



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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

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May 24, 2017

Via email: [REDACTED]@hyundaigallery.com  
Administrative Review – 16-12-002

### **Administrative Penalty**

1369713 ALBERTA LTD.  
operating as HYUNDAI GALLERY  
11770 LAKE FRASER DRIVE SE  
CALGARY, AB T2J 7J5

**Attention: L. Tony Dilawri and Brad Hudson**

Dear Sirs:

**Re: Automotive Business Licence B1029511**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.1(1) of the Fair Trading Act (FTA) to provide you with written notice of the administrative penalty issued under that section.

### **Facts**

Taking into consideration all your representations and the information collected by AMVIC, I find the facts to be as follows: A copy of the Application Report is attached as Schedule "A" to this letter.

### ***Licencee Status***

1. 1369713 Alberta Ltd. operating as Hyundai Gallery (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***

2. An administrative review was held at the AMVIC Calgary office on January 12, 2017 involving D. Lagore – Director of Fair Trading (as delegated), Mr. Brad Hudson and Mr. Scott Story from the Supplier, and [REDACTED] – AMVIC Manager of Investigations South and Nina M. – AMVIC Industry Standards Officer.

3. On July 21, 2015, a routine AMVIC Industry Standards inspection was completed at the business location of the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter was completed and sent to the business. The 2015 inspection raised the following concerns among others:
  - a) Advertisements did not include the AMVIC licensed logo or equivalent wording in a conspicuous manner contrary to section 11(1)(b) of the Automotive Business Regulation ("ABR").
  - b) Advertisements on vehicles displayed in the showroom for sale did not include the stock number contrary to section 11(2)(m) of the ABR.
  - c) There were advertisements on used vehicles on the lot that were missing the full cost of credit disclosure contrary to section 4 and 6 of the Cost of Credit Disclosure Regulation ("COC").
  - d) Advertisements made comparisons or claims of superiority that could not be substantiated contrary to section 11(2)(j), and 12(f) of the ABR.
  - e) Two salespeople were engaging in selling vehicles while they were not registered contrary to section 16(1) of the ABR.
  - f) There were various issues with the completion of and disclosure of the Mechanical Fitness Assessment ("MFA") in the deal jackets breaching section 15(1) of the Vehicle Inspection Regulation ("VIR").
4. On September 29, 2016, a follow up AMVIC Industry Standards inspection was completed on the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter dated October 3, 2016 was completed and sent to the business. The follow up inspection found:
  - a) Advertisements did not include the AMVIC licensed logo or equivalent wording contrary to section 11(1)(b) of the ABR.
  - b) Advertisements were missing the full cost of credit disclosure contrary to section 4 and 6 of the COC.
  - c) Advertisements did not include the full lease disclosure contrary to section 18 of the COC.
  - d) One salesperson was engaging in selling vehicles while he was not registered contrary to section 16(1) of the ABR.
  - e) The odometer reading in advertisements were not always accurate which is contrary to section 11(2)(c), 11(2)(d), and section 12(a) of the ABR.
  - f) Security etching was sold on five of the nine used vehicles deal jackets reviewed by the Industry Standards Officer. However, there were no registration certificates to show that the security etching was registered and remitted.
  - g) There were various issues with the completion of and disclosure of the MFA in the deal jackets breaching section 15(1) of the VIR.
  - h) One used vehicle deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer.
5. There were several issues found at the July 21, 2015 inspection that were still evident at the follow up inspection in September of 2016. The legislative breaches that were found at both inspections were:
  - a) Advertisements did not include the AMVIC licensed logo or equivalent wording contrary to section 11(1)(b) of the ABR.
  - b) Salespersons were engaged in the automotive business despite not being registered.



