

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

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

BY: 2189596 ALBERTA LTD.
o/a CALGARY HYUNDAI
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 leasing, garage, agent or broker, retail sales and wholesale sales in the Province of Alberta.
- B. An administrative review was held on June 13, 2023 at approximately 1 p.m. via teleconference call. Participating in the administrative review were Mr. Lief Sorensen, owner and director 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 March 2023 (case file 23-03-009) relating to the purchase of a 2022 Hyundai Tucson (the "Tucson") by a consumer ("MS") on April 22, 2022.
- D. The offer to purchase dated April 18, 2022 and the finance documents list the Tucson as a new vehicle and the bill of sale ("BOS") dated April 22, 2022 lists the Tucson as a demo vehicle. The Tucson was pre-registered with Alberta Registries to another numbered company using the new vehicle information statement ("NVIS") on Dec. 3, 2021. The director for the numbered company that registered the Tucson has the same director as the Supplier. As the Tucson had been previously registered, it is a used vehicle and was misrepresented to MS as a new vehicle. MS relied on the words and actions of the Supplier. The Supplier provided MS with a NVIS dated April 22, 2022 which declares the Tucson as new and having not been registered which is not accurate. 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 Section 6(4)(g) of the CPA. The discrepancies between all the documents created during the course of this transaction demonstrates the Supplier breached Section 132(1) of the CPA and Section 9 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:

(g) a supplier’s representation that goods are new if they are used, deteriorated, altered or reconditioned;

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.

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.

- E. In review of the Supplier’s BOS, it is not compliant with Section 31.2 of the ABR. The BOS is missing the salesperson registration number of the salesperson involved in the consumer transaction. The odometer reading of the Tucson is listed as 5,508 kilometres on the conditional sales contract and on the BOS is listed as 7,000 kilometres. An air conditioning tax was combined in the documentation fee rather than being itemized separately on the BOS. In addition, a declaration

indicating the vehicle history for the Tucson was not filled out on the BOS or disclosed in accordance with Section 31.1 of the ABR. The AMVIC investigation identified that a Carfax report lists a collision incident involving the Tucson on Sept. 8, 2021 and a claim for \$7,126 which was not disclosed to MS. Based on the evidence before me, the Supplier has breached Sections 31.1, 31.2 and 31.3 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.

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.

Receipt of information

Section 31.3

A business operator engaged in automotive sales must not enter into a bill of sale with a consumer unless the business operator has obtained written confirmation from the consumer that the consumer has received the information required under section 31.1.

- F. During the administrative review, the AMVIC investigator remarked the Supplier was cooperative during the course of the investigation.
- G. At the administrative review, the Supplier indicated they have approximately 62 employees, including approximately 11 salespeople and on average they sell approximately 1,000 new and used vehicles annually.
- H. The Supplier maintains they were unaware of the collision incident and claim involving the Tucson. The Supplier has enacted a policy of providing both a Carfax and a Mechanical Fitness Assessment ("MFA") for all vehicles, regardless of the vehicle status (new, pre-owned, or demo) that are in excess of 500 kilometres in order to avoid any potential future exposure.
- I. In advance of the administrative review, the Supplier reached an agreed upon settlement with MS.
- J. The Supplier has implemented systems which have been in place since September 2022. These systems address a lot of their documentation and administrative issues such as the missing salesperson registration number on the BOS, their advertised pricing and the generating of a NVIS.
- K. The Supplier acknowledged the general conduct described in the AMVIC investigation, 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 do not represent goods as new if they are used as per Section 6(4)(g) of the CPA.
3. The Supplier will undertake to create and maintain complete and accurate business records as per Section 132(1) of the CPA and Section 9 of the ABR.
4. 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.
5. The Supplier will undertake to disclose the vehicle history information, as applicable, in writing to consumers before entering into a contract as per the requirements in Sections 31.1 and 31.3 of the ABR.
6. 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 **Dec. 31, 2023**.
7. The Supplier shall pay the sum of **\$750** 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.
8. 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.
9. 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.

10. 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*.
11. 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 25 day of June, 2023.

**2189596 ALBERTA LTD.
o/a CALGARY HYUNDAI**

PER: "original signed by"
Lief SORENSEN
director of the Supplier

ACCEPTED by the Director of Fair Trading on the 4 day of July, 2023

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