

July 3, 2024

Administrative Review – 23-07-008
Served Personally

Administrative Penalty

NORDEN VOLKSWAGEN LIMITED
o/a GO AUTO NORDEN VOLKSWAGEN
14703 137 AVENUE NW
EDMONTON, AB
T5L 2L5

Attention: Chris Burrows and Michael Priestner

Dear Chris Burrows and Michael Priestner:

**Re: Norden Volkswagen Limited operating as Go Auto Norden Volkswagen
– Provincial Automotive Business Licence No. B209730**

As the Director of Fair Trading (as delegated) (the “Director”), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* (“CPA”) to provide you with written notice of the Administrative Penalty issued under that section.

Facts

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council (“AMVIC”) industry standards department application report (the “Application Report”) prepared by an industry standards officer (“ISO”) and the manager of industry standards. A copy of the Application Report is attached as Schedule “A” to this letter.

Licensee Status

Norden Volkswagen Limited operating as Go Auto Norden Volkswagen (the “Supplier”) holds an automotive business licence and is licensed to carry on the designated business activities of new and used sales, retail sales, service station, garage, leasing, and wholesale sales in the Province of Alberta.

Direct communications with the Supplier and its representatives

1. On April 29, 2016, a routine AMVIC industry standards inspection was completed at the business location of the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on May 26, 2016. The Findings Letter outlined some concerns including but not limited to:

- a) Advertising issues contrary to requirements in Section 11 of the Automotive Business Regulation ("ABR").
- b) Three salespeople designated to act on behalf of the Supplier to sell vehicles had expired salesperson registrations contrary to the ABR.

The Findings Letter provided to the Supplier on May 26, 2016 indicated the Supplier did not provide any advertisements to the ISO and therefore the ISO did not determine whether the Supplier had advertised vehicles for sale with all fees, charges, and accessories or optional equipment physically affixed to the vehicle included in the advertised price (excluding the goods and services tax ("GST") and charges associated with financing) as required by Section 11(2)(l) of the ABR.

2. On May 8, 2017, a followup AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on May 24, 2017. The Findings Letter outlined some concerns including but not limited to:
 - a) Advertising issues contrary to requirements in Section 11 of the ABR.
 - b) During the inspection, 12 deals were reviewed by the ISO and of those 12 deals, five did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - c) Discrepancies were identified in three consumer credit applications submitted by the Supplier to the financial institutions which inflated consumer's income contrary to Section 6 of the CPA.
 - d) Issues with the completion of and/or disclosure of Mechanical Fitness Assessments ("MFAs") contrary to Sections 15(1) and 16 of the Vehicle Inspection Regulation ("VIR").
3. On July 26, 2019, a third AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Aug. 22, 2019. The Findings Letter outlined some concerns including but not limited to:
 - a) Advertising issues contrary to requirements in Section 11 of the ABR, and Sections 4 and 6 of the Cost of Credit Disclosure Regulation ("COC").
 - b) The Supplier was wholesaling vehicles without the required AMVIC licensed to do so contrary to Section 104(1) of the CPA.
 - c) During the inspection, 18 deals were reviewed by the ISO and of those 18 deals, nine did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - d) Three salespeople designated to act on behalf of the Supplier to sell vehicles had expired salesperson registrations contrary to the ABR.
 - e) A number of the bills of sale ("BOS") that were reviewed in the deal jackets had compliance issues contrary to Section 31.2 of the ABR.

As a result of this inspection the ISO issued a Warning Letter to the Supplier dated Aug. 22, 2019.

4. On March 22, 2022, a fourth AMVIC industry standards inspection was completed on the Supplier via telephone. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on March 15, 2022. The Findings Letter outlined some concerns including but not limited to:
 - a) During the inspection, nine deals reviewed by the ISO did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - b) Advertising issues contrary to requirements in Sections 11 and 31.1 of the ABR.
 - c) Issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
 - d) A number of the BOS' that were reviewed in the deal jackets had compliance issues contrary to Section 31.2 of the ABR.

The Findings Letter provided to the Supplier on March 25, 2022 indicated that AMVIC had received two consumer complaints regarding the Supplier not complying with Section 11(2)(l) of the ABR.

