

February 10, 2025

Administrative Review – 24-06-012
Served via email: [REDACTED]

Administrative Penalty

COUNTRY HILLS CHRYSLER DODGE JEEP RAM LTD.
200 STONEHILL GATE NE
CALGARY, AB
T3N 2J7

Attention: James McManes and Jason Bender

Dear James McManes and Jason Bender:

Re: Country Hills Chrysler Dodge Jeep Ram Ltd. – Automotive Business Licence No. B1036471

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”). A copy of the Application Report is attached as Schedule “A” to this letter. The Supplier provided written representations via email on July 22, 2024 (attached as Schedule “B”) prior to the scheduled administrative review, which I have taken into consideration. I have also taken into consideration the information exchanged during an administrative review held via teleconference call on July 30, 2024 and the written representations provided by the Supplier in response to the Proposed Administrative Penalty on Jan. 28, 2025 (attached as Schedule “C”).

Licensee Status

Country Hills Chrysler Dodge Jeep Ram Ltd. (the “Supplier”) holds an AMVIC business licence and carries on the business activities of new sales, used sales, wholesale, leasing, garage, autobody, mobile, service station and agent or broker in the Province of Alberta.

History

The Supplier is currently licensed with AMVIC and holds AMVIC business licence number B1036471, which was first issued in August of 2011. The Supplier previously operated as Varsity Chrysler Dodge Jeep Ram Ltd. The Supplier’s average monthly volume of sales, including fleet vehicles, is approximately 105-110 vehicles per month.

On Jan. 18, 2022, as the result of a consumer complaint and subsequent investigation, the Supplier was issued a \$3,500 Administrative Penalty for unfair practices and a non-compliant bill of sale ("BOS").

On May 2, 2023, as a result of an AMVIC industry standards inspection, the Supplier was issued a \$3,750 Administrative Penalty for charging consumers over the advertised price.

The Supplier was issued a Findings Letter on April 30, 2024 as a result of an AMVIC industry standards inspection which outlined compliance concerns in relation to their Mechanical Fitness Assessment ("MFA"), their BOS and advertising. This Findings Letter provided the Supplier education in relation to the compliance concerns found and advised that disclaimers on their website regarding the advertised price did not absolve them of the legislative requirements of adhering to their advertised price. On May 10, 2024, as a result of a consumer complaint and subsequent AMVIC investigation, the Supplier was issued a Findings Letter in relation to their BOS being non-compliant with the legislative requirements. These Findings Letters were issued to the Supplier after the transaction date that is the subject of the consumer complaint which resulted in the current administrative matter.

Administrative Review

An administrative review was held on July 30, 2024, at a 9:01 a.m. via teleconference call. Participating in the administrative review were Jason Bender, an owner and director for the Supplier; N. M [REDACTED], AMVIC investigator; T. J [REDACTED], AMVIC manager of investigations south; and K. L [REDACTED], Director of Fair Trading (as delegated).

Summary of Investigation

Case File 23-11-743

1. In November 2023, AMVIC received a consumer ("JL") complaint in relation to the purchase of a 2023 Dodge Challenger Swinger Special Edition (the "Dodge") alleging that the Supplier had refused to refund their deposit and sold the Dodge over the advertised price. The consumer complaint received by AMVIC stated:

"New vehicle was aggressively marked up. Car was \$22k over MSRP. "Call for price" on website and 3 days later after deposit given MSRP was displayed on website. I have the window sticker and all documentation to support online ads for the vehicle without and with pricing (vin is on the ads). Called GSM about pricing and was told their [sic] was a pricing error with multiple vehicles and that I would lose my deposit and the car if I backed out of the deal. I have all screen grabs and bill of sale".

