



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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November 2, 2016

Via fax 403-263-9193

Administrative Review – 16-09-005

Administrative Penalty

JJCPB HOLDINGS LTD.
o/a JACK CARTER CHEVROLET CADILLAC BUICK GMC
c/o REGISTERED OFFICE
1600, 421 7TH AVENUE SW
CALGARY, AB T2P 4K9

Attention: Jay McKeen

Dear Sir:

**Re: JJCPB Holdings Ltd. operating as Jack Carter Chevrolet Cadillac Buick GMC
Automotive Business Licence B104188**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.2 of the *Fair Trading Act* (FTA). This letter will detail the action that I propose to take under section 158.1.

After considering all of the information, I am proposing an administrative penalty in an amount set out below.

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.

DIRECT COMMUNICATIONS WITH THE SUPPLIER AND ITS REPRESENTATIVES

1. The representations were made to me by Nicole L – AMVIC Manager of Industry Standards and Stephen V. – AMVIC Industry Standards Officer (ISO) and taken into consideration: for your reference, attached as Schedule “A” is the AMVIC Industry Standards Application Report.

2. On April 18, 2016, AMVIC became aware of a printed advertisement placed by the Supplier in the CarFinder magazine (volume 4; issue 7; pages 4 & 5). Attached as Schedule "B" is a copy of the advertisement found on April 18, 2016. The issues found with the printed advertisements were :
 - The advertisements on page 5 advertised specific vehicles but did not include the stock number of the specific vehicle advertised as being available for sale at the time the advertisement was placed, contrary to section 11(2)(m) of the ABR;
 - The advertisements failed to comply with the all in pricing requirements of the ABR. Specifically, the advertisements stated "Fees and GST extra". Only the GST can be added on to the advertised price. The advertisement is accordingly in breach of the FTA and section 11(2)(l) of the ABR;
3. The ISO contacted the Supplier via email on April 18, 2016. On April 20, 2016, a representative of the Supplier emailed the ISO in response to the email confirming they have updated their advertisements to be compliant. Attached as Schedule "C" is a copy of the email exchange.
4. On July 29, 2016, the ISO learned of a printed advertisement placed by the Supplier in the CarFinder magazine (volume 4; issue 15; pages 14 & 15). Attached as Schedule "D" is a copy of the advertisement found on July 29, 2016. The issues found with the printed advertisements were :
 - The advertisement on page 15 advertised specific vehicles but did not include the stock number of the specific vehicles advertised as being available for sale at the time the advertisement was placed, contrary to section 11(2)(m) of the ABR;
 - The advertisements failed to comply with the all in pricing requirements of the ABR. Specifically, the advertisements stated "Fees and GST extra". Only the GST can be added on to the advertised price. The advertisement is accordingly in breach of the FTA and section 11(2)(l) of the ABR;
5. The ISO contacted the Supplier via telephone and a follow up email was sent to the Supplier on July 29, 2016. On July 30, 2016, a representative of the Supplier responded to the ISO's July 29, 2016 email. The email response from the Supplier to AMVIC suggested they understood their advertisements were non-compliant and were taking steps to bring their advertisements into compliance. Attached as Schedule "E" is a copy of the email exchange.
6. AMVIC received a written response from the Supplier, dated September 30, 2016, regarding the proposed administrative penalty. Attached as Schedule "F" is the Supplier's written representation.

Recent AMVIC Publications

7. AMVIC issues quarterly newsletters on its website. The newsletter is written for all of AMVIC's licensed businesses and registered salespeople. These same publications and back issues are also posted on AMVIC's website www.amvic.org and are readily available free of charge. Prior to 2014, these newsletters were mailed by post to licensees and registrants.