5. On April 25, 2023, a fifth AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on May 29, 2023. The Findings Letter outlined the following concerns:
 - a) Advertising issues contrary to requirements in Sections 11 and 12 of the ABR, Section 6 and 7 of the COC, and Section 76 of the CPA.
 - b) During the inspection, 16 deals reviewed by the ISO did not reflect all-in pricing contrary to Section 11(2)(l) of the ABR.
 - c) One salesperson designated to act on behalf of the Supplier to sell vehicles had an expired salesperson registration. The Supplier advised the ISO that the individual ceased to act as a designated agent as they are now employed with the Supplier in a different role. The Supplier did not notify AMVIC in accordance with Section 21 of the ABR that the individual was no longer authorized to act as designated agent.
 - d) A number of the BOS' that were reviewed in the deal jackets had compliance issues contrary to Section 31.2 of the ABR.
 - e) Issues with the completion of and/or disclosure of MFAs contrary to Section 15(1) of the VIR.
 - f) Multiple discrepancies were identified in eight consumer credit applications submitted by the Supplier to the financial institutions where the Supplier had inflated the consumer's income, inflated the consumer's time at residence and inflated the consumer's time at employment contrary to Section 6 of the CPA.
 - g) In one deal reviewed by the ISO during the inspection the Supplier falsified a BOS to include a fake deposit and inflated the purchase price of the vehicle to account for the fake deposit. This business practice is contrary to Section 6 of the ABR.

The Findings Letter provided to the Supplier on May 29, 2023 stated this inspection was initiated as a result of a consumer complaint AMVIC received in relation to the Supplier selling a vehicle for more than the advertised price contrary to Section 11(2)(l) of the ABR.

6. On May 24, 2024, the proposed Administrative Penalty was served on the Supplier. The proposed Administrative Penalty provided the Supplier an opportunity to make written representations with respect to the matter by June 28, 2024. The Supplier did not provide any written representations in response to the proposed Administrative Penalty.

Applicable Legislation

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.

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
 - (d) uses descriptions and makes promises only in accordance with actual conditions, situations and circumstances,
 - (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
 - (n) does not use false, misleading or deceptive statements, and

General codes of conduct

Section 12

Every business operator must comply with section 6 of the Act and in addition must

- (a) not make any representations, statements or claims that are not true or are likely to mislead a consumer,
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

Salesperson ceases to be authorized

Section 21

- (1) When an automotive sales business operator, automotive leasing business operator or automotive consignment business operator ceases to authorize a salesperson to act on its behalf, the business operator must send to the Director written notification of
- (a) the name of the salesperson, and
 - (b) the date that the salesperson ceases to be authorized to act on its behalf.
- (2) The business operator must notify the Director either before the salesperson ceases to be authorized or within 15 days after the salesperson ceases to be authorized.

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.

Vehicle Inspection Regulation

Sale of used motor vehicle

Section 15

- (1)** Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:
- (a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;
 - (b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;
 - (c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;
 - (d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;

- (e) a statement certifying that at the time of sale the motor vehicle
 - (i) complies with the Vehicle Equipment Regulation (AR 122/2009), or
 - (ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

**Cost of Credit Disclosure Regulation
Advertisements
Section 6**

- (1)** This section applies only to advertisements that offer credit and state the interest rate or amount of any payment.
- (2)** The information required to be disclosed for the purposes of section 76(1) of the Act is
 - (a) the APR, and
 - (b) the term.
- (3)** In addition to the information required under subsection (2),
 - (a) an advertisement for a credit sale of a specifically identified product must disclose the cash price, and
 - (b) an advertisement for a credit sale in connection with which any non-interest finance charge would be payable must disclose
 - (i) the cash price, and
 - (ii) the total cost of credit, except that an advertisement on radio, television or a billboard or other media with similar time or space limitations is not required to disclose the total cost of credit.
- (4)** Where any of the information required to be disclosed by subsections (2) and (3) would not be the same for all credit agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.

**Advertising interest-free periods
Section 7**

- (1)** The information required to be disclosed for the purposes of section 76(2) of the Act must disclose whether
 - (a) the transaction is unconditionally interest-free during the period, or
 - (b) interest accrues during the period but will be forgiven under certain conditions.
- (2)** If interest accrues during the period but will be forgiven under certain conditions, the advertisement must also disclose
 - (a) the conditions, and

(b) the APR for the period, assuming the conditions for forgiveness of the interest are not met.

Consumer Protection Act

Act prevails

Section 2

(1) Any waiver or release by a person of the person's rights, benefits or protections under this Act or the regulations is void.