2. On June 3, 2023, the Supplier had the Dodge advertised for sale stating, "Contact Us For Price". JL's spouse ("CL") reached out to the Supplier regarding the Dodge and was advised the price of the Dodge was "about \$104,000+". CL was advised by the Supplier the Dodge was not at the Supplier's business location but in transit. Based on the information provided in the Application Report, it does not appear the Supplier provided CL the exact cost at this time but rather an approximate amount. On June 3, 2023, CL made two \$2,000 deposit payments to the Supplier over the phone. The Supplier had not provided CL any documentation regarding the purchase of the Dodge at this

time, nor did they provide CL a deposit agreement or advise him whether or not his deposit would be refundable. On June 6, 2023, JL attended the Supplier's business location and paid another \$6,000 deposit for the Dodge. While in attendance at the Supplier, JL was not provided any documentation in relation to the purchase of the Dodge, nor a deposit agreement. At this point, JL and CL had provided the Supplier a total of \$10,000 without a concrete purchase price, any documentation in relation to the transaction to purchase the Dodge or a deposit agreement.

3. On June 7, 2023, the Supplier advertised the Dodge for sale with an advertised price of \$82,670. \$82,670 is the manufacturer's suggested retail price ("MSRP") for the Dodge.
4. The consumer provided the MSRP sheet to AMVIC which confirms the MSRP price for the Dodge was \$82,670. The MSRP sheet includes a stamp that reads *"DEALER MAY SELL FOR LESS"* and indicates the Dodge was sold to the Supplier.
5. According to CL, when he saw the June 7, 2023 advertisement for the Dodge he contacted the Supplier and was told the Supplier had posted a number of advertisements with a pricing error and he would not get his deposit back if he did not conclude the transaction. CL also attended the Supplier's business location and was advised if he did not complete the purchase of the Dodge he would not receive his deposit back. According to CL, the person he spoke with at the Supplier's business location refused to provide him with a business card and therefore he does not know who he spoke to. During the investigation, CL advised the AMVIC investigator that the Dodge was a limited edition that was being discontinued, it was not a vehicle that was abundantly available.
6. CL stated he did not want to lose his \$10,000 deposit and therefore he and JL attended the Supplier's business location to complete the transaction. According to CL, they were also told by the finance manager that they would lose their deposit if they did not complete the transaction.
7. The BOS dated June 10, 2023 was completed in JL's name. The BOS listed the *"BASIC VEHICLE"* at a cost of \$104,995. In addition the Supplier charged JL the following fees and taxes:

*"FEDERAL LUXURY TAX \$1,847.17
AMVIC FEE \$6.25
AB TIRE RECYCLING FEE \$20.00
ADMIN FEE \$695.00
PROTECTIONS \$3,438.00
GST \$5,550.07
REGISTRATION FEE \$81.43"*

The total price JL paid for the Dodge was \$116,551.46.

8. According to the Supplier's *"Deal Summary"* the *"Protections"* included on the BOS for \$3,438 included:

*"Locks & Nitro
Platinum Security
Financial Loss"*

The items and their associated costs are not itemized on the BOS as required by Section 31.2(1)(l) of the Automotive Business Regulation ("ABR"). According to CL, he did not want the security etch, but was told they had already installed it on the Dodge, CL noticed the etch stickers on the Dodge when he arrived on June 10, 2023. The AMVIC investigation determined the wheel locks and nitrogen swap had been completed on the Dodge on June 6, 2023, prior to the June 7, 2023 advertisement.

9. The Supplier provided AMVIC an "OFFER TO PURCHASE" document that was dated May 3, 2023. The Supplier advised that the date was in error and it should have been dated June 3, 2023. The "OFFER TO PURCHASE" was not signed by CL or JL. CL had called the Supplier on that date and had not attended the Supplier's business location. This offer to purchase lists the price of the Dodge as \$104,995 plus added fees and taxes for a total price of \$113,481.12. This document does not reflect any deposit paid to the Supplier in relation to the Dodge and it is not signed by CL or JL. This document includes a statement that reads "DEPOSITS, PARTIAL PAYMENTS AND DOWN PAYMENTS ARE NON-REFUNDABLE". The Supplier's BOS also includes this statement.
10. During the investigation, the investigator reviewed the Supplier's website. The Supplier's website included a disclaimer that states:

"Although the intention is to capture current incentives and prices as of the date of publication, pricing is subject to change without notice and may not be accurate or completely current. While every reasonable effort is made to ensure the accuracy of this data, we are not responsible for any errors or omissions contained on these pages. Please verify any information in question with a dealership sales representative. Information provided at this site does not constitute an offer or guarantee of available prices or financing."

