

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

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

BY: KAFRI MOTORWAYS LTD.
in the city of Edmonton, in the Province of Alberta
(hereinafter called the "Supplier")

TO: The DIRECTOR OF FAIR TRADING (as delegated)
(hereinafter called the "Director")

WHEREAS:

- A. At the time of the complaints, the Supplier was licensed by the Alberta Motor Vehicle Industry Council ("AMVIC") to carry on the following automotive business activities: retail sales and wholesale sales in the Province of Alberta.
- B. An administrative review was held via teleconference call on Oct. 22, 2024 at approximately 1:31 p.m. Participating in the administrative review was Akram AL KAFRI, owner and director for the Supplier; ██████████, AMVIC investigator; ██████████ manager of investigations north; and K. Lockton, Director of Fair Trading (as delegated) (the "Director").
- C. AMVIC received two consumer complaints regarding the Supplier, case files 23-06-003 and 23-10-010. In both consumer complaints received, the consumers alleged they were misled regarding the condition of the vehicles they were purchasing, among other concerns.

Case file 23-06-003

- D. On May 30, 2023 a consumer ("JJH") purchased a 2011 Chrysler 200 (the "Chrysler") from the Supplier for \$9,400. According to JJH, the Chrysler's air conditioning and radio were not working at the time of the test drive, and the tires on the Chrysler were bald. JJH agreed to purchase the Chrysler on the condition that the issues were repaired. JJH received verbal confirmation from the salesperson that if there were any issues she could return the Chrysler for a refund.
- E. When JJH purchased the Chrysler, the Supplier did not provide JJH with a Mechanical Fitness Assessment ("MFA") prior to entering into a contract to sell JJH the Chrysler. The Supplier provided JJH with an Alberta Motor Vehicle Record of Inspection, but did not provide JJH with an MFA. During the administrative review, the Supplier stated that they did not provide JJH with an MFA as the Alberta Motor Vehicle Record of Inspection is a more thorough inspection than an MFA and they felt it covered the need to provide JJH with an MFA. The Supplier is required

to provide consumers an MFA in all used vehicle sales in accordance with the Vehicle Inspection Regulation (“VIR”).

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;

- F. When JJH purchased the Chrysler, the Supplier did not disclose the vehicle history information to her or provide any documentation regarding the vehicle history such as a Carfax report. The AMVIC investigator completed a Carfax report for the Chrysler which established the Chrysler was in a collision on Aug. 3, 2022 reporting “*Damage to front*” with an amount of \$10,333. The Carfax report also showed that the Chrysler was branded “*Salvage*” on Aug. 18, 2022, shortly after the collision. JJH required the Alberta Motor Vehicle Record of Inspection to register the Chrysler as she was the first person to register it after it had been rebranded “*Rebuilt/Rebuildable*”.
- G. When JJH picked up the Chrysler from the Supplier the air conditioning was fixed, however the radio still did not work and the tires had not been changed. JJH took possession of the Chrysler and while leaving the Supplier’s business location, the light on the Chrysler dash illuminated indicating it required an oil change. Shortly after returning home, JJH discovered the key fob provided by the Supplier did not work and she had to manually unlock the vehicle which set off the vehicle’s alarm system. JJH has been unable to get the key fob fixed and to date is unable to lock the Chrysler due to the issue with the key fob. During the administrative review, the Supplier stated they would have the key fob fixed if JJH wanted them to fix it. The Director advised that the investigator is welcome to share that resolution with JJH however, it would not be addressed in the Undertaking.

- H. Shortly after purchase, JJH was required to purchase new tires and complete some repairs and maintenance. In total JJH spent \$1,138.75 on the Chrysler within the first month of owning the Chrysler. In addition, the Chrysler also requires repair of the front wheel bearing and hub assembly. JJH has not paid for the repairs at the time of the administrative review due to the cost associated.
- I. The investigation revealed that the Supplier's advertisement did not provide the required vehicle history disclosure as required by Section 31.1 of the ABR. In addition, as per Sections 31.1 and 31.3 of the ABR, the Supplier did not provide the vehicle history disclosure information to JJH in writing prior to entering into a transaction to sell the Chrysler. The investigation further determined the Supplier's bill of sale ("BOS") was not completed in compliance with Section 31.2 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.