Interpretation of documents

Section 4

If a consumer and a supplier enter into a consumer transaction, or an individual enters into a contract with a licensee and the licensee agrees to supply something to the individual in the normal course of the licensee's business, and

(a) all or any part of the transaction or contract is evidenced by a document provided by the supplier or licensee, and

(b) a provision of the document is ambiguous,

the provision must be interpreted against the supplier or licensee, as the case may be.

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.

(2) It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,

(c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;

Advertising for fixed credit

Section 76

(1) Every advertisement that offers credit and that states the interest rate or amount of any payment must disclose the information provided by the regulations.

(2) An advertisement that states or implies that no interest is payable for a certain period in respect of a transaction must, in the form and manner referred to in the regulations, disclose the information prescribed by the regulations.

(3) An advertisement to which subsection (2) applies that does not, in the form and manner referred to in the regulations, disclose the information required under subsection (2) is deemed to represent that the transaction is unconditionally interest-free during the relevant period.

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.

Administrative Penalties

Notice of administrative penalty

Section 158.1

(1) If the Director is of the opinion that a person

- (a) has contravened a provision of this Act or the regulations, or
- (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,

the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.

(2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.

(3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.

(4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.

(5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

Right to make representations

Section 158.2

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

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.

Analysis – Did the Supplier fail to comply with the provisions of the CPA, ABR, COC and VIR?

A routine AMVIC industry standards inspection was completed on April 29, 2016. The inspection findings were discussed with the Supplier and the Findings Letter was emailed to the business on May 26, 2016. The 2016 inspection findings identified advertising issues and three unregistered salespeople.

A second AMVIC industry standards inspection was completed on May 8, 2017. A Findings Letter outlining the inspection findings was sent to the Supplier on May 24, 2017. On July 26, 2019 a third AMVIC industry standards inspection was completed on the Supplier. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on Aug. 22, 2019. A fourth AMVIC industry standards inspection was completed on March 22, 2022. This inspection was initiated as a result of two consumer complaints received in relation to all-in pricing. A Findings Letter outlining the inspection findings was sent to the Supplier on March 25, 2022. The inspections completed in 2017, 2019, and 2022 found similar and additional breaches to the inspection completed in 2016 including advertising issues, selling over the advertised price, MFA issues, BOS issues, expired salespeople and discrepancies in the information provided to financial institutions in credit applications.

On April 25, 2023 a fifth AMVIC industry standards inspection was completed on the Supplier. This inspection was initiated as a result of a consumer complaint received in relation to the Supplier selling a motor vehicle over the advertised price. A Findings Letter outlining the inspection findings was completed and sent to the Supplier on May 29, 2023. The inspection completed found similar and new breaches to the inspections completed in 2016, 2017, 2019 and 2022.

The ISO identified that advertising issues were found in all five inspections, selling a vehicle over the advertised price was found in four of five AMVIC inspections, MFA issues were found in three of five AMVIC inspections, and BOS issues were found in three of the five AMVIC inspections based on the Findings Letters provided to the Supplier following each AMVIC industry standards inspection.

Based on the facts outlined in the Application Report and supporting documents (see Schedule "A"), I will be considering the alleged breaches from the April 25, 2023 AMVIC industry standards inspection.

A. Selling Above Advertised Price (11(2)(l) ABR)

During the April 25, 2023 inspection, the ISO reviewed the Supplier's retail vehicle deal jackets. Of the deal jackets reviewed by the ISO, the ISO put forth that 16 of the vehicles were sold over the advertised price contrary to Section 11(2)(l) of the ABR. Prices advertised must include all fees the seller intends to charge. The only fee that can be added to the advertised price is the goods and services tax ("GST") and costs associated with financing as per Section 11(2)(l) of the ABR. Pre-installed products such as batteries and anti-theft must be included in the advertised price. Destination fees, documentation fees, the AMVIC levy and tire recycling levy must be included in the advertised price. The Application Report

submitted by the ISO indicates that in **16** consumer transactions the Supplier derived an economic benefit of **\$12,133** at the cost of the consumers:

