

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

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

BY: 1806461 ALBERTA LTD.
operating as DRIVEN BY YOU AUTO SALES/COLISEUM CARS & TRUCKS
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 retail sales and wholesale sales in the Province of Alberta.
- B. An administrative review was held on May 2, 2023 at approximately 9 a.m. via teleconference call. Participating in the administrative review were Mr. Mohamed El-Mahdy Sassi, owner and director 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 November 2022 (case file 22-11-086) relating to the purchase of a 2012 Dodge Journey (the "Journey") on April 19, 2022 by a consumer ("HO"). HO purchased the Journey for \$8,500 inclusive of taxes and fees.
- D. On April 19, 2022, HO attended the Supplier to look at a Dodge Journey that was advertised for sale and spoke with a salesperson. The salesperson directed her to a different Dodge Journey on the lot. When HO wanted to test drive the Journey she was advised that she could not as the battery in the Journey was dead and needed replacing. Nonetheless, HO started dealing on the Journey and advised the salesperson that she wanted to have the Journey inspected before purchasing it. The salesperson advised HO there was no need for an inspection as one had already been completed. The salesperson showed HO a Carfax and the "inspection" report he had. The document presented to HO was in fact not an inspection report but a Mechanical Fitness Assessment ("MFA"). HO believed the MFA was an "inspection" and relied on the representations of the salesperson in her decision to purchase the Journey.
- E. On Jan. 6, 2023, AMVIC investigators attended the Supplier and spoke with the salesperson involved in the consumer transaction with HO. During the conversation with the salesperson,

the salesperson referred to an MFA as an AMVIC “inspection”. When AMVIC investigators questioned the salesperson on the terminology used to describe the MFA to HO, the salesperson advised that he told HO it was Mechanical Fitness Assessment but to make it easier for her to understand he called it an “inspection”.

- F. The MFA is required as per Section 15(1) of the Vehicle Inspection Regulation (“VIR”). The VIR is a regulation under the *Traffic Safety Act* (“TSA”). The requirement to provide an MFA is required under the TSA and is therefore in the jurisdiction of Alberta Transportation. Although the MFA falls under the requirement of Alberta Transportation, it comes into AMVIC’s purview in the course of our mandated duties as per a number of legislated sections that apply to following all legislation applicable to the sale of motor vehicles such as Section 12(o) of the ABR and Section 127(b)(v.1) of the CPA.
- G. HO relied on the words of the Supplier. By referring to an MFA as an “inspection” is a misleading statement to a consumer. 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 evidence supports that there has been a breach of Sections 6(4)(a) 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.

(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;

(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. At the administrative review, the Supplier indicated they have been in the automotive business since 2014 and in retail sales since 2020.

- I. The Supplier prides themselves in trying to do right by their customers and stated this is not a regular business practice they engage in and have no previous enforcement history.
- J. The Supplier put forward there was no malicious intent in trying to mislead or deceive the consumer and acknowledge the wrong wording was used. The owner and director for the Supplier has already spoken to the sales manager to ensure that proper terminology is being used when referencing documents on a go forward basis.
- K. 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 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 Sections 6(4)(a) and 6(4)(b) of the CPA and will endeavor to use the proper terminology when referencing documents.
3. 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.
4. 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.
5. 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.

6. 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*.
7. 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 24 day of May, 2023.

1806461 Alberta Ltd.
o/a Driven By You Auto Sales/Coliseum Cars & Trucks

PER: "original signed by"
Mohamed El-Mahdy SASSI
Director of the Supplier

ACCEPTED by the Director of Fair Trading on the 31 day of May, 2023

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