

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

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

BY: CROWFOOT DODGE CHRYSLER INC.
in the city of Calgary, 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 new and used sales, leasing, garage, service station and wholesale sales in the Province of Alberta.
- B. An administrative review was held on March 14, 2023 at approximately 9 a.m. via teleconference call. Participating in the administrative review were Mr. Thomas Dwyer, general manager for the Supplier; [REDACTED] AMVIC investigator; [REDACTED] manager of investigations south; and G. Gervais, Director of Fair Trading (as delegated).
- C. AMVIC received a consumer complaint in July 2022 (case file 22-07-164) relating to the purchase of a 2021 Jeep Compass (the "Compass") on June 28, 2021 by a consumer ("WB"). WB purchased the Compass for \$38,100 plus applicable fees and charges.
- D. The bill of sale ("BOS") and finance documents indicate that WB put a \$5,000 deposit towards the purchase of the Compass. The investigation determined this was not accurate. The Supplier added a fake deposit. According to the Supplier, this was to ensure WB qualified for financing.
- E. On Sept. 22, 2022, the AMVIC investigator met with the Supplier's general manager who confirmed WB did not have a \$5,000 deposit for the purchase of the Compass. The Supplier stated they added the \$5,000 to the sale price of the vehicle, indicating the actual price of the Compass was closer to \$33,000. The Supplier submitted the BOS with the falsified deposit to the lending institution.
- F. The AMVIC investigation revealed that the Supplier had also drafted a fabricated deposit receipt (receipt #160160) which was contained in the vehicle deal jacket. In addition, WB was to have received a 7.5 per cent off manufacturer suggested retail price ("MSRP") incentive of \$2,503.35

as indicated on the Supplier's "Claim Entry Report". The AMVIC investigator confirmed the Supplier submitted a claim for this incentive and were paid \$2,503.35.

- G. WB relied on the words and actions of the Supplier. WB was not informed of the \$2,503.35 manufacturer incentive she was entitled to. The incentive was not passed on to her and was kept by the Supplier. The Supplier listed a fake \$5,000 deposit on the BOS and the information provided to the financial institution by the Supplier was inaccurate. As per Section 166 of the CPA, the Supplier is vicariously liable for the representations made to consumers by their employees or designated agents. The Supplier withheld information from WB to benefit financially resulting in WB being disadvantaged financially. The evidence supports that there has been a breach of Section 6(4)(a) of the CPA and Section 12(c) of the Automotive Business Regulation ("ABR").

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;

Automotive Business Regulation

General codes of conduct

Section 12

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

- (c) not abuse the trust of a consumer or exploit any fear or lack of experience or knowledge of a consumer,

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 identified that the Supplier falsified a receipt to support the fake \$5,000 deposit listed on the BOS and finance contract submitted to the lending institution. The BOS is not an accurate reflection of the transaction. The Supplier listed a fake deposit of \$5,000 on the BOS and inflated the sale price of the Compass to accommodate the fake deposit. The Supplier had

WB initial and acknowledge they have received all incentives and rebates that are applicable, which they knew was not the case, as they withheld the information about the manufacturer incentive from WB but applied for it and kept the incentive. These business practices and the evidence supporting these actions support that on a balance of probabilities the Supplier has breached Section 132(1) of the CPA and Section 9 of the ABR.

Consumer Protection Act**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.
- (2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

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.

- I. The BOS the Supplier completed in this consumer transaction does not include the government issued identification of the consumer. The BOS also contained inaccurate information, as discussed above. Based on the evidence before me, the Supplier has breached Section 31.2(1) of the 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. At the administrative review, the Supplier indicated they have been in business for over 46 years and have approximately 70 employees, including approximately 20 salespeople. They further stated this is not a common business practice they engage in.
- K. The Supplier advised they have taken steps to address the breaches of legislation to prevent them from reoccurring and have taken disciplinary action with the employee involved.
- L. The Supplier acknowledged the general conduct described in the AMVIC investigation and regrets engaging in the aforementioned activity and are taking this matter very seriously.

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 to ensure they are not engaging in business practices that could mislead or deceive a consumer as per Section 6(4)(a) of the CPA.
3. The Supplier will undertake to ensure they are not engaging in business practices that abuse the trust of a consumer or exploit any fear or lack of experience or knowledge of a consumer as per Section 12(c) of the ABR.
4. The Supplier will undertake to create complete and accurate financial business records as per Section 132(1) of the CPA and Section 9 of the ABR. Specifically, they will not fabricate fake documents or alter the financial details of a transaction on a BOS in order to obtain financing for a consumer.
5. The Supplier will undertake that any incentive or manufacturer rebate a consumer is entitled to, is applied and reimbursed to the consumer. The Supplier will not withhold any incentive a consumer is entitled to for their own financial gain.

6. The Supplier will undertake to ensure their BOS is completed in full and properly itemizes the accurate details of the transaction in accordance with the requirements of Section 31.2 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 **Sept. 30, 2023**.
8. The Supplier will reimburse WB the sum of **\$2,503.35** (the amount of the manufacturer rebate incentive). The Supplier will provide AMVIC with a photocopy of the cheque made payable to the consumer. Such confirmation must be submitted to AMVIC no later than thirty (30) days from the date of signing this Undertaking.
9. 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.
10. 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.
11. 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.
12. 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*.

13. 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 13 day of April, 2023.

Crowfoot Dodge Chrysler Inc.

PER: "original signed by"
Vicki APPLEBY
Director of the Supplier

ACCEPTED by the Director of Fair Trading on the 2 day of May, 2023

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