- Stock No. 23JE2235 was sold over the advertised price by \$126.25;
- Stock No. 23JE0594 was sold over the advertised price by \$126.25;
- Stock No. 23JE2336 was sold over the advertised price by \$126.25;
- Stock No. 23JE2108 was sold over the advertised price by \$126.25;
- Stock No. 23JE1001 was sold over the advertised price by \$226.25;
- Stock No. 23TA2100 was sold over the advertised price by \$1,426.25;
- Stock No. 23TA2444 was sold over the advertised price by \$626.25;
- Stock No. 23TA1560 was sold over the advertised price by \$2,626.25;
- Stock No. 23TA9968 was sold over the advertised price by \$526.25;
- Stock No. 23TA0836 was sold over the advertised price by \$1,326.25;
- Stock No. 23TA0133 was sold over the advertised price by \$3,312.25;
- Stock No. 23TA0052 was sold over the advertised price by \$1,126.25;
- Stock No. 23AT5773A was sold over the advertised price by \$6.25;
- Stock No. PT11492 was sold over the advertised price by \$6.25;
- Stock No. 22T13239A was sold over the advertised price by \$6.25; and
- Stock No. PW11401 was sold over the advertised price by \$4,197.25.

In reviewing Schedule “A”; Exhibit 11, the ISO identified that Stock No. 23JE2108 was sold over the advertised price by \$126.25 as noted above, however in reviewing the evidence the Director found no advertisement of the vehicle included as an exhibit. Without an advertisement, the Director is unable to make a determination if the vehicle was sold over the advertised price and therefore the Director does not find the Supplier sold over the advertised price for Stock No. 23LE2108.

In reviewing Schedule “A”; Exhibit 15, the Application Report subtracts an additional \$784 from the sale of the vehicle, to account for “TINT 5 WINDOWS” and “2 YEAR P.P.M” the Application Report indicates the Supplier sold Stock No. 23TA1560 over the advertised price by \$1,842.25. However, these two options are listed on the BOS with no cost associated and on the offer to purchase with a cost associated of “\$0.00”. Upon further review of the documents before the Director, the “Deal Recap” shows the consumer was not charged for the “2 YEAR P.P.M” and “TINT 5 WINDOWS” and the Supplier’s “Dealer Gross” for these products respectively was “-484.00” and “-300.00”. Given these products were not sold to the consumer, but covered by the Supplier, the Director finds the Supplier sold Stock No. 23TA1560 over the advertised price by \$2,626.25.

In reviewing Schedule “A”; Exhibit 23, the Application Report accounts for negative equity in the amount of \$3,700, subtracting this amount from the total amount Stock No. PW11401 was sold for. In reviewing the evidence currently before me, the BOS does not demonstrate there was any negative equity from the trade-in vehicle. The “Deal Recap” lists the negative equity of the trade-in vehicle as \$700. Therefore, the Director finds Stock No. PW11401 was sold over the advertised price by \$4,197.25 rather than \$1,197.25 indicated in the Application Report.

The Director finds that the Supplier sold over the advertised price in **15** deal jackets reviewed and derived an economic benefit of **\$15,790.75**.

Based on the evidence currently before me, the Supplier has derived an economic benefit by charging consumers over the advertised price. This is concerning as the Supplier has been provided more than ample opportunity and education to rectify this business practice, however continues to engage in this practice and derive an economic benefit at the cost of consumers. It further concerns the Director that inspections completed in 2022 and 2023 were initiated as a direct result of consumer complaints received alleging that the Supplier was selling vehicles over the advertised price, contrary to Section 11(2)(l) of the ABR. The Director acknowledges that three of the vehicles were sold over the advertised price for the cost of the AMVIC levy, which is not a significant dollar amount, however the vehicles were still sold over the advertised price as the AMVIC levy cannot be added onto the advertised price of the vehicles.

Based on the evidence currently before the Director, it appears that the Alberta Package may be a mandatory charge on all new vehicles. The Supplier provides consumers a list of recommended products and the consumer is able to accept or decline the optional products. The Alberta Package is not included on the list of recommended optional products. If the Alberta Package is already installed on the vehicle or is not an optional charge then it must be included in the advertised price.

The Director finds that on a balance of probabilities, the Supplier has breached Section 11(2)(l) of the ABR.

