

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

THIS **UNDERTAKING** is made pursuant to Section 152 of the Consumer Protection Act ("CPA")

BY: FREEDOM FORD SALES LIMITED
at or near 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 activities of garage, autobody, leasing, new and used sales, wholesale and service station in the Province of Alberta.
- B. An AMVIC investigation (case file 22-05-270) was initiated as a result of a consumer complaint received by AMVIC in May 2022, alleging she was misled and deceived by the Supplier's representations regarding the modifications of a vehicle in which she relied upon when deciding to purchase the vehicle.
- C. An administrative review was held via teleconference call on Jan. 10, 2023 at 9 a.m. as well as on March 14, 2023 at 9 a.m. Participating in the administrative reviews were Mr. Amit Singh, dealer principal for the Supplier; Mr. Ronald Berger, legal counsel for the Supplier; [REDACTED] AMVIC investigator; [REDACTED] AMVIC manager of investigations north; and G. Gervais; Director of Fair Trading (as delegated).
- D. In early September 2021, the consumer ("YS") and her common-law partner started negotiations with the Supplier to purchase a 2019 Ford F-350 diesel truck (the "F-350"). YS had wanted to trade in her 2018 truck to the Supplier, however as it had a "deleted" exhaust system the Supplier was not interested or willing to take this vehicle in on trade. In turn, YS inquired whether the F-350 was a factory vehicle with any deleted components and was advised by a sales person of the supplier it was not.
- E. A "deleted" exhaust refers to an exhaust system bypassed and the engine computer programmed by an electronic tuner for enhanced performance for horsepower and torque which can put extra demands on a vehicle's powertrain (engine/transmission) and also voids warranty for these components.
- F. On Nov. 17, 2021, YS purchased the F-350 for a purchase price of \$103,854.36. Included in the sale of the F-350 was an extended warranty for \$7,286 plus the cost of the goods and services tax ("GST"). YS was told by the sales person that she had to purchase this extended warranty to qualify for the lower interest rate loan with the bank.
- G. As YS does not live in Alberta, not long after purchase she took the F-350 for an out of province inspection in order to be able to register the F-350 in the province she resides in. The F-350 passed the out of province inspection.

- H. On Oct. 12, 2021, YS took the F-350 to a third-party Ford repair facility when the truck's check engine light came on. At this time there appeared to be nothing wrong with the F-350, however there was an outstanding Ford recall in regards to the powertrain control module reprogramming. When the repair facility attempted to complete the recall work, they discovered they could not as the F-350 had been programmed to bypass the exhaust system. This was when YS became aware that the F-350 had a deleted exhaust and programmed tuning added to the engine computer for enhanced performance beyond factory specifications.
- I. After driving the F-350 for a period of time, YS had concerns over perceived notable noises coming from the F-350's transmission which YS believed came from the extra torque from the modifications causing a "clunking" noise when the automotive transmission shifts gears. On Feb. 2, 2022, YS took the F-350 back to the third-party Ford repair facility in her province as a result.
- J. Upon discovering that the F-350 had been programmed to bypass the exhaust system increasing the horsepower and torque, YS has had ongoing dialogue and discussions with a salesperson of the Supplier in regards to her concerns regarding the truck, a failure on the Supplier's part to have disclosed this information and the possibility of potential issues arising from the "deleted" exhaust. YS maintains that she would not have purchased the F-350 had she been aware of the modifications.
- K. The AMVIC investigator determined that it is uncertain as to what if any damage has been done to the transmission of the F-350 due to the "deleted" exhaust. A full diagnostic has not been completed on the F-350 as there are no check engine lights illuminating on the dash and the transmission fluid is clean. The supplier has offered to buy the vehicle from YS at a price discounted by an amount reflecting YS had driven the vehicle more than 27,000 kms.
- L. The warranty purchased by YS is void on the aspects of items concerning powertrain (engine and transmission). The supplier has offered to pay for a new warranty for full coverage and restore the vehicle to manufacture's specifications at no cost to YS.
- M. Two recalls concerning the F-350's power control module and transmission control unit could not be done due to the modifications and the window to complete these recalls for free with Ford Canada has now expired. The supplier is prepared to address the recalls at no cost to YS.
- N. YS has parked the F-350 and cannot afford to restore the F-350 to factory settings nor can she afford an engine or transmission replacement if they fail (the supplier has offered to do this at no cost to YS). As a result, YS has received only partial reasonable benefit from the purchase of the F-350 (having driven the vehicle more than 27,000 kms without any problem) or the extended warranty she purchased.
- O. The AMVIC investigator spoke to the previous owner of the F-350, ("GY") who advised he purchased the F-350 from the Supplier and traded it back to them with the added performance tuner and deleted exhaust. GY stated to the investigator that he informed a salesperson of the Supplier of the modifications and received about \$6,000 less for the trade-in as a result.
- P. The AMVIC investigations determined that the "deleted" exhaust system was missed during the out of province inspection YS had completed not long after purchase. It was later discovered that the diesel exhaust fluid tank and diesel exhaust fluid line had not been removed but were simply bypassed which could possibly account for it being missed during the inspection.

