

AUG 27 2008

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Motor
Vehicle Sales Authority
of British Columbia

**IN THE MATTER OF THE *MOTOR DEALER ACT*
AND THE *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT***

UNDERTAKING

(Section 154, *Business Practices and Consumer Protection Act*)

WHEREAS the undersigned

Ensign Chrysler Plymouth Ltd.

is a "supplier" within the meaning of subsection 1(1) of the *Business Practices and Consumer Protection Act*;

AND WHEREAS the Registrar of Motor Dealers (the "Registrar") has reason to believe that the supplier is contravening, is about to contravene or has contravened the *Business Practices and Consumer Protection Act* or the regulations made hereunder, namely:

1. Between March 18, 2008 and March 22, 2008, both dates inclusive, at or near the city of Victoria, BC did commit or engage in a deceptive act or practice wherein a representation by a supplier that goods or services have a prior history or usage that they do not have including a representation that they are new if they are not specifically that an advertisement flyer circulated in the city of Victoria showing sales dates of March 18, 2008 up to and including March 22, 2008 claiming vehicles for sale were BANK REPOS, OFF LEASE SUPERSALE; GIANT REPOSSESSED VEHICLE EVENT; when in fact they were vehicles obtained through the auction or trade contrary to section 4(3)(a)(iii) of the *Business Practices and Consumer Protection Act*.
2. On or about March 18, 2008 at or near the city of Victoria, BC did commit or engage in a deceptive act or practice wherein a representation by a supplier that goods and services are available for a reason that differs from the fact specifically that a 2003 Neon Stock #8-8831B priced at the event for \$13,200.00 and sold to Wendy Joy Barron-Porter and Tracey Dawn Barron for \$10,494.00 and in the flyer advertising a sale from March 18, 2008 to March 22, 2008, both dates inclusive priced at \$5988.00 (fine print states Stock #8-8831B 2003 Neon sale price \$5,988.00 plus taxes and fees 9.74% APR 66 month term. Down payment \$59. Cost of borrowing \$1,655.00. Total paid \$9,900.00) and previously priced in a *Time Colonist* ad dated February 29, 2008 by the supplier for \$4,988.00 – 0 down and \$50.25 Biweekly for 66 months
3. On or about March 18, 2008 at or near the city of Victoria, BC did commit or engage in a deceptive act or practice wherein a representation by a supplier that uses exaggeration, innuendo, or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading specifically that a 2003 Neon Stock #8-8831B priced at the event for \$13,200.00 and sold to Wendy Joy Barron-Porter and Tracey Dawn Barron for \$10,494.00 and in the flyer advertising a sale from March 18, 2008 to March 22, 2008, both dates inclusive priced for \$5988.00 (fine print states Stock #8-8831B 2003 Neon sale price \$5,988.00 plus taxes and fees 9.74% APR 66 month term. Down payment \$59. Cost of borrowing \$1,655.00. Total paid \$9,900.00) and previously priced in a *Time Colonist* ad dated February 29, 2008 by the supplier for \$4,988.00 – 0 down and \$50.25 Biweekly for 66 months contrary to section 4(3)(b)(vi) of the *Business Practices and Consumer Protection Act*.

