



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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

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February 2, 2016

AMENDED

Served Personally

Administrative Review – 15-12-007

OLYMPIC MOTORS (AB) II CORPORATION  
Operating as LAND ROVER CALGARY  
175 GLENDEER CIRCLE SE  
CALGARY AB T2H 2S8

Attention: Mike Bresett

Dear Mr. Bresett

Re: **Olympic Motors (AB) II Corporation (operating as Land Rover Calgary)**  
**Automotive Business Licence #B1044135**

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 license and carries on business as an automotive sales business in the Province of Alberta.
- B. As part of AMVIC's industry standards program, the Supplier was provided with notice that an AMVIC inspection would be conducted on June 19, 2015. The results of the inspection were reviewed with the General Manager, Mike Bresett. In addition, a findings letter was prepared and emailed to the business on June 19, 2015.
- C. The findings letter found the following concerns with the business:
  - 1 Dealer license expired as of May 31, 2015;
  - 2 AMVIC logo or licensed verbiage is missing on Kijiji ads;
  - 3 Website and print ads need to include the fixed credit requirements;
  - 4 Wording in advertisements claim vehicles come with "AMVIC safety" which is misleading;
  - 5 Promotion that everyone is approved for loan financing when the business does not provide in-house financing;
  - 6 Several salespeople showing their registrations as lapsed or not linked with current location of business;

- 7 Issues with the Mechanical Fitness Assessment on several files including missing information and expired;
  - 8 Issues with history reports on several files including incomplete status or missing consumer signature; and
  - 9 Discrepancies in the information provided by the consumer and what is being relayed to the financial institution.
- D. The AMVIC Industry Standards Coordinator followed up with the business on several occasions and the majority of the concerns identified in the June 19, 2015 inspection had been rectified. On September 29, 2015, Roxanne R. - AMVIC Industry Standards Officer–Advertising emailed Mr. Bresett to outline the continuing concerns regarding the cost of credit in the advertising on the business website. Mr. Bresett responded to the concerns on September 29, 2015 and AMVIC responded on October 2, 2015.
- E. When first contacted by AMVIC the Supplier did not resolve the issue with the payment calculator, as of November 15, 2015 it remained on the website. The Supplier eventually corrected the website but only after repeated warnings from AMVIC.
- F. On January 17, 2016 Mr. Bresett responded to the proposed administrative penalty, dated December 14, 2015, stating that the payment calculator had been removed from the website. This was confirmed by AMVIC on January 27, 2016.

## **Legislation**

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

#### **Fixed Credit, Advertisements**

##### **Section 6**

- 6(1) This section applies only to advertisements that offer credit and state the interest rate or amount of any payment.
- (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),
  - (a) an advertisement for a credit sale of a specifically identified product must disclose the cash price, and
  - (b) an advertisement for a credit sale in connection with which any non-interest finance charge would be payable must disclose
    - (i) the cash price, and
    - (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.

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

### **General Codes of Conduct**

#### **Section 12**

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

- (f) not make any representation that savings, price benefits or advantages exist if they do not exist or if there is no evidence to substantiate the representation,

## **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 Fair Trading Act, the Automotive Business Regulation and the Cost of Credit Disclosure Regulation?**

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.

Olympic Motors (AB) II Corporation (operating as Land Rover Calgary) had been made aware of the advertising concerns regarding the payment calculator on their website. However, the business's non-compliance regarding the legislation continued many months after they first became aware. 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 was given three warnings regarding the non-compliant advertising concern before the issue was rectified.

**Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Olympic Motors (AB) II Corporation (operating as Land Rover Calgary) pay an administrative penalty of \$1,000.00. This is based on my opinion that Olympic Motors (AB) II Corporation (operating as Land Rover Calgary) contravened section 6 of the CCDR and section 12 of the Automotive Business Regulation (ABR).

The representations made by Nicole L. - AMVIC Sr. Industry Standards Officer, Nina M. – AMVIC Industry Standards Officer and Roxanne R. – AMVIC Industry Standards Officer-Advertising were taken into consideration. The email received by Mr. Bresett was also taken into consideration.

In accordance with s. 158.1(a), I am writing to advise that I am imposing an administrative penalty to Olympic Motors (AB) II Corporation (operating as Land Rover Calgary) in the amount of \$1,000.00. The amount takes into consideration the length of time it took the Supplier to rectify the non-compliant advertising after they became aware of the issue.

**The amount of the administrative penalty is \$1,000.00**

Additionally, Mr. Bresett will retake and successfully complete the salesperson *Fair Trading Act* course within thirty (30) days from the date of this administrative penalty.

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  
204 Legislature Building  
10800 - 97 Avenue  
Edmonton, AB 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 \$500.00.

Yours truly,

“original signed by”

John Bachinski  
Director of Fair Trading (as Delegated)

JB/kl

cc: Nicole L [REDACTED], Sr. Industry Standards Officer, AMVIC

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