



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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November 3, 2016

Served Personally
Administrative Review – 16-05-005

Administrative Penalty

1748876 ALBERTA LTD.
operating as ALL A'S
372 WOODFIELD ROAD SW
CALGARY, AB T2W 3W1

Attention: Joceline Faraj

Dear Ms. Faraj:

**Re: 1748876 Alberta Ltd. operating as All A's
Automotive Business Licence #B1041767**

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.

Background

LICENCEE STATUS

- A. At the time of the complaint, the Supplier was licensed by AMVIC to carry on the automotive business of wholesale sales only. The Supplier does not have an AMVIC licence for automotive retail sales. Ms. Joceline Faraj is the sole shareholder of the 1748876 Alberta Ltd. operating as All A's.
- B. On June 30, 2016, the Supplier allowed their AMVIC business licence and the salesperson registration of Joceline FARAJ to expire.

DIRECT COMMUNICATIONS WITH THE SUPPLIER AND ITS REPRESENTATIVES

- C. An administrative review was scheduled on June 16, 2016 with the Supplier. Mr. Ahmed Faraj, spouse of Joceline Faraj, attended the review. Mr. Faraj is not a director of 1748876 Alberta Ltd. and neither he nor AMVIC had any documentation that permitted him to represent the above company. The review was adjourned as Ms. Joceline Faraj's attendance was required as she is the only director for the above company and the adjournment would provide an opportunity for Ms. Faraj to attend and represent her company. Mr. Faraj was advised that he and/or a lawyer could attend the next review with the permission of Ms. Faraj.

- D. Disclosure of the investigative documents was provided to the Supplier by personal service to Joceline Faraj.
- E. The administrative review was scheduled to reconvene on July 5, 2016 at the AMVIC Calgary office. On June 30, 2016, Ms. Faraj contacted AMVIC by e-mail stating she was again unable to attend the review. At this time Ms. Faraj was advised by e-mail that the AMVIC review would proceed as scheduled and that she may submit a written representation in her absence. The review reconvened on July 5, 2016 at 10:00 a.m. In attendance were [REDACTED] - AMVIC Investigator and J. Bachinski - Director of Fair Trading (as Delegated) under the *Fair Trading Act*. Ms. Faraj did not attend the review in person, but did submit a written response regarding the matter. The Supplier's response was reviewed accordingly. Attached as Schedule "A" is the Supplier's written representation.
- F. AMVIC investigator advised that AMVIC received two separate anonymous calls (one on August 5, 2015 and one on September 15, 2015) regarding Mr. Ahmed Faraj privately selling vehicles to consumers. The vehicles in question had various mechanical issues. AMVIC was contacted by the consumers to ensure the individual was registered with AMVIC as a salesperson. Mr. Faraj is not registered with AMVIC as a salesperson; however Joceline Faraj holds an AMVIC business licence for wholesale sales only and a salesperson registration. Joceline Faraj and Ahmed Faraj reside at the same residence and the investigator indicated that she understood they are married.
- G. An AMVIC investigation commenced and a number of online advertisements were reviewed in detail by the investigator. A dealer plate was clearly evident on one of the vehicles advertised for sale. The dealer plate in the photo is M41508 and in another photo a partial view of the dealer plate is shown as M415, with the remainder of the plate undisclosed. Attached as Schedule "B" are the two advertisements which the dealer plate is visible. The Supplier responded in writing that the Supplier "Has never owned a dealer plate illustrated in the image(s) provide in your document [sic]" (See Schedule "A"). However, a search of the Alberta Motor Vehicles System (MOVES) was completed by the investigator and it confirmed that dealer plate M41508 was issued to Joceline Faraj on April 15, 2014 and was later reported stolen or lost on December 17, 2015. Attached as Schedule "C" is the MOVES search. Both vehicles that were identified with the dealer plate M41508 were listed for sale earlier in August 2015, well before the dealer plate was reported stolen or lost. The phone number [REDACTED] was used as the contact in the advertisement of the two vehicles, as well as 13 other vehicles that were listed for sale on Kijiji. That phone number is known to be used by Ahmed Faraj.
- H. The investigator indicated the Supplier was advertising vehicles online through her husband Ahmed Faraj. The online advertisements indicated were classified as "for sale by dealer". However, the nature and content of the advertisements conveyed that the vehicles were for sale by the long term owner (private sale). Engaging in this business practice contravenes sections 6 and 104 of the FTA and section 12 of the ABR. Attached as Schedule "D" are copies of the online advertisements.
- I. Additionally, the advertisements did not state the business name of the Supplier contrary to section 11(1)(a) of the Automotive Business Regulation (ABR) (see Schedule D).
- J. The business licence for 1748876 Alberta Ltd. operating as All A's expired on June 30, 2016. Mr. Ahmed Faraj indicated at the administrative review that his wife had no plans to renew the business licence.

- K. AMVIC received a written response to the proposed administrative penalty on October 24, 2016, from the Supplier. That response has been reviewed as well as the original submission made by the AMVIC Investigations department. Attached as Schedule "E" is the Supplier's October 24, 2016 response.

Applicable Legislation

Automotive Business Regulation

Definitions

Section 1

(1) In this Regulation

(l) "wholesaler" means an automotive business that buys vehicles from, sells or consigns vehicles to or exchanges vehicles with other automotive businesses exclusively, and includes an automotive business that buys vehicles from members of the public for sale to other automotive businesses but not to consumers.

New classes of licence

Section 3

(1) The following classes of automotive business licence are established:

- (a) automotive sales licence;
- (b) automotive leasing licence;
- (c) automotive consignment licence;
- (d) automotive repair licence.

