



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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

[www.amvic.org](http://www.amvic.org)

Phone: 780-466-1140  
Toll Free: 1-877-979-8100  
Fax: 780-462-0633

April 15, 2014

[REDACTED]  
DERRICK DODGE (1980) LTD.  
o/a Derrick Dodge Chrysler Jeep  
6211 - 104 STREET  
EDMONTON AB T6H 2K8

**Attention: Mr. Richard Mottershead**

Dear Mr. Mottershead:

**Re: Notice of Administrative Penalty  
Automotive Business Licence #108622**

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 that I propose to take under s.158.1.

Thank you for attending the administrative review and your representations regarding my proposal to administer an administrative penalty on March 4, 2014 and written responses on March 17, 2014 and April 10, 2014. I have taken this into consideration and have assessed an administrative penalty accordingly in the proposed amount.

**Facts**

Taking into consideration your representations and the information collected by AMVIC, I find the facts to be as follows:

1. Derrick Dodge was advertising in the Edmonton Journal a 2014 Ram ½ ton Hemi, stock #ER17688 referred to as the truck. The specific ads ran in January and February, 2014 newspapers. The photo of the vehicle in the advertisement showed a quad cab rather than a regular cab. The advertisement did indicate that "Vehicles may not be exactly as illustrated".
2. The truck was advertised in the Edmonton Journal as early as January 10, 2014 (advertisement attached).
3. On January 31, 2014, the truck along with the above stock number was advertised in the Edmonton Journal (advertisement attached).

4. On February 1, 2014, contact was made by AMVIC at the location of Derrick Dodge regarding the availability of the advertised truck. At that time AMVIC was advised that the truck was no longer available for sale.
5. On February 4, 2014, the same truck was still being advertised for sale in the Edmonton Journal. On or about February 5, 2015 the truck was no longer advertised for sale.
6. On February 6, 2014, AMVIC made contact with Derrick Dodge and requested confirmation of the sale of the truck. After four attempts to receive this information, the sale information was provided to AMVIC.
7. The Bill of Sale provided by Derrick Dodge matched the stock number #ER17688 and price of the advertised vehicle (\$19,488). An offer on the truck was made on January 20, 2014 and a Bill of Sale was completed on January 21, 2014 (attached is the Bill of Sale) and sold for \$28,279.
8. Mr. Mottershead indicated that the truck had not been removed from the advertisement as the deal was not yet finalized however there is a completed Bill of Sale dated January 21, 2014 and the truck was then registered by the new owner with Motor Vehicles on January 21, 2014. This was a new vehicle which requires a New Vehicle Information Statement ("NVIS") in order to successfully register the truck. It would not be reasonable for a store to release the NVIS form if there was any doubt regarding the sale of a vehicle. Once a new vehicle is registered by the consumer it would be considered a used vehicle.
9. The truck was advertised for sale from January 10, 2014 up to and including February 4, 2014 which is two weeks after the confirmed sale of the truck. While it would not be reasonable to expect the newspaper ad to be updated the next business day, it would be reasonable to see the ad corrected within two business days. Regardless, two weeks is an unacceptable time period to correct an advertisement for a vehicle that is no longer available. Advertising is a common practice for Derrick Dodge as it runs daily ads in both major Edmonton newspapers.
10. AMVIC has been engaged in a very active campaign with the automotive industry since the fall of 2012 to obtain full advertising compliance. The campaign started with a letter to all AMVIC-licensed businesses along with a summary of the advertising requirements (a copy of the letter to industry is attached). Following that, AMVIC would randomly review automotive ads in the newspapers for compliance and identify to the automotive business, by fax, any compliance concerns. Derrick Dodge was advised of non-compliant ads numerous times: Derrick Dodge's compliance issues vary from: a) all-in pricing; b) lack of full disclosure on the payment details; c) failure to identify the business as being licensed with AMVIC; and d) advertising a vehicle for sale that is not available for sale.
11. Derrick Dodge (1980) Ltd. also has Canada Wide Auto Sales under its umbrella. An undertaking for Canada Wide Auto Sales was entered into on February 11, 2014. That undertaking was for advertising compliance issues. A copy of that undertaking is attached.



