



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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August 15, 2017

**Via fax: 1-780-429-4453**  
Administrative Review – 17-05-006

### **Administrative Penalty**

ZANE HOLDINGS LTD.  
o/a ALBERTA HONDA  
c/o REGISTERED OFFICE  
1400, 10303 JASPER AVE NW  
EDMONTON, AB T5J 3H6

**Attention: Bart Yachimec**

Dear Mr. Yachimec:

**Re: Zane Holdings Ltd. operating as Alberta Honda  
Automotive Business Licence B207617**

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**

The evidence before me in relation to this matter consists of the material contained in an Application Report prepared by the AMVIC Industry Standards department and dated November 18, 2016 (the "Application Report") and attached as Schedule "A". As well as the correspondence forwarded to AMVIC by Zane Holdings Ltd. operating as Alberta Honda on June 19, 2017. Based on that evidence, I find the facts in this matter to be as follows:

### ***Licencee Status***

Zane Holdings Ltd. operating as Alberta Honda (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. On September 11, 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 Findings Letter outlined the following concerns:

- a) Advertisements were missing the full cost of credit disclosure contrary to section 6 of the Cost of Credit Disclosure Regulation ("COC").
  - b) One bill of sale showed a large deposit when no deposit was provided by the consumer showing false equity to the bank. The sale price on the bill of sale was inflated from the advertised price in the exact amount of the deposit.
  - c) Four of the seven used vehicle deal jackets reviewed did not have a mechanical fitness assessment ("MFA").
  - d) Deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer.
2. On November 4, 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 November 10, 2016 was completed and sent to the business. The follow up inspection found:
- a) The Supplier was not adhering to all-in pricing requirements;
  - b) Two salespeople showed on the AMVIC database as being linked with the business, but with expired registration. One salesperson was engaged in selling vehicles without salesperson registration;
  - c) There were various issues with the completion of and disclosure of the MFA in the deal jackets relating to several transactions;
  - d) Some of the deal jackets did not contain any documentation confirming the Supplier's representation of the history of the vehicle to the consumer;
  - e) Discrepancies were found between actual deposits provided by consumers and the deposit amounts the dealership provided to the financial institution;
  - f) One deal jacket reviewed had documents signed/initialed by the purchaser's underage daughter. This deal jacket also contained a credit application signed by the purchaser but in another person's name;
  - g) Documentation was missing consumer signatures and dates, a security etch document could not be produced, and at least one deposit receipt could not be produced as requested.
3. On June 19, 2017, AMVIC received the Supplier's written representation to the Administrative Penalty Proposal. Attached as Schedule "B" is a copy of the written representation.

## APPLICABLE LEGISLATION

### Automotive Business Regulation ("ABR")

#### 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**

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

(i) 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

## **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 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.

## **Vehicle Inspection Regulation ("VIR")**

### **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 ("FTA")**

#### **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;

(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;

### **Advertising for fixed credit**

#### **Section 76**

(1) Every advertisement that offers credit and that states the interest rate or amount of any payment must disclose the information provided by the regulations.

(2) An advertisement that states or implies that no interest is payable for a certain period in respect of a transaction must, in the form and manner referred to in the regulations, disclose the information prescribed by the regulations.

(3) An advertisement to which subsection (2) applies that does not, in the form and manner referred to in the regulations, disclose the information required under subsection (2) is deemed to represent that the transaction is unconditionally interest-free during the relevant period.

### **Duty to maintain records**

#### **Section 132**

(1) Every licensee and former licensee must create and maintain

(a) complete and accurate financial records of its operations in Alberta for at least 3 years after the records are made, and

(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 – Did the Supplier fail to comply with the provisions of the FTA, ABR and VIR??**

This Administrative Penalty Proposal addresses the matters raised by the Industry Standards Officer ("ISO") arising out of the November 4, 2016 inspection. During the November 4, 2016 inspection the ISO reviewed a number of transactions at random and the relevant material from her review is attached to the enclosed Application Report.

One of the transactions involved a 2013 Honda Ridgeline Sport that had been advertised on the Supplier's website for \$27,999.00. The bill of sale for that vehicle showed that it was sold for a cash sale price of \$28,066.18 plus administration fees of \$499 and the AMVIC levy of \$6.25 (Exhibit 3). A second transaction involved a Ford F-150 which had been advertised for \$14,988.00, but which the bill of sale showed had been sold for \$17,000.25 plus GST (Exhibit 4). A third transaction involved a Honda CR-V advertised for \$24,998, but sold for \$25,500.25 (Exhibit 5). Under section 11(2)(l) of the ABR set out above, the advertised price for a vehicle must include all fees and charges except for GST and financing costs. Based on the documentation, this requirement for "all-in pricing" was not met by the Supplier in relation to these three transactions.

The ISO noted that an individual was involved in sales although his salesperson registration had expired. Registration of salespeople is required under section 16(1) of the ABR. Two other staff members present at the dealership at the time of the ISO's inspection did not have salesperson registrations.