Case file 23-10-010

- J. On Sept. 26, 2023 a consumer ("AAOL") purchased a 2009 Mitsubishi Lancer (the "Lancer") from the Supplier for \$9,900. When AAOL took the Lancer for a test drive he noticed the radio did not work, the windshield was cracked and there was a "weird noise". A representative of the Supplier advised AAOL the Lancer was "perfect" and the noise was just due to the new winter tires that had just been installed. The Supplier agreed to fix the windshield and the radio. AAOL provided a \$500 down payment towards the Lancer. When AAOL took possession of the Lancer, the radio was fixed, however the windshield was still cracked. AAOL was told another business would contact him and have the windshield replaced at no cost.
- K. The Supplier charged AAOL an "Admin Fee" of \$250 above the advertised price of the Lancer contrary to Section 11(2)(l) of the 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,
- L. Three days after AAOL took possession of the Lancer, he took it to another automotive business ("KM") as the "weird noise" had continued. KM completed an inspection of the Lancer on Sept. 29, 2023 which determined the Lancer needed a number of repairs and determined the "weird noise" AAOL was hearing was the exhaust heat shield rattling. AAOL paid to have some of the repairs completed to the Lancer, which cost over \$600.
- M. AAOL alleged that the business that was supposed to replace the windshield had reached out to him twice, however due to scheduling conflicts the windshield was never replaced. While the business provided the investigator a receipt for the windshield replacement, photos of the Lancer taken by the investigator demonstrate the windshield was still cracked in the same place as shown in the photos in the Supplier's advertisement for the Lancer, which were taken before AAOL purchased the Lancer.
- N. The investigator determined the Supplier purchased the Lancer from an auction. The disclosure from the auction included reference to an engine fire and that the Lancer was "BC-SALVAGE". This information was not disclosed to AAOL. In addition, the Supplier did get a Carfax report for the Lancer that indicated the Lancer was last registered in British Columbia ("BC") and branded salvage. The Supplier had this vehicle history information, however did not disclose it to AAOL. Further, this information was not included in the Supplier's advertisement of the Lancer. Failing to disclose the vehicle history information in the advertisement and to AAOL prior to entering into a transaction to sell the Lancer is contrary to Sections 31.1 and 31.3 of the ABR. In addition, the BOS regarding the Lancer to AAOL does not meet the requirements of Section 31.2 of the ABR.
- O. The Supplier stated the Lancer's status in Alberta was not salvage and the Lancer therefore could be registered without a salvage inspection, and stated that due to the normal branding in Alberta they could not get the required paperwork to have a salvage inspection completed. During the administrative review this was discussed and while the Lancer was registered in Alberta prior to being registered in BC and being branded salvage, the Supplier knew otherwise. The Lancer should not have been sold to AAOL without the required disclosure and/or inspections under Sections 13 and 14 of the VIR.

Vehicle Inspection Regulation
Sale of salvage motor vehicle
Section 13

- A person shall not sell a motor vehicle that is a salvage motor vehicle unless, before the sale,
- (a) the person provides the buyer with a subsisting salvage motor vehicle inspection certificate for the motor vehicle, or

(b) the person provides the buyer with a written statement advising that the vehicle is a salvage motor vehicle for which there is no subsisting salvage motor vehicle inspection certificate.

Sale of out of province motor vehicle

Section 14

A person shall not sell a motor vehicle that is an out of province motor vehicle unless, before the sale,

(a) the person provides the buyer with a subsisting out of province motor vehicle inspection certificate for the motor vehicle, or

(b) the person provides the buyer with a written statement advising that the motor vehicle is an out of province motor vehicle for which there is no subsisting out of province motor vehicle inspection certificate.

- P. AAOL no longer resides in Alberta and based on the investigators evidence, is driving the Lancer in another province despite the above information. It is unclear to the Director how the Lancer was registered not only in Alberta but in the province AAOL currently resides in based on the information contained in the Carfax report.
- Q. Based on the repairs required immediately after the Lancer was purchased and the vehicle history information relating to the Lancer, the statements made by the Supplier regarding the condition of the Lancer reasonably misled and deceived AAOL contrary to Section 6(4)(a) of the CPA.

Consumer Protection Act

Unfair practices

Section 6

(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;

- R. During the administrative review, the Director spoke to the Supplier regarding the importance of both creating and maintaining records, as well as the importance of those records being accurate in accordance with Section 132 of the CPA and Section 9 of the ABR. Specifically, the Director addressed the incorrect calculations of the government sales tax ("GST") on each BOS. The BOS for both the Chrysler and the Lancer had incorrect GST calculations; one overcharged the consumer and one undercharged the consumer.
- S. During the administrative review, the Supplier advised that they have made changes to their business practices when the AMVIC investigator provided them with education. The Supplier indicated a willingness to work with the regulator and commit to adhering to legislative requirements.

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 they do not sell vehicles over the advertised price in accordance with Section 11(2)(l) of the ABR.
3. The Supplier will undertake to not do or say anything that might reasonably deceive or mislead a consumer in accordance with Section 6(4)(a) of the CPA.
4. The Supplier will undertake to ensure that an MFA is completed in full and provided to a consumer prior to entering into a consumer transaction in compliance with Section 15 of the VIR.
5. The Supplier will undertake to ensure their BOS is completed in full and in compliance with Section 31.2 of the ABR.
6. The Supplier will undertake to ensure the vehicle history information is provided to a consumer prior to entering into a consumer transaction as required by Sections 31.1 and 31.3 of the ABR.
7. The Supplier will undertake to ensure that they will comply with Section 14 of the VIR and Section 31.1(1)(i) of the ABR in relation to out of province inspections, when required.
8. The Supplier will undertake to ensure that they will comply with Section 13 of the VIR and Section 31.1(1)(g) of the ABR in relation to salvage inspections, when required.
9. 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 **May 31, 2025**.
10. The Supplier agrees to pay JJH **\$1,162.25**, which equates to the repair costs incurred by JJH and the amount overcharged in GST. The Supplier agrees to pay AAOL **\$983.88**, which represents the repairs AAOL had completed on the Lancer. Such payment is to be made as directed within **thirty (30) days** from the date of signing this Undertaking.
11. The Supplier shall pay the sum of **\$1,000** to AMVIC, 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.
12. 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.
13. 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.
14. 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.
15. The Supplier acknowledges that they were advised by AMVIC that they as the Supplier 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 9 day of December, 2024

PER: "original signed by"
Kafri Motorways Ltd.
Akram AL KAFRI
Owner/director

ACCEPTED by the Director of Fair Trading on the 8 day of January, 2025

PER: "original signed by"
AMVIC
Katie Lockton, Deputy Registrar
Director of Fair Trading (as delegated)