



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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May 23, 2017

Via email: [REDACTED]@davisautogroup.ca
Administrative Review – 17-01-007

Administrative Penalty

DAVIS GMC BUICK LTD.
115 WT HILL BOULEVARD S
LETHBRIDGE, AB T1J 1Y6

Attention: Michael Davis

Dear Sirs:

**Re: Davis GMC Buick Ltd.
Automotive Business Licence B1009765**

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 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. Davis GMC Buick Ltd. (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. On September 23, 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. A copy of this document is contained within Schedule "A". The 2015 inspection raised the following concerns:
 - a) One inactive and one expired salesperson registration showed on the AMVIC databased as being linked with the business. The Supplier was advised of the importance of ensuring the AMVIC database is monitored and up to date.
 - b) Online advertisements did not include the AMVIC licensed logo or wording contrary to section 11(1)(b) of the Automotive Business Regulation ("ABR").
 - c) The Supplier was not adhering to all in pricing contrary to section 11(2)(l) of the ABR.

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- d) There were various issues with the completion of and disclosure of the Mechanical Fitness Assessment ("MFA") in the deal jackets, which constituted breaches of section 15(1) of the Vehicle Inspection Regulation ("VIR").
 - e) Seven of the nine deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer as required by section 6(4)(h) of the FTA. There is a requirement on the Supplier to keep complete records of each sale transaction pursuant to section 132(1) of the FTA and section 9 of the ABR.
 - f) Discrepancies were found between the information provided by the consumer and the information the dealership provided to the financial institution. This is contrary to section 6(2)(c) and 6(3)(b) of the FTA.
3. On October 11, 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 18, 2016 was completed and sent to the business. The follow up inspection found:
- a) A salesperson with an expired registration engaging in the sale of motor vehicles contrary to section 16(1) of the ABR.
 - b) The online Kijiji advertisements did include the AMVIC licensed logo but it was not in a conspicuous manner.
 - c) Website advertisements were missing the full cost of credit disclosure contrary to section 6 of the Cost of Credit Disclosure Regulation ("COC").
 - d) Advertisements did not show the Annual Percent Rate ("APR") as prominently as the payment amount as required pursuant to section 4 of the COC.
 - e) The full lease disclosure was not displayed on the advertisements in the show room as required by section 18 of the COC.
 - f) 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.
 - g) The Supplier was not adhering to all in pricing contrary to section 11(2)(l) of the ABR.
 - h) Advertisements made comparisons or claims of superiority that could not be substantiated contrary to section 11(2)(d), 11(2)(j), and 12(f) of the ABR.
 - i) There were various issues with the completion of and disclosure of the MFA in the deal jackets, which issues constituted breaches of section 15(1) of the VIR.
 - j) The MFAs contained in two deal jackets were expired prior to the sale, contrary to section 16 of the VIR.
 - k) All used vehicle deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer as required by section 6(4)(h) of the FTA. There is a requirement on the Supplier to keep complete records of each sale transaction pursuant to section 132(1) of the FTA and section 9 of the ABR.
4. There were several issues found at the September 23, 2015 inspection that were still evident at the follow up inspection in October of 2016. The matters that were found at both inspections were:
- a) Salespersons without current registrations as required by the FTA;
 - b) The Supplier was not adhering to all in pricing contrary to section 11(2)(l) of the ABR.
 - c) Various issues with the completion of and disclosure of the MFA found in the vehicle deal jackets which constituted breaches of section 15(1) of the VIR.

- d) Deal jackets did not contain documentation confirming the Supplier's representation of the history of the vehicle to the consumer as required by section 6(4)(h) of the FTA.
5. Based on the matters outlined above, 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. On March 6, 2017, received the Supplier's written response to the Proposal. The written response did not take issue with most of the legislative breaches outlined in the Proposal, but instead, set out a number of changes that have been made by the Supplier to ensure regulatory compliance in the future. Attached as Schedule "B" is a copy of the written response.
6. The Dealer also provided additional information regarding the changes that have been made by the Supplier to ensure compliance with the FTA and its related regulations moving forward. The changes highlighted include:
- An individual has been recruited who will be responsible for the advertising of all Davis Auto Group stores and ensuring compliance with the new price and payment advertising policies that reflect all-inclusive pricing and cost of credit disclosure in accordance with the legislation;
 - A process has been put in place to ensure all salespeople remain registered at all Davis Auto Group stores;
 - Process changes have been introduced to ensure MFA compliance;
 - AMVIC compliance has been made a regular agenda topic at monthly meetings
7. The Director has taken these representations from the Supplier into consideration in issuing this Administrative Penalty.

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,

(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

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,

(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.

Expiry of mechanical fitness assessment

Section 16

A dealer's mechanical fitness assessment provided under section 15(1) for a used motor vehicle expires 120 days after the date on which it 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,
 - (c) to use exaggeration, innuendo or ambiguity as to a material fact with respect to the consumer transaction;
- (3) It is an unfair practice for a supplier
 - (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:
 - (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 September 23, 2015. The inspection findings were discussed with the Supplier and a 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 October 11, 2016. As with the initial inspection, the inspection findings were discussed with the Supplier and a 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 were identified in the October 18, 2016 Findings Letter and the supporting documents attached to Schedule "A". Based on the facts outlined by the Inspector and the supporting documents, and taking into account the representations from the Supplier, I am satisfied that Supplier committed the legislative breaches identified in October 18, 2016 Findings Letter.

Through the initial inspection the Supplier was given the opportunity to implement changes to ensure business practices were brought into compliance with the legislation. The AMVIC Industry Standards department has been conducting inspections and providing education to the industry about the legislative requirements expected to be met by automotive businesses through publications on the AMVIC website. Based on the Finding Letters from both inspections, the business had clearly not brought all of their business practices into compliance. However, the Supplier has now provided evidence to show that they have taken a number of significant steps to improve regulatory compliance.

The Director is concerned with the statement made by the Supplier in its March 6, 2017 response that complying with the legislation with respect to all-in pricing "puts our dealerships at a significant competitive disadvantage to the majority of dealerships in our markets" (Schedule B, page 2). All dealers are required to comply with the all-in pricing requirements of the *Automotive Business Regulation*. Dealers are not absolved from breaking the law simply because they perceive that others may be doing so. Notwithstanding this statement from the Supplier, the Director is satisfied that the Supplier is taking the issues that have been raised by the AMVIC inspections seriously and has implemented changes accordingly.

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Davis GMC Buick Ltd. pay an administrative penalty. This is based on my decision that Davis GMC Buick Ltd. has contravened sections 11(1)(b), 11(2)(c), 11(2)(d), 11(2)(j), 11(2)(l), 12(a), 12(f), 9, and 16(1) of the ABR, sections 6(4)(a), 6(4)(b), 6(2)(a), 6(2)(b), 6(3)(b)(iii), 6(4), 18(1)(c), 18(1)(e), 18(1)(f), and 18(3) of the COC, sections 15(1) and 16 of the VIR, and sections 6(2)(c), 6(3)(b), 6(4)(h), 132(1)(b) of the FTA.

Taking into consideration the representations made by AMVIC's Industry Standards department and the representations made by the Supplier the administrative penalty being imposed is **\$9,000.00**. This penalty 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;
3. The potential harm to the public of the types of conduct outlined;
4. The maximum penalty under section 158.1(3) of the FTA of \$100,000;
5. The deterrent effect of the penalty;
6. The mitigating factor of the various efforts undertaken by the Supplier to achieve regulatory compliance
7. The administrative penalties issued in similar circumstances.

The amount of the administrative penalty is \$9,000.00.

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