



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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December 5, 2016

Via fax 1-403-265-7219
Administrative Review – 16-10-008

Administrative Penalty

RENFREW CHRYSLER INC.
c/o REGISTERED OFFICE
4500, 855 2ND STREET SW
CALGARY, AB T2P 4K7

Attention: David Lamont

Dear Sir:

**Re: Renfrew Chrysler Inc.
Automotive Business Licence B203506**

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 the information collected by Alberta Motor Vehicle Industry Council (AMVIC), I find the facts to be as follows:

LICENSEE 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 AMVIC Industry Standards Application Report.
2. On July 26, 2016, AMVIC became aware of a printed advertisement placed by the Supplier in the Car Finder magazine (volume 4; issue 15; pages 28 & 29). Attached as Schedule "B" is a copy of the advertisement found on July 26, 2016. The issues found with the printed advertisements were:

- The advertisements failed to comply with the all in pricing requirements of the Automotive Business Regulation (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)(1) of the ABR;
 - The print advertisement published failed to indicate, in a conspicuous manner, that the business operator holds an automotive business licence under the FTA, contrary to section 11(1)(b) of the ABR;
 - The advertisements disclose the number of kilometers on specific vehicles as having been rounded. This round number is not the accurate number of kilometers on the vehicles, contrary to section 11(2)(d) of the ABR;
 - The advertisement uses fine print that materially impair the legibility (unreadable) contrary to section 11(2)(e) of the ABR;
 - The advertisements offered credit and stated the amount of any payment, but failed to disclose the Annual Percentage Rate (APR), contrary to section 76(1) of the FTA and section 6(2)(a) of the Cost of Credit Disclosure Regulation (COC);
 - The advertisements offered credit and stated the amount of a payment, but failed to disclose the term of the loan or amortization period, contrary to section 76(1) of the FTA and section 6(2)(b) of the COC; and
 - The advertisement offered credit and stated the amount of any payment, but failed to disclose the total cost of credit, contrary to section 76(1) of the FTA and section 6(3)(b)(ii) of the COC.
3. The ISO contacted the Supplier via telephone call on July 26, 2016 and spoke to employees of the Supplier, Anthony Dwyer and Patrick Tingle. The ISO followed up the phone call with an email to Patrick Tingle which explained the legislative breaches regarding the Car Finder magazine (volume 4, issue 15, pages 28&29) and the need to be compliant with the legislation. Attached as Schedule "C" is a copy of the July 26, 2016 email.
 4. After the ISO was in contact with the Supplier regarding issue 15, the ISO reviewed the Suppliers advertisement in the previous issue of Car Finder magazine (volume 4, issue 14, pages 4&5). The advertisement had the same advertising concerns the ISO found in issue 15. Attached as Schedule "D" is a copy of the Car Finder magazine (volume 4, issue 14, pages 4&5).

Previous Advertising Concerns

5. On March 7, 2016, the ISO identified advertising concerns in the Calgary Sun newspaper. The ISO contacted the Supplier by telephone on March 7, 2016, and spoke to Anthony Dwyer and David Lamont. An email was sent following the telephone conversation which reiterated the advertising violations found in the Calgary Sun newspaper. Attached as Schedule "E" is a copy of the March 7, 2016 email.
6. On June 7, 2016, the ISO identified an advertising infraction in the Calgary Sun newspaper. The ISO emailed Anthony Dwyer and David Lamont regarding the advertisement on June 7, 2016. The Supplier responded that the advertisements were brought into compliance. Attached as Schedule "F" is a copy of the email correspondence and the advertisement placed in the Calgary Sun.

Proposed Administrative Penalty

7. The Proposed Administrative Penalty was served on the Supplier on October 25, 2016, via the Registered Office address in the Corporate Registry. The Registered Office address is the office of Bennett Jones LLP. The Proposed Administrative Penalty was faxed to their office. Attached as Schedule "G" is the fax confirmation report.
8. An electronic copy of the Proposed Administrative Penalty was sent to the email address of David Lamont on October 28, 2016. Attached as Schedule "H" is the October 28, 2016 email to [REDACTED]
9. The Supplier did not provide a written representation or contact AMVIC regarding the Proposed Administrative Penalty within the required timeline stated in the Proposed Administrative Penalty.

RECENT AMVIC PUBLICATIONS

10. 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.
11. 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"
 - 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"
12. 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.
13. 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"
 - 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"

APPLICABLE LEGISLATION

Automotive Business Regulation

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
 - (d) uses descriptions and makes promises only in accordance with actual conditions, situations and circumstances,
 - (e) does not use a font that due to its size or other visual characteristics is likely to materially impair the legibility or clarity of the advertisement and, without limiting the generality of the foregoing, in no case uses a font size smaller than 8 points,
 - (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

Cost of Credit Disclosure Regulation (COC)

Advertisements

Section 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),
 - (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.

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 Automotive Business Regulation and the Cost of Credit Disclosure Regulation?

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 in 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.

Renfrew Chrysler Inc. had been contacted by AMVIC regarding an advertising concern on March 7, 2016. However, after only a short period of time AMVIC became aware of another non-compliant advertisement on June 7, 2016. The Supplier was contacted regarding the advertising concern and the business brought their advertising into compliance. On July 26, 2016, AMVIC found further advertisements that were not compliant with the FTA and its regulations. There has been a clear violation of the legislation, as identified above. There is clear evidence that the Supplier has not taken the necessary steps to ensure full compliance of its advertising.

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. In fairness to consumers and other industry competitors who are in compliance, regulatory action is required.

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Renfrew Chrysler Inc. pay an administrative penalty. This is based on my decision that Renfrew Chrysler Inc. contravened sections 11(1)(b), 11(2)(d), 11(2)(e), and 11(2)(l) of the ABR and sections, 6(2)(a), 6(2)(b), and 6(3)(b)(ii) of the COC.

The Supplier did not make representations regarding the proposal to assess an administrative penalty against Renfrew Chrysler Inc. Taking into consideration all the representations made to be by Nicole L. - AMVIC Manager of Industry Standards, and Stephen V. - AMVIC Industry Standards Officer, 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: Renfrew Chrysler Inc. is a large new and used car dealership;
2. Scope of economic activity: Due to the size of the dealership the sales volume would be considerable;
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.): All in pricing is a very important part of the FTA. By adding on additional fees to the advertised price, consumers are possibly paying the same fees twice, the fees that should already be included in the advertised price and an additional fee added on at the time of purchase. Furthermore, competitive businesses are also placed at a disadvantage, as they adhere to the all in pricing regulation resulting in a similar products being advertised at higher prices;
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 business was cautioned about advertising compliance both in general, through AMVIC bulletins and newsletters, and specifically through direct contact with AMVIC representatives. Additionally, the business chose not to respond to the proposed administrative penalty.

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 "

Jonh Bacninski
Director of Fair Trading (as Delegated)

JB/kl

cc: Bruce B., Acting Manager of Industry Standards, AMVIC