B. Other Advertising Issues (11 ABR/6 COC/7 COC/76 CPA)

The legislation that governs the automotive industry has numerous requirements in relation to advertising that all automotive businesses must comply with. During the most recent inspection conducted on April 25, 2023, the ISO identified a number of shortcomings related to the Supplier's advertising:

- Schedule "A", Exhibit 24 and 25 – The Supplier's website is advertising an interest rate and not disclosing the total cost of credit as required by Section 6(3)(b)(ii) of the COC and Section 76 of the CPA.
- Schedule "A", Exhibit 26 – The Supplier is advertising a "\$1,000 Trade-in Bonus" or "90 day payment deferral" and up to \$10,000 cash back without disclosing if interest accrues and the terms and conditions. When advertising interest free periods, the terms and conditions must be disclosed as per Section 7 of the COC and Section 76 of the CPA. All fees, rules and details of any promotions have to be fully explained. Further a Supplier cannot advertise a guaranteed trade-in bonus as vehicles advertised cannot have a guaranteed trade-in allowance as per Section 11(2)(d) and Section 11(2)(k) of the ABR.
- Schedule "A", Exhibit 27 and 28 – The Supplier is advertising a "No GST Sale" which is misleading to consumers because GST must be charged on the sale of all vehicles in the Province of Alberta, therefore this business practice is contrary to Section 11(2)(n) of the ABR.

Based on the evidence before me, on a balance of probabilities, I find the Supplier has breached Sections 11(2)(d), 11(2)(k) and 11(2)(l) of the ABR, Section 6(3)(b)(ii) and 7 of the COC and Section 76 of the CPA.

C. Bill of Sale Issues (31.2 ABR)

On Oct. 31, 2018, legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018 AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the legislative amendments, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

The Supplier was educated regarding the BOS requirements during the 2019 and 2022 industry standards inspection as well as the 2019 Warning Letter from the ISO. The Findings Letters and Warning Letter provided to the Supplier as a result of the 2019 and 2022 industry standards inspections provided the Supplier with the legislation they must comply with in the completion of their BOS.

In reviewing the documentation relating to the most recent inspection conducted on April 25, 2023, it is noted that the Supplier continues to be non-compliant with the rather straightforward BOS legislation. In the sale of Stock No. 23JE2235, Stock No. 23JE2108, Stock No. 23JE3589, Stock No. 23TA9912, Stock No. 23TI6824A and Stock No. PT11486 (see Schedule "A"; Exhibits 30, 31, 32, 33 and 34), the Supplier's BOS is missing the date that the vehicle is to be delivered to the consumer as required by Section 31.2(1)(i) of the ABR. In the sale of Stock No. SL6254A (see Schedule "A"; Exhibit 35) the Supplier's BOS is missing the number of the government-issued identification that the business operator used to confirm the identity of the consumer as required by Section 31.2(1)(b).

In the sale of Stock No. 23AT8014A (see Schedule "A"; Exhibit 42), the Supplier's "Deal Recap" lists a "Fake \$2K Deposit". The BOS identifies a \$2,000 deposit but there was no deposit receipt in the deal jacket. The purchase price of the vehicle was inflated from \$16,750 as listed on the offer to purchase to \$18,750 which is what is written on the BOS to account for the falsified deposit. A BOS should be a complete and accurate representation of the transaction, this is not the case in the sale of Stock No. 23AT8014A.

Based on the evidence before me, on a balance of probabilities, I find the Supplier has breached Section 31.2 of the ABR.

D. MFA Issues (15 VIR)/ General Code of Conduct (12(o) ABR)

The MFA is required as per Section 15(1) of the 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.

In the sale of Stock No. 23AT8014A (see Schedule "A"; Exhibit 37) the MFA was signed and dated by the consumer on April 3, 2023, however the BOS date is March 29, 2023. This demonstrates the consumer was not provided with the MFA prior to entering into a contract to purchase the vehicle. In addition, the delivery date listed on the BOS is March 29, 2023, therefore the consumer took delivery of the vehicle five days prior to being provided the MFA.

In the sale of Stock No. PW11513 (see Schedule "A"; Exhibit 38) the BOS is dated April 4, 2023. The MFA shows a date the MFA was acknowledged by the consumer with a date format of 04/05/2023. This is ambiguous as the Director is unable to determine whether this date is April 5, 2023 or May 4, 2023 however, either date is after the consumer entered into a contract to purchase the vehicle on April 4, 2023 and is therefore non-compliant with Section 15 of the VIR.

Having a consumer sign and date the MFA is the best way to document that a consumer was shown the MFA prior to entering into a transaction. By failing to provide an MFA to a consumer prior to entering into a consumer transaction takes advantage of a consumer's ability to make an informed decision prior to purchasing a motor vehicle as per the legislative requirements, therefore the Supplier has breached Section 15 of the VIR and Section 12(o) of the ABR.

