



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

#303, 9945-50 STREET, EDMONTON, ALBERTA T6A 0L4

[www.amvic.org](http://www.amvic.org)

Phone: 780-466-1140

Toll Free: 1-877-979-8100

Fax: 780-462-0633

March 22, 2016

Served Personally  
Administrative Review – 16-01-005

767405 ALBERTA LTD.  
operating as MAYFIELD TOYOTA  
10220 170 STREET  
EDMONTON, AB T5S 1N9

Attention: Jim Jiwani and David Friesen

Dear Mr. Jiwani:

Re: 767405 Alberta Ltd. (operating as Mayfield Toyota)  
Automotive Business Licence B301301

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1 of the *Fair Trading Act* (FTA). This letter will detail the action being taken under section 158.1.

#### Facts

Taking into consideration your representations and the information collected by AMVIC, I find the facts to be as follows:

- A. The Supplier holds an automotive business licence and carries on business as an automotive sales business in the Province of Alberta. The Supplier is licensed with AMVIC as 767405 Alberta Ltd. operating as Mayfield Toyota.
- B. As part of AMVIC's industry standards program, the Supplier was provided with notice that an AMVIC inspection would be conducted on August 14, 2015. The results of the inspection were reviewed with the General Manager, David Friesen. In addition, a findings letter was prepared and emailed to the business on August 20, 2015.
- C. The findings letter found the following concerns with the business:
  1. AMVIC logo or licensed verbiage is missing on the company website and Kijiji ads.

The findings letter clearly identified to the Supplier that they need to be in compliance with section 11(1) of the Automotive Business Regulation (ABR).

- D. Shortly after the AMVIC ISO inspection AMVIC became aware that 767405 Alberta Ltd. was advertising and doing business as "We Drive", which was not a registered trade name with AMVIC. On August 19, 2015, AMVIC Industry Standards Coordinator Candace C. followed up with the business and the business was brought into compliance.
- E. On November 27, 2015, AMVIC then became aware of the Facebook page advertising under the name "Mayfield Toyota Truck Centre". The Facebook page links the consumer to the Mayfield Toyota website. Mayfield Toyota Truck Centre is not a registered trade name or designated as a trade name on the Supplier's AMVIC licence. Additionally, the email contact for the Facebook page is [baustin@mayfieldtoyota.com](mailto:baustin@mayfieldtoyota.com) the email of AMVIC registered salesperson Bradley Austin, who is a designated agent for the Supplier exclusively.
- F. In November AMVIC became aware of a Facebook page advertising under the name "Mayfield Pre-Owned Superstore". The advertising contained on the Facebook page indicates the vehicles are "AMVIC inspected" which is misleading to a consumer as AMVIC does not inspect vehicles. The Facebook page links the consumer to the Mayfield Toyota website. Mayfield Pre-Owned Superstore is not a registered trade name or designated as a trade name on the Supplier's AMVIC licence. Upon further investigation AMVIC found Mayfield Pre-Owned Superstore was located at a different legal address than Mayfield Toyota, subsequently the business is required to have a separate AMVIC licence for the location of 17456 102 Avenue NW Edmonton, Alberta. Additionally, the email contact for the Facebook page is [mmacdougall@mayfieldtoyota.com](mailto:mmacdougall@mayfieldtoyota.com) the email of AMVIC registered salesperson Martin MacDougall; who at the time, was a designated agent for the Supplier exclusively.
- G. Subsequently, a Facebook page advertising under the name "Driving with Jules" was found to be linked to Jason Coueslan. Mr. Coueslan is a registered salesperson with AMVIC who is solely a designated agent for 767405 Alberta Ltd. Upon review of the inventory advertised on the Driving with Jules Facebook page and inventory advertised on the Supplier's website, Driving with Jules was conclusively linked to the Supplier. Driving with Jules is not a registered trade name or designated as a trade name on the Supplier's AMVIC licence. Furthermore, the Facebook page did not link to the Mayfield Toyota webpage, but rather an independent webpage [www.drivingwithjules.help](http://www.drivingwithjules.help).
- H. On February 24, 2016 Mr. Friesen responded to the proposed administrative penalty dated February 5, 2016. He indicated in his response that he does not feel the Facebook pages fall under section 11 of the ABR.
- I. The Supplier continues to be actively posting on the Mayfield Pre-Owned Superstore and Driving with Jules Facebook pages following Mayfield Toyota being served the administrative penalty proposal.



## **Legislation**

### **Automotive Business Regulation**

#### **Advertising**

##### **Section 11**

- (1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner
  - (a) the name of the business operator as set out in the licence or the trade name of the business operator as set out in the licence, and
  - (b) in the case of print and television advertising, that the business operator holds an automotive business licence under the Act.

