

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

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

BY: TEAM FORD SALES LIMITED
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 the automotive business activity of new and used sales, leasing, garage, service station, mobile repairs, specialty service and wholesale sales in the Province of Alberta.
- B. An administrative review was held on April 6, 2023 at approximately 11 a.m. via teleconference call. Participating in the administrative review were Mr. Jamie Jasman, general manager for the Supplier; [REDACTED] AMVIC investigator; [REDACTED] manager of investigations north; and G. Gervais, Director of Fair Trading (as delegated).
- C. AMVIC received a consumer complaint in October 2022 (case file 22-10-282) relating to the purchase of a 2022 Ford F-150 Lightning (the "Lightning") on Aug. 24, 2022 by a consumer ("JG"). JG purchased the Lightning for \$112,169 plus applicable fees and charges.
- D. JG requested that the Lightning be financed specifically through Ford Credit as typically their finance rates are lower than conventional financial institutions. The Lightning would have been the fourth vehicle JG would have financed through Ford Credit since 2015.
- E. The Supplier submitted credit applications for financing the Lightning to two financial institutions including the bank in which JG has an account, however did not submit the credit application to Ford Credit as requested by JG. Of the two financial institutions, JG's bank came back with the lowest finance rate of 7.49 per cent. JG was surprised that Ford Credit was presumably at a higher interest rate but given the rise in interest rates globally he did not question the finance rate and moved forward with the sale of the Lightning.
- F. On Sept. 30, 2022, JG purchased another Lightning from another automotive business for his wife and was able to obtain financing through Ford Credit at a rate of 4.99 per cent. At this time, JG

submitted a complaint to AMVIC alleging he was misled by the Supplier on the finance rate he was quoted. JG also claimed the Supplier would not cancel some add on products, tire and rim protection and a "Smart Plan", or provide a refund of JG's \$1,000 deposit.

- G. JG provided text messages between himself and a salesperson for the Supplier in which JG mentions he would like the financing for the Lightning to be through Ford Credit.
- H. The Supplier acknowledged they unintentionally did not submit JG's credit application to Ford Credit and confirmed they only sent the credit application to two financial institutions. When the text messages were provided to them they took responsibility for the miscommunication and offered to have JG's purchase contract re-written at the 4.99 per cent rate through Ford Credit, however JG did not cooperate or accept the Supplier's offer. Additionally, the Supplier refunded JG for add on products he wanted cancelled as well as his \$1,000 deposit.
- I. The financial cost as a result of the two different interest rates (7.49 per cent and 4.99 per cent) was calculated to be approximately a difference of \$12,516 over the course of the 84 month loan for the Lightning.
- J. JG relied on the words and actions of the Supplier. 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 did not advise JG that they had not submitted his credit application to Ford Credit, as he had requested. JG relied on the Supplier's employee and as a result JG was financially disadvantaged by having the Lightning financed at a higher interest rate than what would have been available to him through Ford Credit. The evidence supports that there has been a breach of Section 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.

(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;

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.

- K. The bill of sale ("BOS") that was completed by the Supplier in this consumer transaction does not include the date the Lightning was delivered to JG and does not itemize the costs of all extra equipment and options sold to JG in connection with the Lightning or installed on the Lightning at the time of sale including listing the box liner and tonneau cover. Based on the evidence before me, the Supplier has breached Sections 31.2(1)(i) and 31.2(1)(l) 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.

- L. During the administrative review, the Supplier indicated they have been in business since at least 2001 and have approximately 150 employees, including approximately 15 salespeople. They further stated this is not a common business practice they engage in. The Supplier sells over 2,000 new and used vehicles annually, not including fleet vehicles.
- M. The Supplier expressed a continued willingness to remedy their error with the consumer and stated it was unfortunate that JG was unwilling to have the Supplier re-write the finance contract on his behalf at the interest rate that would have been available through Ford Credit at the time of the transaction. A breakdown in communication between the initial salesperson and the finance manager contributed to the Supplier not sending the credit application to Ford Credit, there was no intent by the Supplier to mislead JG.

- N. The Supplier further indicated that despite selling a large volume of vehicles annually, they have no previous enforcement history.
- O. 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 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 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.
- 4. The Supplier will reimburse JG the sum of \$10,000, this amount is to compensate JG for the cost associated with the difference in the interest rate from the interest rate that would have been available through Ford Credit. 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.
- 5. The investigation costs in completing this investigation will be waived.
- 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 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.

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 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 28 day of April, 2023.

Team Ford Sales Limited

PER: "original signed by"
Jamie JASMAN
General Manager 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)