



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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June 24, 2014

Served Personally

Personal & Confidential

1292709 ALBERTA LTD.
5540 – 184A STREET
EDMONTON AB T6M 1Y5

Attention: Martin Hausner

Dear Mr. Hausner:

Re: 1292709 Alberta Ltd. (o/a Edmonton Imports)
Automotive Business Licence #1022490

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.

After considering all of the information, I am proposing an administrative penalty in an amount set out below.

Background

Taking into consideration the information collected by AMVIC, I understand the facts to be as follows, 1292709 Alberta Ltd. operating as Edmonton Imports was:

1. advertising online that did not provide full disclosure regarding the cost of borrowing;
2. advertising online that did not include the total price of the vehicle in the ad;
3. not providing stock numbers or providing incorrect stock numbers of the advertised vehicle;
4. missing or incorrect business licensee name;
5. showing pictures of vehicles for sale without any disclaimer indicating that the vehicle pictured is or is not the actual vehicle for sale;

Legislation

Fair Trading Act Unfair practices

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,

(a) to exert undue pressure or influence on the consumer to enter into the 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;

(e) to charge a price for goods or services that is more than 10%, to a maximum of \$100, higher than the estimate given for those goods or services unless

(i) the consumer has expressly consented to the higher price before the goods or services are supplied, or

(ii) if the consumer requires additional or different goods and services, the consumer and the supplier agree to amend the estimate in a consumer agreement;

(f) to charge a fee for an estimate for goods or services unless the consumer

(i) is informed in advance that a fee will be charged and informed of the amount of the fee, and

(ii) has expressly consented to be charged the fee.

(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;

(c) to include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one-sided;

(d) to make a representation that a consumer transaction involves or does not involve rights, remedies or obligations that is different from the fact.

(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;

(b) a supplier's misleading statement of opinion if the consumer is likely to rely on that opinion to the

- consumer's disadvantage;
- (c) a supplier's representation that

Cost of Credit Disclosure Regulation

Advertisements

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
- (b) the term.

(3) In addition to the information required under subsection (2),
(a) an advertisement for a credit sale of a specifically identified product must disclose the cash price, and
(b) an advertisement for a credit sale in connection with which any non-interest finance charge would be payable must disclose

- (i) the cash price, and
- (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.

Automotive Business Regulation

Advertising

11(1) Every business operator must ensure that the business operator's advertising indicates in a conspicuous manner

- (a) the name of the business operator as set out in the licence or the trade name of the business operator as set out in the licence, and
- (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

- (a) states whether the vehicle pictured in the advertisement is or is not the specific vehicle that is for sale,
- (b) identifies vehicles that have been used as taxi cabs, police cars or emergency vehicles or that have been recertified when the previous use or condition of the vehicles is known to the business operator,
- (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,
- (e) does not use a font that due to its size or other visual

characteristics is likely to materially impair the legibility or clarity of the advertisement and, without limiting the generality of the foregoing, in no case uses a font size smaller than 8 points,

(f) does not use the words, or words similar to, "demonstrator vehicle" or "demo vehicle" unless the vehicle in question was purchased new by the business operator and used solely for the normal business of the business operator,

(g) does not use the words, or words similar to, "savings", "discount", "percentage off the purchase price", "free", "invoice price", "below invoice", "dealer's cost", "at cost" or a price that is a specified amount above or below invoice or cost unless the claims represented by the words can be substantiated,

(h) does not use the words, or words similar to, "wholesale", "take over payments" or "repossession" unless the claims represented by the words are objectively and demonstrably true,

(i) does not imply a warranty exists with respect to a vehicle or a repair or service unless such a warranty with respect to the vehicle, repair or service exists and is available at the price advertised,

(j) does not make comparisons or claims of superiority unless the results of the comparisons or the claims can be substantiated,

(k) does not offer a guaranteed trade-in allowance for any vehicle regardless of make, year or condition,

(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

(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 – Did 1292709 Alberta Ltd. o/a Edmonton Imports engage in an Unfair Practice contrary to the Fair Trading Act.

On or about March 17, 2014, Alberta Motor Vehicle Industry Council (AMVIC) staff conducted a routine inspection of automotive advertisements listed on electronic message boards Kijiji Canada (kijiji.ca) and Auto Trader (autotrader.ca). Edmonton Imports were found to have advertisements which contravened the advertising rules as set out in provincial legislation. Some examples of the contraventions were: missing the total cost of credit, showing bi-weekly payments as the cash price, missing or incorrect stock numbers, missing or incorrect business operator name and a statement indicating if the vehicle pictured is or is not the actual vehicle for sale.

On March 20, 2014, a Director's Order was signed by the Director of *Fair Trading* (as delegated) under Section 158 of the *FTA* ordering 1292709 Alberta Ltd. and any employee, representative or agent, to **immediately cease** the sale of vehicles via mass communication (i.e. television, radio, newspapers, social media, and the Internet) that breach the legislation. AMVIC Investigator L.D. personally served J.R.D. an employee at Edmonton Imports with the Director's Order on March 20, 2014.

As of May 1, 2014, the Advertisements by Edmonton Imports on Kijiji.ca and Autotrader.ca had not changed as ordered in the Director's order served on March 20, 2014.

AMVIC has been very diligent with the industry in requesting full compliance in automotive advertising. A formal letter went to the industry in the fall of 2012. That was followed with information on advertising in the AMVIC newsletter and a number of warning letters and meetings with the industry.

AMVIC has also provided advertising training and recently sent out a bulletin on online advertising to the industry on March 28, 2014. On April 10, 2014, AMVIC participated in a webinar that was available to the automotive industry through Kijiji where Edmonton Imports has placed numerous ads. This webinar was available to the industry at no cost to them as a client of Kijiji.

Even though Edmonton Imports was made aware of the need to be compliant in automotive advertising, they continued to run non-compliant ads for a number of weeks after they were directed to stop. While online ads can be corrected almost immediately, it was reasonable to allow a few days for ads to be corrected. Edmonton Imports' continued disregard of the Director's Order is inexcusable.

Mr. Hausner has responded indicating that he feels the responsibility falls more with the advertising service provider rather than himself or his company. The onus falls on Mr. Hausner to ensure that the companies he engages to do this work can do so in full compliance with the Fair Trading Act. Mr. Hausner was the author of the original information placed in the advertisements and is ultimately responsible for the outcome of the advertisements.

Action and Proposal

In accordance with section 158.1(a) of the FTA and based on the above facts, I am proposing that 1292709 Alberta Ltd. pay an administrative penalty of \$750.00. This is based on my opinion that 1292709 Alberta Ltd. contravened s. 6(2)(c), 6(4)(o) of the FTA, s. 11(1)(a), (11)(2)(a)(i)(m) of the Automotive Business Regulation (ABR) and s. 6(2), 6(3) of the Cost of Credit Disclosure Regulation (CCDR).

The representations made by LuAnne Sirdiak - Sr. Manager of Investigations, Investigator G.M. and Investigator L.D. were taken into consideration. Also taken into consideration were two letters received from David Scorgie (Lawyer) on behalf of Mr. Hausner.

In accordance with s. 158.1(a), I am writing to advise that I am imposing an administrative penalty to 1292709 Alberta Ltd. o/a Edmonton Imports in the amount of \$750.00. The amount takes into consideration the volume of ads and economic benefit related to the non-compliant advertising.

The amount of the administrative penalty is \$750.00

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 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 \$375.00

Yours truly,



John Bachinski
Director of Fair Trading (as Delegated)

JB/rv

cc: LuAnne Sirdiak, Sr. Manager of Investigations, AMVIC