E. Salesperson Ceases to be Authorized (21 ABR)

When an automotive sales business operator ceases to authorize a salesperson to act on its behalf, the business operator must send to the Director written notification of the name of the salesperson, and the date that the salesperson ceases to be authorized to act on its behalf with 15 days of when the salesperson is no longer designated. Due to technological advancements, the current process to advise AMVIC a salesperson is no longer an authorized designated agent to act on their behalf can be completed online. The Supplier can simply log into their online business portal and place an end date of employment for the associated salesperson. During the most recent inspection conducted on April 25, 2023, the ISO identified that one salesperson was registered under the Supplier with an expired salesperson registration. This individual was no longer selling motor vehicles and had moved to the Supplier's marketing department.

Issues with expired salespeople were brought to the attention of the Supplier in during the previous inspections. It concerns the Director that despite repeated education, the Supplier is not able to properly monitor and keep an accurate up to date roster of salespeople and notify the Director, as per the legislative requirements, when a salesperson ceases to be authorized which can put consumers at risk.

Based on the evidence before me, on a balance of probabilities, I find the Supplier has breached Section 21 of the ABR.

F. Maintain Records (132 CPA and 9 ABR)/ Use Exaggeration, Innuendo or Ambiguity (6(2)(c) CPA)

The Director does want to address an overarching issue. Specifically, the Findings Letters and Warning Letters revealed to the Director that the Supplier has issues with record keeping. It is imperative that the Supplier creates and maintains accurate records. Creating and maintaining accurate records is the best way for the Supplier to ensure the consumer is fully aware of all the details and required information during their transaction and is also the best way for the Supplier to demonstrate they are complying with the legislative requirements.

Issues that the Director found in the Findings Letters include the completion of and/or disclosure of MFAs, issues with the completion of the BOS, and discrepancies in credit applications. The legislation is very clear, that being negligent in keeping records is not only an offence under the CPA but in addition, if a provision of the document is ambiguous, the provision must be interpreted against the Supplier in accordance with Section 4 of the CPA. The Supplier is vicariously liable for all records created and maintained by an employee or agent acting on behalf of the Supplier in the course of completing the Supplier's delegated business activities.

A recent Service Alberta Appeal Board rendered a decision (attached as Schedule "B") regarding the importance of record keeping as a member of a regulated industry. Paragraph 152 of the Service Alberta Appeal Board decision states:

The Board finds that there is a need for general deterrence as well, such that other members of the industry understand that failure to keep proper records is an extremely serious contravention of the act, and a business practise that puts the public at risk.

The seriousness of the contravention is further supported in the Administrative Penalties (*Consumer Protection Act*) Regulation, in which Section 2(5) of the regulation states the contravention of the record keeping legislation in the CPA (Section 132) has a maximum penalty amount of \$25,000 per contravention. This is the highest amount indicated for a contravention in the Administrative Penalties (*Consumer Protection Act*) Regulation.

Administrative Penalties (*Consumer Protection Act*) Regulation

Amount of administrative penalty

Section 2

(5) The maximum administrative penalty that may be imposed for a contravention of section 132 of the Act is \$25 000 for each contravention.

During the most recent inspection conducted on April 25, 2023, the ISO identified a number of discrepancies in credit application document information as provided by the consumer versus credit application document information furnished to banking institutions from the Supplier including but not limited to the amount of time a consumer has resided at their residence, a consumer's income or a consumer's term of employment:

- Schedule “A”, Exhibit 39 - time at residence inflated from six months to two years and six months.
- Schedule “A”, Exhibit 40 – income inflated from \$42,000 to \$54,000.
- Schedule “A”, Exhibit 41 – income inflated from \$60,000 to \$65,000.
- Schedule “A”, Exhibit 42 – time at residence inflated from eight months to two years and one month, time at employment inflated from eight months to two years one month.
- Schedule “A”, Exhibit 43 – monthly income inflated by \$1,000.
- Schedule “A”, Exhibit 44 – income inflated from \$46,000 annually to \$54,000.
- Schedule “A”, Exhibit 45 – time at residence inflated from eight months to one year three months.
- Schedule “A”, Exhibit 46 – income inflated from \$62,500 annually or \$5,400 monthly, to \$78,000 annually or \$6,500 monthly.

By inflating the consumers information as listed above, the Supplier is using exaggeration as to a material fact with respect to the consumer transaction, breaching Section 6(2)(c) of the CPA.