4. Between March 18, 2008 and March 22, 2008, both dates inclusive, at or near the city of Victoria, BC did commit or engage in a deceptive act or practice wherein a representation by a supplier that uses exaggeration, innuendo, or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading specifically an advertisement flyer circulated in the city of Victoria showing sales dates of March 18, 2008 up to and including March 22, 2008 claiming that this was a 'PUBLIC NOTICE', THE BIGGEST USED CAR LIQUIDATION SALE IN BC, AUCTION * BANK REPOS, OFF LEASE SUPERSALE; GIANT REPOSSESSED VEHICLE EVENT; YOU'RE GOING TO VEGAS; \$59 DELIVERS *ANY VEHICLE; Anyone can take delivery* by simply picking the vehicle, pay a \$59 down payment then take on the payments; CREDIT PROBLEMS? NO PROBLEM! YOU'RE APPROVED Contrary to fine print which states " You're approved" subject to lender's final approval; PURCHASE ANY USED VEHICLE and RECEIVE \$1650 CASH BACK; contrary to section 4(3)(b)(vi) of the Business Practices and Consumer Protection Act.
5. Between March 18, 2008 and March 22, 2008, both dates inclusive at or near the City of Victoria, British Columbia, did commit or engage in a deceptive act or practice wherein a representation by a supplier about the total price of goods or services if a person could reasonably conclude that a price benefit or advantage exists but it does not - specifically that an advertisement flyer circulated in the city of Victoria showing sales dates of March 18, 2008 up to and including March 22, 2008 claiming on the front: "PUBLIC NOTICE! THE BIGGEST USED CAR LIQUADATION SALE IN BC and on the back: AUCTION BANK REPOS OFF LEASE SUPERSALE, in the fine print Stock #8-8831B 2003 Neon sale price \$5,988.00 plus taxes and fees 9.74% APR 66 month term. Down payment \$59. Cost of borrowing \$1,655.00. Total paid \$9,900.00 sold to Wendy Joy Barron-Porter and Tracey Dawn Barron for \$10,494.00 previously listed in a Time Colonist ad dated February 29, 2008 by the supplier for \$4,988.00 – 0 down and \$50.25 Biweekly for 66 months contrary to section 4(3)(c)(i) of the Business Practices and Consumer Protection Act.
6. On or about February 29, 2008, and March 3, 2008 at or near the city of Victoria, BC did commit or engage in a deceptive act or practice wherein a representation by a supplier that goods and services that uses exaggeration, innuendo, or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading specifically advertisements that appeared in the Time Colonist Newspaper on February 29, 2008 and March 3, 2008 claiming THE GREATEST AUTOMOTIVE SALES EVENT EVER; Purchase any new or used vehicle and receive FREE LIFETIME OIL & FILTER CHANGES; 0% financing APR* ON 2007 VEHICLES contradicts the statement in the fine print 0% financing available on 2007 vehicles but cannot be used in conjunction with cash rebates; Good Credit, Bad Credit, No Credit? WE FINANCE EVERYBODY!, not listing the total prices of advertised vehicles, failure to identify vehicle by stock numbers, contrary to section 4(3)(b)(vi) of the Business Practices and Consumer Protection Act.
7. On or about February 29, 2008 and March 3, 2008 at or near the city of Victoria, BC did commit or engage in a deceptive act or practice wherein a representation by a supplier that uses exaggeration, innuendo, or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading specifically advertisements published in the Times Colonist Newspaper on the dates in question which failed to declare the APR, the term of the lease or credit, whether the biweekly price was for a lease or credit purchase, no stock numbers, contrary to section 4(3)(b)(vi) of the Business Practices and Consumer Protection Act.
8. On or about February 29, 2008 and March 3, 2008 at or near the city of Victoria, BC did commit or engage in a deceptive act or practice wherein a representation by a supplier that a consumer transaction involves or does not involve rights, remedies or obligations that differs from the fact specifically that advertisements published in the Times Colonist on the dates in question that a 2004 Tracker is sold AS IS, no warranties expressed or implied contrary to section 4(3)(b)(iv) of the Business Practices and Consumer Protection Act.
9. On or about April 11, 2008, April 18, 2008, April 21, 2008, April 23, 2008 and April 30, 2008 at or near the city of Victoria, BC did commit or engage in a deceptive act or practice wherein a representation by a supplier that that uses exaggeration, innuendo, or ambiguity about a material fact or that fails to state a material fact, if the effect is misleading specifically advertisements



published in the Times Colonist on the dates in questions declaring saving from MSRP and whether the vehicles in question, stock number P8-1949, A8-0681, A7-8714, P8-7273, P7-8432, A8-3352, A8-4657, A8-7984, A8-5034 and A8-4347 are new or used or if this is a true saving claim; stock numbers P7-8432 vehicles may not be exactly as illustrated; DISCOUNTS UP TO \$19,892 is contradicted in the fine print with a statement Discounts up to \$19,892 are from the MSRP and year of vehicle; PAYMENTS AS LOW AS \$48/wkly* identifies a 2004 Chrysler Sebring in the fine print at \$11,788 for 60 months, cost of borrowing \$3,299.77 plus taxes and fees. On approved credit with zero down payment; lowest prices in Victoria, We Pay your lien our no matter what you owe; Top dollar for your trade; Bad Credit we finance everybody contrary to section 4(3)(b)(vi) of the Business Practices and Consumer Protection Act.

