

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

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

**BY: KASH AUTOMOTIVE GROUP LTD.
o/a KASH AUTO GALLERY**
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 wholesale sales, agent or broker, retail sales and service station in the Province of Alberta.
- B. An administrative review was held on June 13, 2023 at approximately 9:05 a.m. via teleconference call. Participating in the administrative review were Mr. Sufyan Iqbal, 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 August 2022 (case file 22-08-554) relating to the purchase of a 2008 Toyota Tundra (the "Tundra") for \$18,691 by a consumer ("AG") on Aug. 3, 2022.
- D. The Supplier provided AG with a Motor Vehicle Record of Inspection, an Out of Province Vehicle Inspection ("OOP") and a Mechanical Fitness Assessment ("MFA") which all indicated the Tundra had no mechanical issues.
- E. On Aug. 16, 2022, AG had the Tundra inspected in British Columbia by a third party automotive business who determined the Tundra's HVAC (air conditioning ("AC") compressor) and parking brake cables were both seized and an estimate to repair these two issues totaled \$4,033.12. The brakes and HVAC categories on the Motor Vehicle Record of Inspection indicate a pass as does the brake component on the MFA.
- F. When AG reviewed the documentation he received from the Supplier, AG identified that he had been charged a \$999 documentation fee and a \$799 lender fee above the advertised price.

- G. AG provided the AMVIC investigator with a timeline of the consumer transaction which listed that on Aug. 2, 2022, AG's father in law had test driven the Tundra prior to the sale on behalf of AG and noted the Tundra's air conditioning was not working. AG spoke with the Supplier on Aug. 3, 2022 and was told the Supplier would repair the AC prior to delivering it to AG's father in law. On Aug. 10, 2022, the Tundra was delivered to AG's father in law but the AC had not been fixed and the parking brake did not work.
- H. AG sent an email to the Supplier requesting reimbursement of the documentation fee, and repairs to the AC and parking brake. AG purchased a used AC compressor and had it installed for \$768 and contacted Alberta Transportation to report the technician who performed the OOP and the MFA. AG then also submitted a complaint to AMVIC.
- I. Alberta Transportation conducted an investigation into the actions of the inspecting technician and soon after AG was reimbursed \$800 by the inspecting technician for the parking brake repairs.
- J. On Sept. 15, 2022, AG notified AMVIC's consumer's services officer ("CSO") that a settlement with the Supplier of \$1,000 had been reached and accepted, and to notify the AMVIC investigator.
- K. The AMVIC investigation revealed that screenshots of the Supplier's advertisements for the Tundra had the Tundra advertised for \$15,998. In review of the bill of sale ("BOS") AG paid \$17,797 for the Tundra, \$1,799 over the advertised price. In doing so, the Supplier sold the Tundra over the advertised price and breached Section 11(2)(l) of the Automotive Business Regulation ("ABR").

**Automotive Business Regulation
Advertising
Section 11**

- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
 - (l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and
- L. The BOS the Supplier completed in this consumer transaction does not include the business licence number of the Supplier, the date the Tundra was to be delivered, the maximum odometer reading at time of delivery and a declaration that the business operator disclosed the information required under Section 31.1, specifically that the vehicle was registered in a jurisdiction other than Alberta immediately before it was acquired by the business operator. Based on the evidence before me, the Supplier has breached 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.

- M. During the administrative review, the Supplier indicated they only became aware of the Tundra's air conditioning compressor issue after it was delivered and not when AG's father in law test drove the Tundra, as was relayed to the AMVIC investigator.
- N. At the administrative review, the Supplier indicated they employ two salespeople.
- O. The Supplier advised they have taken steps to address the breaches of legislation to prevent them from reoccurring.
- P. 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 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 their advertising conforms to legislation as required in Section 11 of the ABR, specifically they will ensure they are complying with Section 11(2)(l) of the ABR.
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. 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**.
5. The Supplier will reimburse AG the sum of **\$999** (the documentation fee charged to the consumer). 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.
6. The Supplier shall pay the sum of **\$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.
7. 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.
8. 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.
9. 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*.

10. 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 4 day of July, 2023.

**Kash Automotive Group Ltd.
o/a Kash Auto Gallery**

PER: "original signed by"
Sufyan IQBAL
director of the Supplier

ACCEPTED by the Director of Fair Trading on the 5 day of July, 2023

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