When a Supplier is inflating income, time at residence or time at employment and providing inaccurate credit application details to lending institutions to ensure a consumer is financed, they are putting consumers at risk financially and the reputation of the automotive industry into disrepute. If a consumer is unable to obtain financing with the accurate financial information it is not within the legislative guidelines governing the automotive industry for the Supplier to fabricate the financial information to obtain financing for the consumer. The consumer must qualify based on the accurate facts, including their employment, salary, time at a residence, negative equity of a trade-in, or the amount of a down payment or deposit they are providing. Section 132 is very clear that the financial documents must be **accurate**. The lending intuitions approve financing based on the facts that are submitted which are in place to ensure the consumer is purchasing a vehicle they can reasonably afford, Section 6(3)(b) of the CPA states:

Consumer Protection Act

Unfair practices

Section 6

(3) It is an unfair practice for a supplier

(b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;

Based on the totality of all of the issues and concerns with the Supplier’s paperwork on a balance of probabilities, the Director does find that the Supplier is in contravention of Section 6(2)(c) and Section 132(1) of the CPA and Section 9 of the ABR.

F. Other Considerations

In addition to the individual education AMVIC provided the Supplier in the form of the Findings Letters provided after each AMVIC industry standards inspection, AMVIC has issued numerous industry bulletins

and newsletters over the past two years explaining all-in pricing and advertising regulations, educating the automotive industry as a whole. As a licensed member of the automotive industry, the Supplier would have received the AMVIC industry bulletins and newsletters and in the opinion of the Director, is expected to have reviewed these education bulletins and newsletters to ensure their business practices are in compliance.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. The Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903* addressed the issue of the onus and responsibility the Supplier has when operating within a regulated industry. The court at paragraph 59 stated:

"In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator."

The Supplier's business practices discussed above leverages the Supplier's knowledge and position, and does not foster a level playing field between the consumer and the Supplier, leading to financial harm to consumers. It further concerns the Director that the Supplier has continued to breach rather straightforward legislation to the financial detriment of consumers, despite the education provided by AMVIC.

The aggravating factors in this matter include the resulting financial impact adversely affecting the consumers due to paying over the advertised price, in 15 transactions the Supplier derived an economic benefit of **\$15,790.75** and continued non-compliance with the rather straightforward requirements of the legislation despite education provided to the Supplier.

This Administrative Penalty is taking into account the number and seriousness of the contraventions of the legislation found during the fifth inspection; and the aggravating factors listed above.

The amount of the Administrative Penalty cannot be viewed as a cost of doing business but rather as a deterrent for continuing to engage in non-compliant business practices.

Action

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Norden Volkswagen Limited operating as Go Auto Norden Volkswagen pay an Administrative Penalty. This is based on my opinion that Norden Volkswagen Limited operating as Go Auto Norden Volkswagen contravened Sections 6(2)(c), 76 and 132 of the CPA, Sections 9, 11, 12(o), 21 and 31.2(1) of the ABR, Section 15 of the VIR and Sections 6(3)(b)(ii) and 7 of the COC.

Taking into consideration all the evidence currently before the Director, the amount of the Administrative Penalty is **\$23,500**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The financial harm on the persons adversely affected by the contraventions or failure to comply;
2. The seriousness of the contraventions or failure to comply;
3. The economic benefit derived from the contraventions or failure to comply;
4. The degree of willfulness or negligence in the contravention or failure to comply;
5. The maximum penalty under Section 158.1(3) of the CPA of \$100,000; and
6. The deterrent effect of the penalty.

The amount of the Administrative Penalty is \$23,500.

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the **“Government of Alberta” and sent to AMVIC** at:

Suite 303, 9945 – 50th Street
Edmonton, AB T6A 0L4.

If payment has not been received in this time period, the Notice may be filed in the Court of King’s Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of Administrative Penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta and Red Tape Reduction

Minister of Service Alberta and Red Tape Reduction
103 Legislature Building
10800 - 97 Avenue NW
Edmonton, AB
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$1,000. Should you choose to appeal this Administrative Penalty, you must send the appeal fee to the Minister of Service Alberta and Red Tape Reduction at the above noted address, made payable to the "Government of Alberta".

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)
Gerald Gervais, Registrar
Director of Fair Trading (as Delegated)

GG/kl
Encl.

cc: Roxanne S [REDACTED] Manager of Industry Standards, AMVIC