(2) A person who holds an automotive sales licence is authorized to carry on a class or classes of the activity of buying or selling vehicles as specified by the Director, including, but not limited to, selling vehicles as

- (a) a retailer,
- (b) a wholesaler, or
- (c) an agent or broker,

but not including selling vehicles on consignment

(7) A person who holds an automotive business licence is not authorized to carry on any class or classes of activities that are not specified on the licence.

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

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.
- (h) a supplier's representation that goods have or do not have a particular prior history or usage if that is different from the fact;

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.

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.

Analysis – Did the Supplier fail to comply with the provisions of the FTA and ABR?

1748876 Alberta Ltd. operating as All A's is required to be licensed for retail sales as established in the FTA and the ABR. All businesses doing automotive retail sales must have an active AMVIC licence for that specific business activity. Section 3(1) of the ABR requires all automotive businesses to be licensed with AMVIC. Section 3(2) defines a retail sales licence and section 3(7) indicates that a person is only permitted to carry on the business activity for which they are licensed. 1748876 Alberta Ltd. operating as All A's is not licensed for retail sales. Ms. Joceline Faraj does hold a salesperson registration however, Mr. Ahmed Faraj does not hold an AMVIC salesperson registration and therefore he is not a designated agent and cannot act on behalf of the Supplier. The Supplier has allowed Mr. Ahmed Faraj access to the Supplier's dealer plate to sell vehicles retail although neither party is licensed or registered to sell vehicles directly to the public. The AMVIC investigator, through the use of online data, which is available to the public, was able to match up various online advertisements to its originating source, 1748876 Alberta Ltd. When online advertisements are placed, AMVIC is able to assess a number of factors such as common phone numbers, e-mail addresses, user ID's and various other identifying factors.

The retail sale of automobiles by unlicensed businesses and individuals within the province of Alberta is a serious concern to AMVIC as it has a negative impact both to consumers and the industry members who are properly licensed. While consumer protection is AMVIC's number one priority, a level playing field for industry members is also very important. All of the automotive industry must comply with the FTA, Traffic Safety Act (TSA) and related regulations in order to protect the concerns of consumers and fairness in the market place. Businesses and individuals who engage in business activities beyond the scope of their licence are not in compliance with the FTA and must not engage in the practise.

Notwithstanding the complaints received by AMVIC were anonymous, the complaints specifically identified Mr. Faraj as the individual who sold them a vehicle. The online advertisements revealed a complete dealer plate that was registered to Ms. Faraj and partially revealed that same dealer plate in another online advertisement. There was a clear pattern of phone numbers being used in the online advertisements that directed the investigator to 1748876 Alberta Ltd. operating as All A's. The dealer plate identified in the advertisements indicates that the Supplier was working with Mr. Faraj to sell vehicles retail when they were not licensed to do so.

The Supplier also provided some additional online advertisements placed by other parties (see Schedule E). It appears that the Supplier was simply identifying other individuals who are improperly advertising. AMVIC has been dedicating considerable resources to ensure full compliance with the legislation applicable to automotive advertising and there is more work to be done. AMVIC has published a number of resources pertaining to advertising such as AMVIC newsletters and bulletins, and other information and resources on the AMVIC website. These materials are available on the AMVIC website and available to all licensees and registrants.

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring 1748876 Alberta Ltd. operating as All A's to pay an administrative penalty. This is based on my decision that 1748876 Alberta Ltd. operating as All A's contravened sections 6(4)(a), 6(4)(h) and 104(1) of the FTA, and sections 11(1)(a) & 12(a) of the ABR.

Taking into consideration all of the representations made by the Supplier and the representations made by [REDACTED] – AMVIC investigator and [REDACTED] – AMVIC Sr. Manager of Investigations, the administrative penalty amount is **\$1,000.00**. The amount takes into consideration the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* and particularly the following:

1. Volume of vehicles : the sales volume considered during this review appears relatively low;
2. Scope of economic activity: the retail sale of cars when only licensed for wholesale sales is a serious concern in Alberta. Properly licensed businesses are placed at a disadvantage when another competitor does not meet the same licensing requirements. Additionally, the AMVIC levy of \$6.25 was not paid on the retail sale of the vehicles sold by the Supplier;
3. Actual and potential harm to the public and industry (consumers who were misled or could be driving business away from competitors who are law abiding): in this case, AMVIC was contacted by two consumers with concerns regarding the mechanical condition of the vehicle. It is doubtful the consumers received a Mechanical Fitness Assessment when they purchased their vehicle from the Supplier as required by the legislation;
4. Maximum penalty of the statute pursuant to section 158.1(3) of the FTA is \$100,000; and
5. Absence of intent of the business to become compliant: the Supplier has chosen not to renew her automotive business licence and accordingly, the business licence now stands at an expired status. Ms. Faraj also failed to renew her salesperson registration and it too stands at an expired status. To renew the salesperson registration, Ms. Faraj will need to submit the appropriate application for registration and be associated with an AMVIC licensed business.

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

Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, you are required to submit payment within thirty (30) days of the date of service of this notice. Payment may be made payable to the "Government of Alberta" and sent to AMVIC at:

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

The Supplier requested an extended time period to pay the administrative penalty if a penalty was going to be assessed. The Supplier may pay the penalty by submitting two postdated cheques, one payable within 30 days in the amount of \$500.00 and one payable in 60 days in the amount of \$500.00 from the date of this letter.

If payment has not been received in this time period, a Notice may be filed in the Court of Queen's Bench and enforced as a judgment of that Court pursuant to section 158.4 if the *Fair Trading Act*.

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 \$500.00.

Yours truly,

"original signed by"

John Bachinski
Director of Fair Trading (as Delegated)

JB/kl

Encls.

cc: [REDACTED], Sr. Manager of Investigations, AMVIC