



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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June 9, 2016

Served Personally

Administrative Review – 16-05-001

CALGARY HOUSE OF CARS 5 INC.  
o/a HOUSE OF CARS 5  
formerly known as CALGARY HOUSE OF CARS INC (HOUSE OF CARS)  
2410 BARLOW TRAIL NE  
CALGARY, AB T1Y 3N7

Attention: Justin Klee & Nadeem Malik

Dear Mr. Klee and Ms. Malik:

Re: Calgary House of Cars Inc. (operating as House of Cars)  
Automotive Business Licence #B1038228

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 and automotive repair business.
- B. The Supplier has had previous warnings from AMVIC regarding advertisement concerns. Those warnings include:
  - a) A letter from the Director of Fair Trading (as Delegated) dated July 16, 2014 was sent to the Supplier regarding an advertisement violation. The advertisement violations identified where:
    - Advertisement did not include vehicle stock numbers of the used vehicles for sale;
    - Advertisement stated payments but did not include the APR of financing;
    - Advertisement stated payments but did not include the term of financing;
    - Advertisement stated payments but did not include the total cost of credit;
    - Advertisement did not state the total cash price.

This letter also states that the Supplier had a previous advertising violation. On August 18, 2014, Justin Klee emailed an AMVIC representative in response to this letter confirming the advertisement concerns had been rectified.

- b) In January of 2015 the Supplier was provided another written warning from AMVIC regarding an advertising concern in the Calgary Metro newspaper (January 20, 2015 issue, page 16). The concerns regarding the printed advertisements were identified as:
- Advertisement did not include vehicle stock numbers of the used vehicles for sale;
  - Advertisement stated payments but did not include the APR of financing;
  - Advertisement stated payments but did not include the term of financing;
  - Advertisement stated payments but did not include the total cost of credit.
- There was also a warning with regards to non-compliant online advertisements that was very similar to the above concerns.

- c) On April 9, 2015, the Supplier was contacted by AMVIC via email regarding an advertising concern. The concern identified was regarding non-compliant advertisements placed by the Supplier or possibly a designated agent. Justin Klee, a Director of Calgary House of Cars Inc., acknowledged the complaint. Additionally, a designated agent for the Supplier (██████████) responded to AMVIC regarding the concern. He admitted he had placed the advertisements. ██████████ went on to state that the advertisements had been removed and that Justin Klee had explained to him that the advertisements were contrary to the relevant legislation.

- C. On March 10, 2016, AMVIC became aware of a non-compliant advertisement in the AUTOHUNTER magazine (edition stated as current until March 21, 2016, front cover and pages 8-11). The following advertising issues were identified:

- Failure to identify the Supplier as AMVIC licensed on the advertisement placed on the front cover of the magazine;
- The APR of financing was not legible in the advertisements which stated payments;
- The term of financing was not legible in the advertisements which stated payments;
- The total cost of credit was not legible in the advertisements which stated payments;
- Exclusion of the terms and conditions for special promotions and payment deferrals.

- D. Upon review of the Supplier's webpage and the Supplier's online advertisements on Kijiji the Industry Standards Officer (ISO) identified the following advertising issue:

- Exclusion of the terms and conditions for special promotions and payment deferrals.

- E. Additionally, the ISO identified the following advertisement concerns upon review of the Supplier's Facebook page:

- Advertisements which stated payments did not include the APR of financing;
- Advertisements which stated payments did not include the term of financing;
- Advertisements which stated payments did not include the total cost of credit;
- Advertisements did not include vehicle stock numbers of the used vehicles for sale.

- F. Justin Klee, Director of Calgary House of Cars Inc. (operating as House of Cars) responded to the Proposed Administrative Penalty via email on May 27, 2016.

- G. In the Supplier's response, he states that the business's controller, [REDACTED] spoke with AMVIC regarding the licensing concern in paragraph F. AMVIC has record of this conversation taking place on May 19, 2016. [REDACTED] was informed that the businesses could not stay at INACTIVE status and that the outstanding levies would have to be configured online and a business closure letter was required for each location. The AMVIC representative followed up with this phone call with an email to the controller on May 19, 2016 explaining the same and attached the business closure letter.
- H. The Provincial Automotive Business Licence for Calgary House of Cars Inc. operating as House of Cars (AMVIC No. B103822) and the AMVIC Business Licence for Calgary House of Cars 2 Inc. (AMVIC No. B1039788) have now been closed, as of June 2, 2016. As per the response from the Supplier, the two locations have "merged into House of Cars 5 and are now simply shell companies to funnel dividends down".