NOW THEREFORE the undersigned:

1. Hereby undertakes:
 - (a) To comply with the *Business Practices and Consumer Protection Act* and the regulations made thereunder;
 - (b) To refrain from engaging in the following acts or practices:
 - (i) deceptive acts or practices and more specifically engage in advertising a sale wherein the prices of the motor vehicles offered for sale are higher than prior to the advertised sale;
 - (ii) that the purpose or intent of the solicitation of, or a communication with, a consumer by a supplier is for a purpose or intent that differs from the fact;
 - (iii) that uses exaggeration, innuendo or ambiguity about a material fact or fail to state a material fact; and
 - (iv) mislead consumers into believing that a price benefit or advantage exists when it does not.
 - (c) To reimburse to the Registrar for the costs of inspection, including actual legal costs, relating to the matters which are the subject matter of this Undertaking, namely: investigation costs amounting to \$545.94
 - (d) To make or maintain trust accounts, records, contracts, advertisements or other documents and more specifically to keep list prices of motor vehicle inventory from the date the motor vehicle came into Ensign's inventory to when it was sold or disposed of.
2. Hereby acknowledges, represents and declares:
 - (a) That Ensign Chrysler Plymouth Ltd. has sought and obtained legal advise from Gregory T. Rhone, Velletta & Company, Barristers, Solicitors and Notaries, 4th Floor – 931 – Fort Street, Victoria, B.C. V8V 3K3;
 - (b) That on August 5 and 7, 2008, Gregory T. Rhone provided VSA with letters wherein Ensign Chrysler Plymouth Ltd. agreed to sign an undertaking accepting reimbursement of the VSA's investigation costs of \$545.94, an admission that Ensign Chrysler Plymouth Ltd. violated sections 4(3)(a)(iii), 4(3)(a)(vi), 4(3)(b)(vi), 4(3)(b)(vi), 4(3)(c)(i) of the Business Practices and Consumer Protection Act (for clarity the offence section is Section 5(1) of the Business Practices and Consumer Protection Act), an agreement to pay an administration penalty of \$2,000.00; and that the terms of the Undertaking shall not be disclosed by the Motor Vehicle Sales Authority of BC (VSA) except as required by law or by order of a Court of competent jurisdiction.

- (c) That Ensign Chrysler Plymouth Ltd. reimburse Wendy Joy Barron-Porter and Tracey Dawn Barron the sum of \$4,007.00 as restitution for overpayment of a 2003 Neon, Stock #8-8831B and provide the VSA with proof of payment by August 29, 2008;
- (d) That this undertaking and the accompanying Notice of Penalty does not absolve Ensign Chrysler Plymouth Ltd. from any complaints from any consumer who purchased a motor vehicle as advertised and noted in the various dates identified in the contraventions noted above;
- (e) If this Undertaking is given by two or more persons, all the persons named in the Undertaking are jointly and severally responsible for complying with the Undertaking and are jointly and severally liable for the payment of any amounts under the Undertaking and the Notice of Penalty; and
- (f) That the undersigned have each read this Undertaking and have had the opportunity to take independent legal advice as to its terms.

IN WITNESS WHEREOF the undersigned (and each of them, if more than one) has set his/her/its hand and seal (attested by the hands of its duly authorized officers, if applicable):

Name: Ensign Chrysler Plymouth Ltd.	
Motor Dealer (Registration No. 5295)	
Business Address: 1061 Yates Street, Victoria, BC V8V 3M5	
Date:	<u>Aug. 20/08</u>
Signature: 	Title: General Manager
	Robert John Davis <u>BRETT GALLAGHER</u>
Signature: 	Title: President , 19. August, 2008
	Judith Buchanan <u>19. AUG 2008</u>

ACCEPTED by the Registrar this 27 day of AUGUST, 2008



Ian Christman, Registrar of Motor Dealers