11. In advance of the administrative review, on July 22, 2024, the Supplier provided written representations and two documents (see Schedule "B"). The two documents provided by the Supplier dated March 30, 2023 are signed by two employees. The document states the following:

"RE: Selling at or below Advertised Price

All vehicles sold to a consumer must be sold at or below Advertised Price. The only expense to the consumer over the advertised price is GST. Included in the Advertised price is all fees including Doc Fee, AMVIC fee, tire levy and any accessories on the vehicle when advertised. There are no exception to this. This is a requirement of AMVIC and Alberta legislation.

If a consumer selects accessories/warranties or cashback to the vehicle purchase those items can be added to the price of the vehicle but must be itemized with price. If you are including adds such as free oil change in the Advertised price of the vehicle you must disclose. The included items can be itemized on the bill of sale as N/C or included. You cannot exceed the advertised price and put an item that is already on the vehicle as included. Further, the item added to the contract must be reasonably priced to value of the additional item.

I the undersigned have read and agree that strict compliance to the above is a requirement of employment at Varsity Chrysler Dodge Jeep Ram Ltd."

12. During the administrative review, the Supplier advised it was not necessary for the AMVIC investigator to go over all of the investigative material, and the investigator instead presented a summary of the Application Report and supporting documentation.
13. During the administrative review the Supplier advised the following:
- The day CL contacted the Supplier the advertisement for the Dodge directed consumers to contact the Supplier for the price;
 - The itemization of costs was provided to CL over the phone;
 - No documentation was signed when they received the deposits from CL and JL;
 - CL agreed to the price of the Dodge;
 - The Supplier had no knowledge of the advertisement, it is possible the day the Dodge arrived a member of their staff incorrectly labeled the Dodge;
 - If the price on the website is incorrect it is their policy to not conclude the transaction that day. They would advise the consumer that the advertisement is incorrect, fix the advertisement and conclude the deal after the advertisement has been corrected;
 - No reasonable person would have told CL and JL they couldn't have their deposit back as there was no signed documentation;
 - The disclaimer is only on the bottom of the general page on the website, not the actual advertisements on their website;
 - The general sales manager ("GB") did not talk to CL about an advertised price;
 - CL is saying whatever he wants;
 - Employees hand out business cards all day and every person has their name on their office;
 - CL knew the Dodge was limited production; and
 - With no signed document the Supplier would have refunded CL and JL their deposit. It is not worth the time or effort to keep a deposit without a signed agreement.
14. During the administrative review, in response to questions by the Director the Supplier provided the following information:
- He does not have an advertisement for the Dodge on June 10, 2023, the day the transaction was completed;
 - The MSRP sheet was not on the Dodge when it was on the Supplier's lot;
 - The reason they advertise "*Contact Us For Price*" is because the Supplier wants to explain why there is an adjustment to the price;
 - He did not speak to the salesperson about the transaction;
 - He spoke to the general sales manager, GB, about the transaction. GB confirmed they would not have kept the deposit as there was no signed agreement.
 - The Supplier makes every attempt to ensure they appropriately deal with errors when dealing with consumers;
 - The Supplier intends to change their policy and require consumer sign the advertisement when the transaction is completed;
 - The disclaimer has been removed from the website; and
 - He could not explain why JL did not sign any paperwork when she attended the Supplier's business location on June 6, 2023 and paid a \$6,000 deposit.
15. The Supplier provided written representations on Jan. 28, 2025, in response to the Proposed Administrative Penalty (see Schedule "C").

Legislation

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,

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.

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.

(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;

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 and ABR?

The material which formed the Application Report was the result of a consumer complaint received by AMVIC in relation to the purchase of the Dodge at a price above an advertised price. The consumer alleged that the Supplier had refused to refund their deposit and sold the Dodge over the advertised price, AMVIC case file 23-11-743.

A. All-in Pricing (ABR Section 11(2)(l))

A Supplier must ensure that their advertisements include 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.