The ISO further noted that the MFAs contained on a number of files did not contain the dealer's name and address as required by section 15 of the VIR (Exhibits 3, 5, 7, 8, 9 and 12). It is the business selling the vehicle who is required to obtain and provide the MFA. If the business's name and address information is left blank, this allows a dealer to transfer the MFA to another dealer along with the vehicle in contravention of the regulation. It has not been suggested that the Supplier engaged in this practice, but the MFA's were not to be completed to the level required to be in compliance with section 15 of the VIR.

During the review, the ISO also noted missing and incomplete documentation on the files relating to some of the transactions. In relation to one of the transactions there was a warranty document on file, but no signature from the consumer accepting that coverage and acknowledging receipt of the terms and conditions (Exhibit 4). On another file, the bill of sale showed a charge for anti-theft protection of \$699, but there was no documentation on file showing that the anti-theft coverage had been put into effect (Exhibit 9). On a third file the application for warranty coverage was unsigned (Exhibit 10). These gaps in the documentation raise the possibility that the consumer might not be able to enforce the coverage they believe they purchased. The Supplier did not provide any information in their written representation (Schedule B) to explain this or show that the consumers involved in these transactions actually received the benefit of the products they purchased. Section 6(3)(a) of the FTA states it is an unfair practice for a Supplier to enter into a consumer transaction if that the Supplier knows or ought to know that the consumer is unable to obtain a reasonable benefit from the goods or services, this section of the FTA relates to this aspect of these transactions.

Exhibit 12 to the Application Report shows that one consumer was charged a \$100 excise tax on a used vehicle. While the Canada Revenue Agency does levy an "air conditioning tax" on manufacturers relating to air conditioning on new vehicles imported into or manufactured in Canada, and this tax may be passed on to the dealer, this is not a consumer tax and is to be included in the price the dealer is asking the consumer to pay.

Finally, in relation to two transactions, the ISO found bills of sale that indicated that deposit amounts had been paid by the consumer but on further inquiry it appeared that no deposit had actually been paid in one case and in the other transaction the amount of the deposit had been deliberately misstated (Exhibits 11 and 12). The ISO indicated she was advised by a representative of the Supplier that that this was done so that the consumer would be approved for financing. The concern in relation to these transactions is that the Supplier making representations to the consumer about the nature of the transaction that are different from the facts or that the Supplier saying things about the transaction that misled the consumer about the transaction contrary to sections 6(3)(d) and 6(4)(a) of the FTA. In addition, if the consumer is unable to qualify for financing for a vehicle without paying a deposit, and the consumer cannot afford the deposit, then there is evidence that the Supplier should know that there is no reasonable probability that the consumer is able to pay the full price for that vehicle. To enter into a consumer transaction in those circumstances is a breach of section 6(3)(b) of the FTA.

The September 2015 Findings Letter is evidence that the Supplier had received notice at that time of compliance concerns in relation to all-inclusive pricing, non-existent deposits and MFA deficiencies. Through the initial inspection the Supplier had been given the opportunity to implement changes to ensure its business practices were brought into compliance with the legislation and to rectify potential breaches of the legislation. Based on the 2016 inspection, the evidence demonstrates that the Supplier has not taken adequate steps to address the issues that were raised and to comply with the legislative requirements established by the FTA and associated regulations.



The Supplier was provided an opportunity to respond to the proposed administrative penalty. The Supplier's written representation (Schedule B) stated that they have made numerous changes in their process after the 2016 AMVIC Industry Standards Inspection, however no evidence or details regarding these changes were provided. Further, the Supplier was given a significant amount of time to bring their business practices into compliance after the initial 2015 Industry Standards Inspection and based on the evidence provided to me. It is evident by the second AMVIC Industry Standards Inspection the Supplier did not implement any changes to their business practices as outlined in the 2015 Findings Letter and in fact continued to operate in contravention of the legislation and its related regulations. The Supplier has not provided any information or evidence disputing the information provided to them in the Administrative Penalty Proposal or the Application Report.

Not only did the Supplier fail to bring their business practices into compliance after the first inspection, they provided no evidence in their written representation to demonstrate what they have actually done to mitigate the contraventions that occurred under the FTA and related regulations which led to the Proposed Administrative Penalty. The provision of a statement indicating that "numerous changes in our processes" have occurred without providing any supporting evidence to the same does not equate to providing actual evidence to what, if anything actually occurred.

#### **Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Zane Holdings Ltd. operating as Alberta Honda pay an administrative penalty. This is based on my decision Zane Holdings Ltd. operating as Alberta Honda has contravened sections 11(2)(l), and 16(1) of the ABR, section 15(1) of the VIR, and sections 6(2)(b), 6(2)(d), 6(3)(a), 6(3)(d), 6(4)(a) 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 **\$14,000.00**. 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 previous history of non-compliance identified in the first inspection which was not rectified by the time of the second inspection;
2. The potential harm to the public of the types of conduct outlined;
3. The maximum penalty under section 158.1(3) of the FTA of \$100,000;
4. The deterrent effect of the penalty;
5. The administrative penalties issued in similar circumstances;

**The amount of the administrative penalty is \$14,000.00.**

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"

Brenda Chomey  
Director of Fair Trading (as Delegated)

BJC/kl  
Enclos.

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