- Q. The evidence supports that the Supplier is deemed to have been aware/or ought to have been aware of the modifications made to the F-350 having taken in the F-350 on trade with the modifications from the previous owner, and did not disclose this to YS. The investigation further revealed that a salesperson of the Supplier did in fact tell YS she was required to purchase an extended warranty to qualify for the lower interest loan with the bank which is not true and is a misleading statement. YS relied on that statement of opinion to her disadvantage as she is not receiving the benefit of a comprehensive warranty package that cost her \$7,286 plus GST. There was no requirement for her to purchase an extended warranty to qualify for a lower interest loan. The supplier has offered to pay for a new warranty for full coverage and restore the vehicle to manufacture's specifications at no cost to YS.
- R. The investigation revealed that in communication with YS, a salesperson of the Supplier made reference to a mechanical fitness assessment ("MFA") as an inspection which is also misleading to a consumer. YS has received only partial reasonable benefit from the F-350 or the extended warranty. In doing so, the Supplier has contravened Sections 6(3)(a), 6(4)(a) and 6(4)(b) of the CPA.
- S. The Supplier's legal counsel had been in communication with YS's legal counsel up until the Jan. 10, 2023 administrative review regarding a possible mutual settlement. The Supplier does not look to YS to have to absorb any costs to restore the vehicle to factory settings and if the Ford Canada warranty is no longer viable are prepared to authorize the cost of an alternate equivalent warranty which would be absorbed at the cost of the Supplier.

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

(a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;

(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;

- T. The AMVIC investigation identified issues with the Supplier's bill of sale ("BOS"). The BOS for this transaction is missing the government issued identification that the Supplier used to confirm the identity of the consumer, the colour of the F-350, whether any MFA had been issued, a disclosure statement or documentation respecting the F-350's previous use, history or condition, and a declaration that the business operator has disclosed to the consumer the information required under section 31.1. The BOS does not comply with the requirements as set out in the Automotive Business Regulation ("ABR") therefore the Supplier has contravened the following highlighted provisions of Section 31.2 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.

- U. In advance of the scheduled Jan. 10, 2023 administrative review, the Supplier's legal counsel provided written representations to the Director. The consumer transaction involving YS predates the new general manager and dealer principal Mr. Amit Singh who took over on Feb. 1, 2022 and who has taken immediate and ongoing steps to rectify the deficiencies noted.
- V. In this consumer transaction, the Supplier concedes their failure to record, retain, and thereby inform YS of the pertinent history of the F-350 sold to her. A truck with a "deleted" exhaust and modifications is not a common and typical sale. Mr. Singh has taken steps to improve their business practices by implementing a new process to ensure that records of modifications made to a trade-in are recorded, maintained, and disclosed to subsequent purchasers thereby ensuring customers are made aware of any vehicle modifications and after-market accessories installed on vehicles sold or taken in on trade. The Supplier has created new forms to catalogue this information, which will then be accessible to any sales staff to ensure they disclose the information to any potential consumer.
- W. The misleading statements made by a member of the sales staff employed by the Supplier while communicating with YS was of concern to Mr. Singh. He has addressed this both orally and in writing to his staff to make clear that the supplier insists that full disclosure to customers is essential and is expected of all staff members. That message has been reiterated at follow-up staff meetings to ensure strict compliance.
- X. The Supplier advised that to date subsequent to the acquisition of the F-350, based on reports from the Ford repair facility, YS has driven the F-350 a distance of 27,000 kilometers ("kms") or more over an 11-month period. YS has not denied this.
- Y. During the follow-up administrative review which was held on March 14, 2023, the investigator advised that YS was no longer represented by legal counsel and efforts on a resolution had not progressed. The Director extended the time period for the parties to try to resolve the matter through a settlement however, the two parties have not been able to come to a mutual agreement notwithstanding three offers of resolution proffered by the supplier.

- Z. The Supplier has made clear that it was not its intention to mislead the consumer. Their common practice reflects compliance with the legislation in the 2021-2022 fiscal year during which they sold approximately 3,600 vehicles without complaints of concerns.
- AA. The Supplier provided the Director with documentation and internal email correspondence to the supplier's staff to support their new processes they have implemented and how they have remedied the breaches.
- BB. The Supplier has implemented changes to their BOS to bring the form and completion of the form into compliance by their staff.
- CC. The Supplier expressed a genuine interest to resolve YS's concerns and come to a mutual resolution. The Supplier advised the Director they remain open to further discussions with YS *"to settle the matter even if 'civil remedies' are pursued by her."*
- DD. The Supplier has been in business since 1997 and is a large volume automotive business. The investigator confirmed that the Supplier was cooperative during the investigation.
- EE. The Director is satisfied that the Supplier has ceased the contraventions.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges and admits that it failed to comply with the aforementioned provisions of the CPA and ABR and undertakes to the Director that the Supplier has taken steps and 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 do or say anything that might reasonably deceive or mislead a consumer during the course of a consumer transaction as per Section 6(4)(a) of the CPA.
3. The Supplier will undertake not to make any misleading statements of opinion if a consumer is likely to rely on that opinion to the consumer's disadvantage as per Section 6(4)(b) of the CPA. The Supplier will not advise consumers that they are required to purchase a warranty or that they must purchase a warranty to obtain a loan with a lower interest rate.
4. The Supplier will undertake not to enter into a consumer transaction if the Supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services as per Section 6(3)(a) of the CPA. The Supplier will not sell a consumer a warranty that the consumer will not be able to use due to any non-disclosed limitations or exclusions in the warranty coverage.
5. The Supplier will undertake to ensure their BOS is completed in compliance with Section 31.2 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 **Nov. 30, 2023**.
7. The Supplier shall pay the sum of **\$1,500** 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 CPA 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 CPA.

11. The Supplier acknowledges that it was advised by AMVIC, and is 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 19 day of June, 2023.

FREEDOM FORD SALES LIMITED

PER: "original signed by"
Amit SINGH
Dealer Principal

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

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