On June 3, 2023 CL saw the Dodge advertised on the Supplier's website. The advertisement stated "Contact Us For Price". CL contacted the Supplier on June 3, 2023 in relation to the Dodge. Based on the information in the Application Report, when CL contacted the Supplier he was advised the cost of the Dodge would be "about \$104,000+", based on the evidence in the Application Report (see Schedule "A") it is not clear if CL was given an exact price. The same day CL sent the Supplier two \$2,000 deposits. CL was not advised whether or not the deposits were refundable. On June 6, 2023, JL attended the Supplier's business location and paid an additional \$6,000 deposit. JL did not sign any documents while at the Supplier's business location on June 6, 2023. CL and JL paid a total deposit of \$10,000 for the Dodge without receiving or signing any documents.

On June 7, 2023, CL saw the Dodge was advertised on the Supplier's website for the MSRP of \$82,670. According to CL, when he saw the June 7, 2023 advertisement for the Dodge he contacted the Supplier and was told the Supplier had posted a number of advertisements with a pricing error and he would not get his deposit back if he did not conclude the transaction. CL also attended the Supplier's business location and was advised if he did not complete the purchase of the Dodge he would not receive his deposit back.

During the administrative review, the Supplier stated that they would not keep a deposit without any paperwork signed because if they did and the consumer were to sue them, they would lose in court and it is not worth the effort. The Supplier stated that any reasonable person would know they could get their money back if they had not signed any documentation. There is no evidence to demonstrate what the Supplier's employees advised CL and JL in relation to their deposit currently before the Director. These interactions were either over the phone or in person, and the Supplier did not provide any evidence of the conversations their employees had with CL and JL in relation to their deposit. The only information before the Director that can be demonstrated is the statement written on the "OFFER TO PURCHASE" and the Supplier's BOS that states "DEPOSITS, PARTIAL PAYMENTS AND DOWN PAYMENTS ARE NON-REFUNDABLE".

The Director cannot assume CL and JL knew they could get their deposit back as no documentation had been signed, as the Supplier asserted during the administrative review. The Supplier's BOS and "OFFER TO PURCHASE" state that deposits are non-refundable and there is no other undisputed evidence in relation to the comments made by CL or the Supplier. The Supplier states in their Jan. 28, 2025 written representations (see Schedule "C") the reasons they do not believe the consumer was told the deposit

was non-refundable is *"The consumer cannot identify what employee he spoke to"* and *"Our written policy in the evident [sic] there is a pricing error. As adopted by the instruction given to us by AMVIC"* however, the Supplier did not provide their written policy to AMVIC to support this statement.

CL and JL completed the purchase of the Dodge as they did not want to lose their deposit. The BOS dated June 10, 2023 was completed in JL's name.

The Supplier is of the opinion that CL agreed to the price on June 3, 2023 when the two \$2,000 deposits were paid to the Supplier and therefore the advertisement that states *"Contact Us For Price"* is the advertisement that CL saw when he chose to purchase the Dodge, and therefore they did not sell the Dodge over the advertised price. Section 2 of the CPA states a person cannot waive their rights under the Act or regulations. Whether CL agreed to the price on June 3, 2023, the Supplier is still required to comply with the Section 11(2)(l) of the ABR.

The Supplier did not have CL or JL sign any documentation regarding the purchase of the Dodge prior to June 10, 2023, when the BOS was completed as well as all the other relevant documents to complete the purchase. The June 7, 2023 advertisement is the advertisement closest in date to the date of the transaction. The Supplier stated during the administrative review, that had CL contacted them about the June 7, 2023 advertisement, as he claims, the Supplier would have fixed the advertisement error before concluding the sale of the Dodge to JL. The Supplier, however does not have evidence of an advertisement of the Dodge on a closer date to the transaction than the June 7, 2023 advertisement. In the Supplier's Jan. 28, 2025 written representations (see Schedule "C") they advise *"Nor is there any documentation around what the vehicle was advertised at on June 10, 2023 when the vehicle was delivered."* The Supplier has not provided evidence of an advertisement of the Dodge closer to the date of the sale that reflects the Dodge was advertised differently than on June 7, 2023. The Director must review and consider the evidence that is available, therefore in the opinion of the Director, the June 7, 2023 advertisement is the closest advertisement prior to the date of the transaction on June 10, 2023. There is no signed documentation between CL or JL and the Supplier prior to June 7, 2023. The transaction took place after the June 7, 2023 advertisement.