- c) Advertisements were missing the full cost of credit disclosure when required.
  - d) There were various issues with the completion of and disclosure of the MFA in the vehicle deal jackets in breach of section 15(1) of the VIR.
6. After the follow up inspection on September 29, 2016 the Industry Standards Officer requested further documentation from the Supplier in order to confirm whether security etchings had been registered and fees remitted to First Canadian in relation to those transactions which had no confirmation of that on file.
  7. The Supplier provided documentation. However, the dates on those documents and the customer signatures caused the Industry Standards Officer concern regarding their authenticity. On October 12, 2016, the Industry Standards Officer requested clarification by email regarding the matters she had noted. The Supplier did not respond to the email.
  8. By correspondence dated December 2, 2016 the Director advised the Supplier of an administrative review that had been scheduled.
  9. On December 5, 2016, the Supplier provided AMVIC with documentation regarding the concerns raised in the Director's December 2, 2016 correspondence. In this response the Supplier advised of many processes that had been implemented to ensure the Supplier brought their business practices into compliance. Additionally, the Supplier advised that in relation to the five deals involving security etching that the ISO had asked about, the consumers would be given the option to have the security etching applied or refunded. The Supplier did not provide any clarification as to the authenticity of the documents. Attached as Schedule "B" is the documentation provided by Mr. Brad Hudson on December 5, 2016.
  10. On January 12, 2017 the Supplier attended an administrative review and provided some additional documentation. At that administrative review the Supplier provided documentation to confirm that he had contacted the five consumers regarding the security etching and given them the option to have the money refunded or have the security etching they purchased applied to their vehicles. The Supplier stated they had not looked at any other deal jackets to determine whether representations had been made to any other consumers or any other consumers had paid for security etching without the etching having been applied. During the administrative review the Supplier undertook to review all deal jackets to ensure that all consumers who had paid for security etching had received the benefit of that product. Attached as Schedule "C" is the documentation provided at the administrative review.
  11. On March 23, 2017, the Director advised the Supplier in writing of his intention to impose an Administrative Penalty (the "Proposal") and provided the Supplier with an opportunity to make representations.
  12. On April 10, 2017, the Supplier provided AMVIC with its written response to the Proposal and the information arising from the undertaking given at the administrative review relating to the security etching. The Supplier advised that it had performed an internal audit on all files relating to transactions occurring between January 1, 2016 and December 31, 2016 and had found 42 additional transactions where security etching had been sold, but there was no documentation confirming that the etching had been registered. The Supplier advised that the relevant

customers had been contacted and the etching registered. According to the Supplier one individual had been involved in almost every one of the transactions and this was the same individual who had provided AMVIC inspectors with the questionable documentation that had been provided in the fall of 2016. The Supplier indicated that this particular individual was no longer employed by the Supplier and that a procedural change had been made so that all of the files relating to new and pre-owned vehicles were being reviewed by the General Manager to ensure all documentation and paperwork was fully completed. Attached as Schedule "D" is a copy of the written representation.

13. In its April 10, 2017 response the Supplier also indicated that it had implemented a process to ensure that no salesperson working for it was allowed to engage in sales activities without a proper registration.
14. Finally, the Supplier advised that it had made changes to its sales process regarding MFAs in order to ensure that MFAs are properly completed and reviewed with customers.

#### APPLICABLE LEGISLATION

##### Automotive Business Regulation

###### **Records**

###### **Section 9**

In addition to the requirement to create and maintain financial records in accordance with section 132(1) of the Act, every business operator and former business operator must maintain all records and documents created or received while carrying on the activities authorized by the licence for at least 3 years after the records were created or received.

###### **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
  - (c) does not misrepresent, through statements or omissions, a vehicle's mechanical or structural condition,
  - (d) uses descriptions and makes promises only in accordance with actual conditions, situations and circumstances,
  - (j) does not make comparisons or claims of superiority unless the results of the comparisons or the claims can be substantiated,
  - (m) includes the stock number of the specific vehicle that is

advertised as being available for sale at the time the advertisement is placed.

#### **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,
- (c) not abuse the trust of a consumer or exploit any fear or lack of experience or knowledge of a consumer,
- (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,

#### **Registration**

##### **Section 16**

(1) A salesperson of an automotive sales business operator must be registered for automotive sales before acting on behalf of the business operator.

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

#### **Advertisements**

##### **Section 4**

Where an advertisement contains information that under section 6, 7(2), 12(1) or 18 requires disclosure of the APR or other information in the advertisement,

- (a) the APR must be as prominent, in relation to looking at it, listening to it, or both, as the case may be, as any of the information that required the APR to be disclosed, and
- (b) any other information required to be disclosed must be conspicuous.

#### **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

(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.

(4) Where any of the information required to be disclosed by subsections (2) and (3) would not be the same for all credit agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.

## **Advertisements**

### **Section 18**

(1) As much of the following information as is applicable is required to be disclosed for the purposes of section 92 of the Act:

(c) any payments that would be required at or before the beginning of the term;

(e) the amount of any other payments that the lessee will be required to make in the ordinary course of events;

(f) the APR;

(3) Where any of the information required to be disclosed by subsection (1) would not be the same for all credit agreements to which the advertisement relates, the information must be for a representative transaction and must be disclosed as such.