8. AMVIC has issued multiple impact newsletters which contain articles reminding licensees and registrants of their advertising obligations under the FTA and its regulations. Recent articles relating to the legislative breach at hand can be found in the following publications:
- June 2011: "What's your advertising IQ?"
 - March 2012: "Regulation Education"
 - June 2013: "Advertising program sparks increased compliance"
 - February 2014: "Be an ad superstar and Need some help sorting through advertising rules"
 - September 2014: "Tips for RV ads"
 - December 2014: "Advertising – lease"
 - June 2015: "Extra fees: Disclose what you charge"
9. 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.
10. The following industry bulletins remind dealers of their advertising obligations relating to the legislative breach at hand under the FTA and its regulations:
- December 14, 2013: "Shop smart this holiday season"
 - October 31, 2014: "Attn: RV sales – Important reminder before you place an ad"
 - December 14, 2015: "Check this list before you advertise"

Applicable Legislation

Automotive Business Regulation

Advertising

Section 11

(2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services

(l) includes in the advertised price for any vehicle the total cost of the vehicle, including, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges and any applicable taxes or administration fees, but not including GST or costs and charges associated with financing, and

(m) includes the stock number of the specific vehicle that is advertised as being available for sale at the time the advertisement is placed.,

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 FTA and Automotive Business Regulation (ABR)?

There is the responsibility that a business within a regulated industry will undertake to become familiar and apply the appropriate legislation that regulates it. AMVIC has been very diligent with the industry in requiring full compliance with the legislation applicable to automotive advertising. Information pertaining to advertising is contained in numerous AMVIC newsletters and bulletins, and on the AMVIC website. These materials are available to all licensees and registrants.

JJCPB Holdings Ltd. operating as Jack Carter Chevrolet Cadillac Buick GMC had been contacted by AMVIC regarding an advertising concern in April 2016. However, after only a short period of compliance AMVIC became aware of another non-compliant advertisement that was very similar to the advertisement found in April 2016. Consumer protection is a key responsibility for AMVIC as a regulator of the

automotive industry. In addition to ensuring compliance with the legislation, there is an expectation that AMVIC will maintain a level playing field within the industry. The automotive industry is very competitive and compliance with the regulation needs to be supported by the regulator.

The Supplier, in his response, has acknowledged that the advertisements were not compliant. The Supplier has also stated that he feels that the email sent by Stephen V. on July 29, 2016, indicates the ISO has no intention of further enforcement. The email sent by Stephen V. states "Due to previous infractions of the Act, additional enforcement will be considered". The further statement of "If any further advertising concerns arise or compliance is not met in a diligent fashion, further enforcement may be required" speaks to progressive enforcement. In other words, AMVIC may consider a significantly higher penalty if the matter at hand is not dealt with in a diligent fashion or there are further advertising compliance concerns identified by AMVIC.

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring JJCPB Holdings Ltd. operating as Jack Carter Chevrolet Cadillac Buick GMC pay an administrative penalty. This is based on my decision that JJCPB Holdings Ltd. operating as Jack Carter Chevrolet Cadillac Buick GMC contravened sections 11(2)(l) and 11(2)(m) of the ABR.

Taking into consideration all of the representations made by the Supplier and the representations made to be by Nicole L. - AMVIC Manager of Industry Standards, and Stephen V. – AMVIC Industry Standards, 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 : This is a large new and used dealership;
2. Scope of economic activity: The impact of the automotive business is significant;
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, etc.): AMVIC receives advertising complaints from consumers and the industry. AMVIC is responsible to deal with these complaints globally from a compliance concern. Often consumers are not aware that the advertisement did not adhere to the legislation and its regulations. AMVIC has an overall role to ensure the legislation is complied with.
4. Maximum penalty of the statute pursuant to section 158.1(3) of the FTA is \$100,000;
5. Absence of intent of the business to become compliant: The penalty recognizes that that the Supplier has accepted the recommendations from AMVIC and that the advertising was non-compliant.

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. Failure to pay the administrative penalty will result in a review of the licence status. Payment may be made payable to the "Government of Alberta" and sent to AMVIC at:**

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

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

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

cc: Nicole L., Manager of Industry Standards, AMVIC