The June 7, 2023 advertisement listed the Dodge for sale for a price of \$82,670. The investigation further determined that the wheel locks had been installed and nitrogen had been swapped in the tires on June 6, 2023. Furthermore, the luxury sales tax would not have applied to the transaction had the Supplier sold the Dodge for the advertised price of \$82,670. JL was charged over the advertised price by the Supplier in the purchase of the Dodge, as outlined below:

Sale price overcharge	\$22,325.00	(\$104,995-\$82,670)
Luxury tax	+ 1,847.14	
AMVIC levy	+ 6.25	
Tire levy	+ 20.00	
Admin fee	+ 695.00	
Preinstalled locks/nitrogen	+ <u>199.00</u>	
Sub Total	\$25,092.39	
Additional GST paid	+ <u>1,254.61</u>	
Total	\$26,347.00	

JL paid an additional \$26,347 than she would have had the Supplier charged her the advertised price in the June 7, 2023 advertisement. During the administrative review, the Supplier advised the reason they advertise vehicles with “*Contact Us For Price*” is because the Supplier wants to explain why there is an adjustment to the price. If the Supplier had been transparent with CL about the MSRP and the amount of the price adjustment of the Dodge when CL saw the June 7, 2023 advertisement, he would not have contacted the Supplier wondering why the price of the Dodge was over \$20,000 less than the Supplier had advised him only days prior. In the Supplier’s Jan. 28, 2025 written representations (see Schedule “C”) they stated “*The consumer has acknowledged they new [sic] the MSRP, new [sic] the market value vs MSRP, acknowledged when they negotiated the terms of purchase when the vehicle the vehicle was advertised without a price...*” however, the Supplier provided no evidence to demonstrate how CL knew the MSRP value of the Dodge and there is no evidence before the Director that supports that CL knew the MSRP value before he saw the June 7, 2023 advertisement.

When a Supplier adds a significant market adjustment fee increase to a vehicle price within days of an advertisement this is price gouging; a deceptive practice that grossly takes advantage of consumers and potential consumers. This type of business practice leverages the Supplier’s knowledge and position, and does not foster a level playing field between the consumer and the Supplier. This leads to extensive financial harm to consumers. In the opinion of the Director, this business practice is against the spirit and intent of the legislation. The written representations in response to the Proposed Administrative Penalty (see Schedule “C”) state “*There does not seem to be any evidence that we negotiated in bad faith or misrepresented the price at anytime [sic] during the negotiation of the terms of purchase.*” The Supplier must adhere to the legislation that governs the automotive industry, which includes Section 11(2)(l) of the ABR, that requires the Supplier to advertise the total cost of the vehicle and sell that vehicle for the price it was advertised but not including GST or costs and charges associated with financing.

On a balance of probabilities, based on the evidence that currently available, the Director finds that the Supplier has failed to adhere to all-in pricing legislation as required under Section 11(2)(l) of the ABR.

B. Mislead and Deceive (CPA Section 6(4)(a))

The Supplier’s website included a disclaimer that stated:

“Although the intention is to capture current incentives and prices as of the date of publication, pricing is subject to change without notice and may not be accurate or completely current. While every reasonable effort is made to ensure the accuracy of this data, we are not responsible for any errors or omissions contained on these pages. Please verify any information in question with a dealership sales representative. Information provided at this site does not constitute an offer or guarantee of available prices or financing.”

The Supplier is responsible and accountable for all advertisements that are published for the purposes of their business activities as per Section 166 of the CPA. Using fine print or disclaimers do not exempt the Supplier’s advertisements from the requirements of the legislation.

