale with several representatives from the Supplier and the investigator had trouble determining the true cost that BB actually paid for both vehicles.

## 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.
- I. In advance of the scheduled administrative review, the Supplier's in-house counsel submitted written representations advising that this factual scenario is not a frequent occurrence at their store. The Supplier advised that this is not a practice that is condoned by their management.
  - J. The Supplier has reviewed both consumer transactions thoroughly and concluded that the negative equity was not over \$20,000 as the consumer had been given a cheque in the amount of \$4,250 from the first transaction. From a practical point of view, it would be too difficult for the Supplier to unwind the transactions. On their own volition, the Supplier put forward a proposal to the Director to reimburse BB the sum of \$19,531.43 which represents the negative equity of \$18,850 plus the charged interest at the rate of 7.23 per cent in the amount of \$681.43 that was charged given the transactions were funded by different lenders and at different interest rates
  - K. At the administrative review, the AMVIC investigator identified that in the Supplier's offer of reimbursement they had not included the cost of the tires and brakes the consumer was charged on the 2018 Dodge in the amount of \$4,200. The Supplier stated this was an error and advised they were agreeable to reimburse the consumer for the tires and brakes as well. The brought the total reimbursement to the consumer to \$23,731.43.
  - L. The Supplier indicated they have taken steps to address their shortcomings including holding a meeting with their entire customer team and putting a policy in place to prevent this practice from reoccurring. The Supplier advised they regret this practice took place and are taking this matter very seriously.

M. The investigator noted the Supplier was very cooperative throughout the investigative process.

**NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:**

1. The Supplier acknowledges and admits that it failed to comply with the provisions of the CPA and Automotive Business Regulation (“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 or result in harsh, oppressive or one sided terms as per Sections 6(3)(c) and 6(4)(b) of the CPA.
3. The Supplier will undertake to ensure their BOS properly itemizes what is required and is completed in compliance with Section 31.2 of the ABR.
4. The Supplier will reimburse BB the sum of **\$23,731.43** (this amount represents the negative equity of \$18,850, \$4,200 for the tires and brakes and the charged interest at the rate of 7.23 per cent in the amount of \$681.43 that was charged to the consumer). The Supplier will provide AMVIC with a photocopy of the cheque made payable to the consumer. Such confirmation can be submitted to AMVIC immediately following reimbursement of the consumer or within thirty (30) days from the date of signing this Undertaking.
5. The Supplier shall pay the sum of **\$1,000** 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.
6. 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.
7. The Supplier acknowledges the Director may, upon breach of any term of the Undertaking, institute such proceedings and take such action under the *Consumer Protection Act* as they may consider necessary.

8. 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 *Consumer Protection Act*.
9. The Supplier acknowledges that he was advised by AMVIC, and he is aware that he is entitled to seek independent professional advice regarding the signing of this Undertaking, and the individual acknowledges he is entering into this Undertaking voluntarily.

IN WITNESS WHEREOF the Supplier, has on the 19 day of May, 2022.

PER: "original signed by"

Joe MEDINA  
General Manager  
AutoCanada Xtown Motors GP Inc.  
o/a Crosstown Chrysler Dodge Jeep Ram

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

PER: "original signed by"

Gerald Gervais  
Director of Fair Trading  
(as delegated)