## **Legislation**

### **Fair Trading Act**

(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;
- (k) a supplier's representation that the supplier can supply goods or services if the supplier cannot;

### **Automotive Business Regulation**

#### **Codes of Conduct**

##### **Advertising**

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

- (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**

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**

**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 – Was there a violation of the Fair Trading Act?**

The analysis is based on the above facts. On January 20, 2013 Derrick Dodge sold the advertised truck for the advertised amount of \$19,488 with some minor additional fees (\$126.25) added to the partially completed Bill of Sale. The addition of GST was not calculated or added to the partially completed Bill of Sale. With GST, this would have made the vehicle sale price approximately \$20,595. On the following day a new Bill of Sale was fully completed with an amount of \$28,279.94. The final sale included some additional options to the truck, as well as \$4,375 for health, accident and life insurance. That same vehicle continued to be advertised in the Edmonton Journal up to and including February 4, 2014. That was well past a reasonable time to correct the newspaper advertisement.

In your representations, you indicated that your normal practice is to update the vehicle ads once the sale of the vehicle has been confirmed. You also indicated that you have responded in a positive way by correcting many of the advertisements that were not in compliance. However, there continues to be compliance issues with advertising in spite of numerous warnings and an undertaking. AMVIC has invested a considerable amount of time reviewing various Derrick Dodge ads for compliance including advertisements from Canada Wide Auto Sales which is also owned by Derrick Dodge but operates at a different location. AMVIC Investigators have made direct contact with Derrick Dodge regarding the need for their advertising to be compliant. Mr. Mottershead met with the Executive Director on April 9, 2013 regarding advertising and the need to be in compliance. The responsibility is on Derrick Dodge to be knowledgeable of the advertising rules as a matter of best practice rather than making the correction after the violation has been identified by AMVIC.

AMVIC receives numerous calls from consumers regarding the accuracy of automotive advertisements. It is essential to the industry that their advertisements are compliant with the FTA and maintain accurate information as to the advertised vehicles availability. While similar vehicles may be available at the store, consumers should reasonably expect to see the vehicle with the appropriate stock number.

**Action**

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring Derrick Dodge (1980) Limited to pay an administrative penalty. This is based on my opinion that you contravened s.6 of the FTA and S. 11(2) of the ABR by advertising a vehicle that was no longer available for two weeks after it was sold.



Advertising a vehicle that is not available along with numerous non-complaint ads is a serious violation and warrants an administrative penalty in a significant amount. Consumers are at risk because they attend an automotive business in good faith expecting the advertised vehicle to be available as advertised. Derrick Dodge has an obligation under the Automotive Business Regulation to ensure that the specific vehicle advertised is available.

As a result of this review, Mr. Mottershead on behalf of Derrick Dodge has undertaken to make a number of new procedures to improve the compliance of automotive advertising. These steps include:

1. Mr. Mottershead will be proofing and approving all ads placed by Derrick Dodge;
2. Any ads that have not been approved by Mr. Mottershead are not to be run by the newspapers;
3. Mr. Mottershead and his senior staff will ensure that the ads are updated on a daily basis to ensure any sold vehicles are removed from the advertisement; and
4. Mr. Mottershead personally attended one of AMVIC's advertising seminars.

After taking into consideration all of the representations and corrective steps made by Mr. Mottershead and the representations made by LuAnne Sirdiak, Sr. Manager of Investigations - AMVIC, the proposed administrative penalty amount is \$2500.00.

**The amount of this administrative penalty is \$2500.00.**


Pursuant to section 3 of the *Administrative Penalties (Fair Trading Act) Regulation*, **this administrative penalty must be paid within 30 days of service of this notice. Payment may be made to the Government of Alberta and sent to my attention.**

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 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 appeal 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 \$1000.00

Yours truly,

  
John Bachinski

Director of Fair Trading (as Delegated)

JB/rv

Encls.

cc: 