The Supplier’s website having the statements as described above is contrary to Section 6(4)(a) of the CPA. The average consumer is not knowledgeable on the legislation that governs the automotive industry and would not know that these statements are not true. The business practice of having

statements on their website that are not in line with the legislative requirements communicate to consumers that the Supplier's advertised price does not need to be accurate and that they are not responsible for errors in their advertisements. The use of a disclaimer, such as the one outlined above, is misleading to consumers. It misleads consumers to believe the Supplier can tell them the advertised price is not price of the vehicle and add costs that do not fall within 11(2)(l) of the ABR. This potentially puts consumers into a transaction where they are paying over the advertised price because they do not understand the legislative requirements the Supplier must adhere to. The disclaimer misleads the consumer to believe the Supplier can and does do this in their transactions with consumers based on their advertising.

Based on the evidence before me, in relation to the Supplier's website disclaimer, on a balance of probabilities, I find the Supplier has breached Section 6(4)(a) of the CPA.

C. Bill of Sale (ABR Section 31.2)

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 Administrative Penalty that was issued to the Supplier on Jan. 18, 2022 included a breach of Section 31.2 of the ABR in relation to the Supplier's BOS. The Supplier was provided with the legislative section in relation to the legislative requirements that must be met in relation to their BOS.

The BOS in relation to the purchase of the Dodge failed to include an itemized list of the costs of the financial loss membership, platinum security etch, the wheel locks and the nitrogen as required by Section 31.2(1)(l) of the ABR.

On a balance of probabilities, the Director finds that the Supplier has breached Section 31.2(1)(l) of the ABR.

D. Other Considerations

AMVIC follows a progressive enforcement model when enforcing consumer protection laws. Administrative action may include a written warning, condition(s) added to the licence, charges under the legislation, Administrative Penalty, Director's Order, Undertaking and suspension or cancellation of a licence as outlined in the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making a decision to ensure what level of enforcement is appropriate to the contravention.

The Director could not consider entering into an Undertaking with the Supplier as the Supplier did not believe they had sold the Dodge over the advertised price. Therefore the Director and the Supplier would not have been able to negotiate a voluntary Undertaking that the Director considered proper. An

Administrative Penalty must be sufficient in that the Supplier and other suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the law.

The aggravating factors in this matter include:

- The actual financial harm to a consumer, who paid an additional \$26,347 than she would have had the Supplier adhered to the advertised price.
- The Supplier's previous enforcement history as outlined below.

The mitigating factors in this matter include:

- The Supplier indicated they have removed the disclaimer from their website. The Director has no evidence to support this statement however, will consider this action taken by the Supplier as a mitigating factor.
- The Supplier provided the documents signed by their employees on March 30, 2023, prior to AMVIC receiving this consumer complaint, which demonstrates to the Director the Supplier is making an effort to ensure their employees are adhering to Section 11(2)(l) of the ABR.

The Supplier was recently subject to the below administrative enforcement actions:

- Administrative Penalty of \$3,500 for unfair practices, including Section 6(4)(a) of the CPA and a non-compliant BOS.
- Administrative Penalty of \$3,750 for charging consumers over the advertised price.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in 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 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.

This Administrative Penalty is taking into account both the aggravating and mitigating factors listed above.

In the opinion of the Director, based on the evidence available, the Supplier did sell the Dodge over the advertised price, however the amount of the Administrative Penalty must take in consideration the lack of evidence to support both the Supplier's and the consumer's account of events. Therefore, to be procedurally fair to the Supplier the amount of the Administrative Penalty was reduced from the proposed amount.

Action

In my opinion Country Hills Chrysler Dodge Jeep Ram Ltd. has contravened Section 6(4)(a) of the CPA and Sections 11(2)(l) and 31.2 of the ABR. In accordance with Section 158.1(a) of the CPA and based on

the above facts, I am requiring that Country Hills Chrysler Dodge Jeep Ram Ltd. pay an Administrative Penalty.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigations department, the amount of the Administrative Penalty is **\$15,000**.

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 the above listed aggravating and mitigating facts as well as:

1. The Supplier's history of non-compliance;
2. The seriousness of the contraventions or failure to comply;
3. The economic benefit derived from the contraventions or failure to comply;
4. The financial harm on the persons adversely affected by the contraventions 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 \$15,000.

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)
Katie L [REDACTED], Deputy Registrar
Director of Fair Trading (as Delegated)

KL
Encl.

cc: Derek B [REDACTED], Senior Manager of Investigations, AMVIC