## **Vehicle Inspection Regulation**

### **Sale of used motor vehicle**

#### **Section 15**

(1) Subject to subsection (2), a dealer in used motor vehicles shall, before entering into a contract to sell a motor vehicle, give to the buyer a used motor vehicle mechanical fitness assessment that contains the following:

(a) a statement identifying the type of motor vehicle as a truck, motorcycle, bus, van, light truck, automobile or other type of motor vehicle;

(b) a statement showing the make, model, year, vehicle identification number, odometer reading in kilometres or miles, licence plate number and province of registration of the vehicle;

(c) the name and address of the dealer selling the vehicle and the name of the technician who issued the mechanical fitness assessment;

(d) a statement that the mechanical fitness assessment expires 120 days after the date on which it was issued;

(e) a statement certifying that at the time of sale the motor vehicle

(i) complies with the Vehicle Equipment Regulation (AR 122/2009), or

(ii) does not comply with the Vehicle Equipment Regulation (AR 122/2009) and containing a description of the items of equipment that are

- missing or do not comply with the Vehicle Equipment Regulation (AR 122/2009);
- (f) the signature of the technician who conducted the mechanical fitness assessment;
- (g) the date the mechanical fitness assessment was issued.

### **Fair Trading Act**

#### **Unfair practices**

##### **Section 6**

- (1) In this section, "material fact" means any information that would reasonably be expected to affect the decision of a consumer to enter into a consumer transaction.
- (1.1) It is an offence for a supplier to engage in an unfair practice.
- (2) It is an unfair practice for a supplier, in a consumer transaction or a proposed consumer transaction,
  - (b) to take advantage of the consumer as a result of the consumer's inability to understand the character, nature, language or effect of the consumer transaction or any matter related to the transaction;
  - (c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;
  - (d) to charge a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference;
- (3) It is an unfair practice for a supplier
  - (a) to enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;
  - (b) to enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;
- (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;

#### **Duty to maintain records**

##### **Section 132**

- (1) Every licensee and former licensee must create and maintain
  - (b) other records and documents described in the regulations for

the period specified in the regulations.

#### **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 – Whether the Supplier fail to comply with the provisions of the FTA, ABR, COC and VIR.**

A routine AMVIC Industry Standards inspection was completed on July 21, 2015. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. This inspection concluded that a follow up inspection was required due to legislative breaches found during the inspection.

A follow up inspection was completed on September 29, 2016. As with the initial inspection, the inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The inspection found multiple breaches of the relevant legislation, some of which had been previously identified in the initial inspection.

Details of the breaches that are currently under consideration are identified in the October 3, 2016 Findings Letter. The Supplier did not dispute that the breaches had occurred, but took the position that the security etch problems had been created by a single individual and was not evidence of a systemic issue. Based on the facts as outlined by the Inspector and the documents provided by the Inspector, I am satisfied that contraventions of the FTA and the related regulations did occur.

I am also satisfied that the documentation that was provided to AMVIC in response to its inquiries about the status of the security etching was created after the event, in an effort to mislead the Inspector. The only explanation that has been provided by the Supplier is that it was provided by an employee who has since been terminated. While that appears to be the case, the Supplier is ultimately responsible for the actions of its employees and the FTA specifically provides that any act or omission by an employee in the course of the employee's employment is deemed to be an act or omission of the employer.

It is also relevant that the Supplier was given the opportunity to implement changes to ensure their business practices were brought into compliance with the legislation after the first inspection, but it does not appear that any changes were implemented until the Supplier was facing an administrative review and potential enforcement action.

In the face of potential enforcement action, the Supplier has now provided evidence that it has taken steps to address the legislative breaches identified by AMVIC. The Supplier agreed to and completed an internal audit to ensure all consumer who were charged for security etching received the benefit of the product they paid for. The Supplier has put processes in place to ensure all documentation is completed properly and to ensure all salespeople are actively registered. These efforts have been taken into account in determining the amount of the administrative penalty.

### **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring 1369713 Alberta Ltd. operating as Hyundai Gallery to pay an administrative penalty.

Taking into consideration the representations made by the Supplier and the representations made by AMVIC's Industry Standards department and the information presented at the administrative review on January 12, 2017, the amount of the administrative penalty is **\$6,000.00**.

The amount takes into consideration the factors outlined in section 2 of the *Administrative Penalties (Fair Trading Act) Regulation*, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The fact that the dealership is a large new and used dealership with a significant volume of sales;
2. The previous history of non-compliance identified in the first inspection which was not rectified by the time of the second inspection cope of economic activity;
3. The potential harm to the public of the types of conduct outlined, including the fact that a number of consumers would have paid for security etching and not received it, had the inspections not occurred;
4. The deterrent effect of the administrative penalty;
5. The mitigating factor of the various efforts undertaking by the Supplier to achieve regulatory compliance in the future;
6. The amount imposed as administrative penalties in similar circumstances.

**The amount of the administrative penalty is \$6,000.00.**

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 \$1,000.00.

Yours truly,

"original signed by"

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

DBL/kl  
Enclos.

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