



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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

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July 21, 2016

Via fax 780-352-5976  
Administrative Review – 16-06-006



DENHAM CHRYSLER LTD.  
c/o REGISTERED OFFICE  
5220 – 51 STREET  
WETASKIWIN, AB T9A 0V4

Attention: Hugh Denham & Steven Moll

Dear Sirs:

Re: Denham Chrysler Ltd.  
Automotive Business Licence B1006661

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:

#### LICENCEE STATUS

The Supplier holds an Automotive Business Licence and carries on business as an automotive sales business in the Province of Alberta.

#### RECENT AMVIC PUBLICATIONS

1. AMVIC 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.
2. AMVIC issued an industry bulletin on April 1, 2016 regarding misleading advertisements that involved:
  - The information has been provided by, or on behalf of, the Government of Canada.
  - The offer is part of a government rebate or incentive program.

- A rebate or incentive program is available based on a consumer's income tax notice of assessment.

This industry bulletin cautioned licensed business not to engage in similar marketing.

#### DIRECT COMMUNICATIONS WITH THE SUPPLIER AND ITS REPRESENTATIVES

3. On April 18, 2016, AMVIC became aware of an advertisement being distributed by the Supplier. The advertisement promoted the Alberta Auto Debt Relief Program. The advertisement issues identified where:
  - The advertisement was misleading to consumers;
  - The information appeared to have been provided by, or on behalf of, the Government of Canada;
  - The offer appeared to be part of a government rebate or incentive program;
  - The advertisement stated a rebate/incentive program is available based on a consumer's income tax notice of assessment.
4. On April 18, 2016, the Supplier was contacted via telephone by an AMVIC Industry Standards Officer (ISO) advising of the concerns regarding the advertisement. Additionally, an email was sent to the Supplier regarding the matter on April 18, 2016.
5. On April 19, 2016, the Supplier was served with a Director's Order regarding the non-compliant advertisement. This document ordered the Supplier to immediately cease distribution of the advertisement, to immediately remove all postings of the advertisement, to immediately post clarification at the Supplier's business premises that the Alberta Auto Debt Relief Program is not a government initiative and enjoys no government sponsorship, affiliation or otherwise, and to immediately publish a clarification on the Supplier's website for sixty (60) days that the Alberta Auto Debt Relief Program is not a government initiative and enjoys no government sponsorship, affiliation or otherwise.
6. On April 20, 2016, the Supplier's website was adjusted in accordance with the Director's Order. The Supplier removed the advertising and posted on their website a statement that clarified the program.
7. On July 12, 2016, Steven Moll, Director of Denham Chrysler Ltd. provided his written representation in response to the proposed administrative penalty via email.

#### APPLICABLE LEGISLATION

##### Automotive Business Regulation

##### **General codes of conduct**

##### **Section 12**

Every business operator must comply with section 6 of the Act and in addition must

- (a) not make any representations, statements or claims that are not true or are likely to mislead a consumer,

## **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;
- (d) a supplier's representation that the supplier has a sponsorship, approval, status, qualification, affiliation or connection that the supplier does not have;

### **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 FTA and Automotive Business Regulation (ABR)?**

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. Section 6 of the FTA clearly identifies the responsibility of the Supplier not to mislead a consumer with their advertising. Section 6(4) of the FTA states:

**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;

(d) a supplier's representation that the supplier has a sponsorship, approval, status, qualification, affiliation or connection that the supplier does not have;

Additionally, the general codes of conduct under section 12 of the ABR identify the responsibility of the Supplier not to mislead the consumer.

**General codes of conduct**

**Section 12**

Every business operator must comply with section 6 of the Act and in addition must

(a) not make any representations, statements or claims that are not true or are likely to mislead a consumer,

A bulletin released by AMVIC on April 1, 2016 was sent via email to all industry members cautioning not to engage in advertisements that are misleading in nature regarding the appearance of being a government endorsed program. The advertisement also refers to funding being limited and encourages consumers to apply before the funding runs out. The bulletin was sent to all AMVIC licensed businesses and registered salespeople as well as on the AMVIC website. The Supplier would have received multiple copies of the AMVIC bulletin.

Denham Chrysler Ltd. continued to advertise in such a manner after the industry bulletin was released. On April 18, 2016 the misleading advertisement was still available for public viewing. The advertisement was misleading as it led consumers to believe that there was government program that would assist consumers financially in the purchase of a vehicle. The title of the advertisement was 'Alberta Debt Relief Program' along with a Maple Leaf with the acronym 'AADR'. The advertisement was created to look like a government program of which there is none. The online contact information was also created to mislead consumers by thinking the online contact was government related. The contact information on the advertisement stated the email address to be [alberta@cadp.ca](mailto:alberta@cadp.ca) and gave the option to apply online at [www.cadrp.ca/alberta](http://www.cadrp.ca/alberta).

The Supplier in his response indicates that the advertisement is not the same as the advertisement that was in the AMVIC bulletin warning Suppliers not to use misleading advertisements. While the Supplier's advertisement is not identical to the one identified in the Bulletin, it is very similar in many ways. Both advertisements are misleading to consumers by leading them to believe that the advertisement is either a government program or sponsored by a government program. The term "Alberta Debt Relief Program" is specifically designed to create the misleading impression to a consumer to believe it is a provincial program. The Supplier has acknowledged that it is not a government program. The advertisement goes on to state "plus we can provide a one-time payment of up to \$20,000 cash back to help you through any economic hardship". The advertisement also states that "funding is limited per area per household" which suggests a limitation much similar to government programs and not dealer financing. The advertisement also suggests that "late entry's will not be accepted and funding is expected to run out before the deadline" which is a common element with government programs and not dealer financing.

In conclusion, the Supplier chose to proceed with the advertisement even after specific notification to the industry about advertising and the compliance concerns that it raised. Once the Supplier was served with the Director's Order, there was compliance; however it is a reasonable expectation that AMVIC would not have to take the additional steps of serving a Director's Order to obtain compliance.

#### **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Denham Chrysler Ltd. pay an administrative penalty of **\$2,500.00** which is reduced from the original proposal of \$5,000.00. This is based on my decision that Denham Chrysler Ltd. clearly contravened sections 6(4)(a) and 6(4)(d) of the FTA and section 12(a) of the ABR. The reduction in the proposed penalty amount recognizes that the Supplier did respond in a prompt manner to the Directors Order which required the Supplier to cease the specific advertisements identified.

The representations made by Steven Moll – Director of Denham Chrysler, Nicole L. - AMVIC Manager of Industry Standards, and Stephen V. – AMVIC Industry Standards Officer were taken into consideration.

**The amount of the administrative penalty is \$2,500.00**

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., Manager of Industry Standards, AMVIC