## **Legislation**

### **Automotive Business Regulation (ABR)**

#### **Advertising**

##### **Section 11**

- (1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner
- (b) in the case of print and television advertising, that the business operator holds an automotive business licence under the Act.
- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
- (m) includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed.

### **Cost of Credit Disclosure Regulation (COC)**

#### **Advertisements**

##### **Section 4**

Where an advertisement contains information that under section 6, 7(2), 12(1) or 18 requires disclosure of the APR or other information in the advertisement,

- (a) the APR must be as prominent, in relation to looking at it, listening to it, or both, as the case may be, as any of the information that required the APR to be disclosed, and
- (b) any other information required to be disclosed must be conspicuous.

#### **Advertisements**

## **Section 6**

(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),  
(b) an advertisement for a credit sale in connection with which any non-interest finance charge would be payable must disclose

- (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.

## **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.

## **Fair Trading Act**

### **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 ABR and COC?**

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

Calgary House of Cars Inc. (operating as House of Cars) has been made aware of the advertising concerns. However, the business's has continued to be non-compliant regarding the legislation. 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 advertisements placed by the Supplier are undoubtedly non-complaint and do not meet the legislative requirements under the FTA.

The Supplier has indicated that they have a very confusing licensing structure between their numerous store locations which leads in part to the situation we are dealing with at this time. If the structure is confusing to the owner, then it would be even more difficult for consumers to understand which store they are dealing and the accuracy of the advertising.

AMVIC always encourages compliance first and the Supplier has received numerous information bulletin and newsletter along with direct feedback from AMVIC regarding the need for AMVIC to be compliant. AMVIC has issued multiple impact newsletters which contain articles reminding licensees and registrants of their advertising obligations under the FTA and its regulations. These bulletins are sent by email to any licensee or registrant who wishes to subscribe. These same bulletins and back issues are also posted on AMVIC's website and are readily available free of charge. Recent articles can be found in the following publications:

- June 2011: "What's your advertising IQ?"
- March 2013: "AMVIC takes action on advertising"
- June 2013: "Advertising program sparks increased compliance"
- February 2014: "Be an ad superstar and Need some help sorting through advertising rules"
- June 2014: "Advertising tips for service & repair"
- September 2014: "Tips for RV ads"
- December 2014: "Advertising – lease"
- June 2015: "Extra fees: Disclose what you charge"

AMVIC also issues regular industry bulletins. These bulletins are sent by email to any licensee or registrant who wishes to subscribe. These same bulletins and back issues are also posted on AMVIC's website and are readily available free of charge. The following industry bulletins remind dealers of their advertising obligations under the FTA and its regulations:

- December 14, 2013: "Shop smart this holiday season"
- March 28, 2014: "Online and website advertising rules"
- October 31, 2014: "Attn: RV sales – Important reminder before you place an ad"
- December 14, 2015: "Check this list before you advertise"
- January 21, 2016: "Quiz: do you know the automotive advertising laws?"

Additionally, AMVIC maintains an advertising link on its website. The link contains tools and resources to help licensees and registrants comply with advertising laws and regulations. The resources include an advertising checklist which was first posted in or around October 2014, an advertising webinar and an advertising quiz. These resources are also available free of charge.

Part of AMVIC's challenge is to be fair and balanced to the many stores that have already taken steps to ensure complaint advertising and for AMVIC to take the necessary steps to bring the remaining stores into compliance. I am pleased to note that you are now taking the necessary steps to be compliant in the future.

## Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Calgary House of Cars Inc. (operating as House of Cars) pay an administrative penalty. This is based on my decision that Calgary House of Cars Inc. (operating as House of Cars) contravened section 11(1)(b)(2)(m) of the ABR and sections 4(a)(b), 6(2)(a)(b)(3)(b)(ii) and 7(1)(a)(b) of the COC.

Taking into consideration all of the representations made by Nicole L. - AMVIC Manager of Industry Standards, Stephen V. - AMVIC Industry Standards Officer and the written response received by Mr. Justin Klee, the administrative penalty amount is \$3,000.00. The amount takes into consideration the failure of the business to become compliant. This business has been warned previously with regard to advertising.

**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 \$1,000.00.

Yours truly,

"original signed by"

John Băchinski  
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