



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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

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January 16, 2017

Administrative Review – 16-10-002

**Administrative Penalty**

Via email: [safwanzaid@hotmail.com](mailto:safwanzaid@hotmail.com)

1478509 ALBERTA LTD.  
o/a CALGARY AUTO GALLERY  
c/o REGISTERED OFFICE  
929 42 AVENUE SE  
CALGARY, AB T2G 1Z1

**Attention: Safwan Hniedi & Dina Noufal**

Dear Sir/Madam:

**Re: 1478509 Alberta Ltd. operating as Calgary Auto Gallery  
Automotive Business Licence B1030486**

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 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.

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

1. Representations were made to the Director of Fair Trading (as delegated) 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. As part of AMVIC's industry standards program, the Supplier was provided with notice that an AMVIC industry standards inspection would be conducted on March 14, 2016. The results of the inspection were reviewed with Safwan Hniedi (owner). In addition, a findings letter was

prepared and emailed to the business on March 17, 2016. Attached as Schedule "B" is a copy of the findings letter. The findings letter found the following concerns regarding advertising:

- The AMVIC licensed logo or the words AMVIC licensed dealer is missing from the company website and Kijiji advertisements as per section 11 of the Automotive Business Regulation (ABR);
  - Advertisements that offer fixed credit must include full credit disclosure including the Annual Percent Rate (APR) and the term as well as all additional information required by sections 4 and 6 of the Cost of Credit Disclosure Regulation (COC);
  - All advertisements of used vehicles must identify the stock number of the vehicle being advertised as per section 11(2)(m) of the ABR.
3. The AMVIC Industry Standards Coordinator (ISC) followed up with the business on March 31, 2016, via email confirming the business had 48 hours to rectify the concerns from the inspection. On April 5, 2016, it was noted the concerns had not been rectified and the file was brought to the attention of the Manager of Industry Standards. Attached as Schedule "C" is the email sent to the Supplier by the ISC and the email forwarding the concern on April 5, 2016.
  4. The file was escalated to the ISO who contacted the Supplier on April 8, 2016 regarding the continued advertising concerns. This email states "If any further advertising concerns arise or compliance is not met in a diligent fashion, further enforcement WILL be required." The Supplier responded to the ISO on April 8, 2016 and brought their advertisements into compliance. Attached as Schedule "D" is a copy of the email exchange.
  5. On July 25, 2016, AMVIC became aware of two advertisements placed by the Supplier on the website Kijiji. An advertisement for a 2004 Infiniti G35 Coupe was placed on Kijiji by the Supplier on July 15, 2016. Attached as Schedule "E" is a copy of the advertisement of the 2004 Infiniti. The issue found with the online advertisements was:
    - The advertisement states the kilometers the vehicle has as 160,000. This round number indicates it is not the accurate number of kilometers the vehicle has on it contrary to section 11(2)(d) of the ABR.
  6. The second advertisement the ISO became aware of on July 25, 2016 advertises a 2012 Dodge Ram 1500 ST. Attached as Schedule "F" is a copy of the advertisement of the 2012 Dodge Ram. The issue found with the online advertisements was:
    - The advertisements identified 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;
  7. The ISO contacted the Supplier via email on July 25, 2016. On July 25, 2016, Safwan Hniedi emailed the ISO in response to the email confirming they received the email from the ISO and confirming he would work on the advertisement issue when he was back at work. Attached as Schedule "G" is a copy of the email exchange.
  8. On November 9, 2016, AMVIC received the Suppliers written response to the Administrative Penalty Proposal. Attached as Schedule "H" is a copy of the written representation.

9. 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](http://www.amvic.org) and are readily available free of charge. Prior to 2014, these newsletters were mailed by post to licensees and registrants.
10. 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?"
  - February 2014: "Be an ad superstar and Need some help sorting through advertising rules"
  - September 2014: "Tips for RV ads"
  - December 2014: "Advertising – lease"
11. 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.
12. 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"
  - December 14, 2015: "Check this list before you advertise"
13. AMVIC also maintains an advertising link on its website. The link contains tools and resources to help licensees and registrants comply with advertising laws and regulations. The resources include an advertising checklist which was first posted in or around October 2014, an advertising webinar and an advertising quiz. These resources are also available free of charge.

#### 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

- (d) uses descriptions and makes promises only in accordance with actual conditions, situations and circumstances,
- (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.

1478509 Alberta Ltd. operating as Calgary Auto Gallery was made aware of their advertising concerns during the AMVIC industry standards inspection. The ISO explained the advertising rules to Safwan

Hniedi during the inspection. Following the inspection, the Supplier had to be contacted by AMVIC employee's twice to rectify the concerns raised during the inspection regarding their advertising. Shortly after the initial advertising concerns were rectified, AMVIC found further advertisements that were not compliant with the FTA and its regulations. Automotive advertising must be in compliance with the legislation. 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.

#### **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring 1478509 Alberta Ltd. operating as Calgary Auto Gallery pay an administrative penalty. This is based on my decision that 1478509 Alberta Ltd. operating as Calgary Auto Gallery contravened sections 11(2)(d) and 11(2)(m) of the ABR.

Taking into consideration the representations made by the Supplier on November 9, 2016 and the representations made 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 : the sales volume considered during this review appears relatively low;
2. Scope of economic activity: the economic impact of this automotive business appears to be relatively low;
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 Supplier was informed about the advertising requirements at the inspection. AMVIC employees had to follow up twice before the advertising was brought into compliance. After a short time AMVIC found further advertising concerns. The Supplier continued to violate the FTA and the related legislation regarding the advertising rules.

**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"

Douglas B. Lagore  
Director of Fair Trading (as Delegated)

DBL/kl

cc: Evelyn L-J., Manager of Industry Standards, AMVIC