### **Fair Trading 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 potential consumers:
  - (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

#### **Licence required - designated businesses**

##### **Section 104**

- (1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.
- (2) If required to do so by the applicable regulation, a person who engages in a designated business at more than one location must hold a separate licence issued under this Act for each location that authorizes the person to engage in that business.

#### **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.

#### **Analysis – Did the Supplier fail to comply with the provisions of the *Fair Trading Act* and the *Automotive Business Regulation*?**

AMVIC has been very diligent with the industry in requesting full compliance in automotive advertising. Information pertaining to advertising is contained in numerous AMVIC newsletters, AMVIC bulletins, and on the AMVIC website.

The Supplier was made aware of the advertising requirements under the FTA when the Supplier was contacted regarding the web page We Drive. However, additional non-compliant advertising associated to the Supplier has been found by AMVIC. The business came into compliance regarding the advertising under the trade name We Drive by properly registering that name with AMVIC, but has continued to disregard the legislation and failed to bring three additional online advertisements into compliance. In a recent decision of the Supreme Court of British Columbia, the following comment was made by Justice Skolrod\*:

*"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 obligations under the regime, as well as the obligations, and the authority, of the regulator."*



The Supplier has continued to disregard the legislation with regard to the advertising after receiving the proposed administrative penalty and continues to sanction improper automotive advertisements that are directing consumers to the Supplier without identifying the appropriate AMVIC licensed business name for the Supplier. The Supplier acknowledged responsibility for placing the advertisements but feels the advertisements are complaint for the following reasons:

Dave Friesen, General manager Mayfield Toyota:

*"These social media sites are nothing more than lead generators, the kind of which fills the social media sites now. These sites are not retailing any units and they are not advertising to sell units directly and all contact made to a consumer are made from Mayfield Toyota Scion, then how can we breach the fair trade act?"*

*Section 11 does not apply as we are not advertising, we are simply creating a general interest site.*

*Section 6(4) cannot apply as we are not making any representations. There is nothing to deceive or mislead about.*

*Section 104 does not apply as all business dealings are conducted under 767405 Alberta Ltd. which does carry a license.*

*We will be open and point out that occasionally some sort of term had hit the site by a poster, but we are always reviewing and remove any such post. Again, at no time was any business conducted through these sites. If a lead of interest was created, a representative of Mayfield Toyota Scion would contact the consumer directly, and conduct business solely as Mayfield Toyota Scion.*

*We operate one business called Mayfield Toyota Scion(767405 Alberta Ltd.) which operates out of 10220 170 st. All documents are created and stored at this location. We do not complete business under any other name. As we are a very sizable company, we do have require several buildings to house all of our necessary staff and equipment, but they all operate under the same name. We store our trucks at the "Truck Centre", we store our pre-owned units at our "Pre-Owned Centre", but they all operate under Mayfield Toyota Scion(767405 Alberta Ltd.) We Drive does the same thing, only we added them to our AMVIC license as per your previous request, even though they do not complete any business as We Drive, it is all under Mayfield Toyota Scion."*

## **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring 767405 Alberta Ltd. (operating as Mayfield Toyota) pay an administrative penalty of \$3,000.00. This is based on my decision that 767405 Alberta Ltd clearly contravened section 11 of the ABR and sections 6 and 104 of the FTA by not identifying the name of the AMVIC licensed business that was placing the online advertisements. The advertisements are considered misleading to consumers as they are led to believe that they will be dealing with a different business.

The representations made by Nicole L. - AMVIC Sr. Industry Standards Officer, Roxanne R. – AMVIC Industry Standards Officer and Candace C. – AMVIC Industry Standards Coordinator were taken into consideration. The email received by Mr. Friesen was also taken into consideration.

In a recent decision of the Supreme Court of British Columbia, the following comment was made by Justice Skolrod\*:

*"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 obligations under the regime, as well as the obligations, and the authority, of the regulator."*

In accordance with s. 158.1(a), I am writing to advise that I am imposing an administrative penalty to 767405 Alberta Ltd. (operating as Mayfield Toyota) in the amount of \$3,000.00. The amount takes into consideration the failure of the business to become compliant much earlier. This business has been warned previously with regard to advertising. The penalty is assessed at \$1,000.00 per unregistered online advertisement that continues to be actively posting advertisements. One online advertisement was corrected by the Supplier.

**The amount of the administrative penalty is \$3,000.00**

**Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, this administrative penalty must be paid within 30 days of service of this notice. Payment may be made to the Government of Alberta and sent to AMVIC at:**

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

Section 179 of the FTA 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

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

with a notice of appeal within 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 FTA, 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 (Fair Trading Act) Regulation*, the fee for appealing an administrative penalty is the lesser of \$1000 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 \$1000.00.

Yours truly,

"original signed by"

John Bachinski

Director of Fair Trading (as Delegated)

JB/kl

cc: Nicole L. [REDACTED] Manager of Industry Standards, AMVIC

\*Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers, 2014 BCSC 903