



ALBERTA MOTOR VEHICLE  
INDUSTRY COUNCIL

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

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August 16, 2018

**Served Personally**  
Administrative Review – 18-07-012

**Administrative Penalty**

SHAGANAPPI MOTORS (1976) LTD.  
4720 CROWCHILD TRAIL NW  
CALGARY, AB T3A 2N2

Attention: Gary Sartorio

Dear Sir:

Re: **Shaganappi Motors (1976) Ltd.**  
**Automotive Business Licence B1038984**

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

**Facts**

The information that I have taken into consideration for the purpose of my preliminary assessment is set out in an Alberta Motor Vehicle Industry Council (AMVIC) Application Report (the "Application Report") prepared by an Industry standards officer and the manager of industry standards. A copy of the Application Report is attached as Schedule "A" to this letter. The Supplier provided written representations on August 8, 2018, in response to the Proposed Administrative Penalty attached as Schedule "B". Based on all the evidence, I find the facts in this matter to be as follows:

***Licencee Status***

Shaganappi Motors (1976) 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***

1. On June 5, 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) Online advertisements (Supplier's website and Kijiji advertisements) did not include the AMVIC licensed logo or equivalent wording contrary to section 11(1)(b) of the Automotive Business Regulation (ABR).
  - b) Two salespeople were engaging in selling vehicles while they were not registered contrary to section 16(1) of the ABR. The Supplier had not updated AMVIC on the status of two salespersons (one who was no longer working at the dealership and one who was no longer engaging in sales).
  - c) One of seven used sales deal jackets did not have a Mechanical Fitness Assessment (MFA) which is required for all used sales as per section 15(1) of the Vehicle Inspection Regulation (VIR).
2. On July 25, 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 July 28, 2016 was completed and sent to the business. The follow up inspection found:
- a) Online advertisements (Facebook) did not include the AMVIC-licensed logo or equivalent wording contrary to section 11(1)(b) of the ABR.
  - b) One salesperson was engaging in selling vehicles while he was not registered contrary to section 16(1) of the ABR.
  - c) Advertisement on one vehicle displayed for sale did not include the stock number contrary to section 11(2)(m) of the ABR.
  - d) Advertisements on the website included fine print which did not reflect the all-in pricing requirements contrary to section 11(2)(l) of the ABR.
  - e) There were various issues with the completion of and disclosure of the MFAs in the deal jackets breaching section 15(1) of the VIR.
  - f) Discrepancies were found between the information provided by the consumer and the information the Supplier provided to the financial institution regarding mortgage/rent. This is contrary to section 6(2)(c) and 6(3)(b) of the CPA.
  - g) One 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 CPA and section 9 of the ABR.
  - h) A couple bills of sale (BOS) did not include the life insurance amount purchased by the consumer. All goods and services purchased from the Supplier is required to be itemized on the bill of sale as per sections 35(e) and 35(g) of the CPA.
3. On September 13, 2017, a third 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 17, 2017 was completed and sent to the business. The follow up inspection found:
- a) Online advertisements (Supplier's website) did not include the AMVIC licensed logo or equivalent wording contrary to section 11(1)(b) of the ABR.
  - b) The Supplier was not adhering to all in pricing contrary to section 11(2)(l) of the ABR.
  - c) Advertisements on the website include fine print which does not reflect the all in pricing requirements contrary to section 11(2)(l) of the ABR.
  - d) There were various issues with the completion of and disclosure of the MFAs in the deal jackets breaching sections 15(1) and 16 of the VIR.



- e) Discrepancies were found between the information provided by a consumer and the information the Supplier provided to the financial institution regarding the mortgage/rent and salary. This is contrary to section 6(2)(c) and 6(3)(b) of the CPA.
  - f) A BOS did not include the life insurance amount purchased by the consumer. All goods and services purchased from the Supplier is required to be itemized on the bill of sale as per sections 35(e) and 35(g) of the CPA.
4. There were several issues found at more than one inspection. The legislative breaches that were found during two or more of the inspections were:
- a) Online advertisements did not include the AMVIC licensed logo or equivalent wording contrary to section 11(1)(b) of the ABR.
  - b) Various issues with the completion of and/or disclosure of the MFAs in the deal jackets breaching section 15(1) of the VIR.
  - c) Salespersons were engaged in automotive sales despite not being registered as required by section 16(1) of the ABR.
  - d) Advertisements on the website include fine print which does not reflect the all in pricing requirements contrary to section 11(2)(l) of the ABR.
  - e) Discrepancies were found between the information provided by a consumer and the information the Supplier provided to the financial institution. This is contrary to section 6(2)(c) and 6(3)(b) of the CPA.
  - f) Bills of sale did not include the life insurance amount purchased by the consumer. All goods and services purchased from the Supplier is required to be itemized on the bill of sale as per sections 35(e) and 35(g) of the CPA.
5. On August 8, 2018, the Supplier provided AMVIC with its written response to the Proposed Administrative Penalty see schedule "B". The Supplier advised that they have made a number of changes over the past three years, based on the recommendations made by the AMVIC Industry Standards department. Some of which include putting the AMVIC logo and documentation fees on the website; certified pre-owned vehicles are scheduled for MFA's to be re-issued every 90 days; and designing their BOS's to show a breakdown of insurance, taxes and so forth.

#### 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
  - (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.

## **General codes of conduct**

### **Section 12**

- Every business operator must comply with section 6 of the Act and in addition must
- (o) comply with any legislation that may apply to the selling, leasing, consigning, repairing, installing, recycling or dismantling of vehicles.

## **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.

## **Acting on behalf of business operator**

### **Section 20.1**

- No business operator may allow a salesperson to act on the business operator's behalf unless
- (a) the salesperson is registered for the class of licence held by the business operator, and
  - (b) the business operator authorizes the salesperson to act on its behalf.

## **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.

## **Consumer Protection Act (formerly 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;

#### **Contents of sales contract**

##### **Section 35**

A written direct sales contract must include

- (a) the consumer's name and address;
- (b) the supplier's name, business address, telephone number and, where applicable, fax number;
- (c) where applicable, the salesperson's name;
- (d) the date and place at which the direct sales contract is entered into;
- (e) a description of the goods or services, sufficient to identify them;
- (f) a statement of cancellation rights that conforms with the requirements set out in the regulations;
- (g) the itemized price of the goods or services, or both;
- (h) the total amount of the direct sales contract;
- (i) the terms of payment;
- (j) in the case of a sales contract for the future delivery of goods, future provision of services or future delivery of goods together with services, the delivery date for the goods or commencement date for the services, or both;
- (k) in the case of a sales contract for the future provision of services or the delivery of goods together with services, the completion date for providing the services or the goods together with services;
- (l) where credit is extended,
  - (i) a statement of any security taken for payment, and
  - (ii) the disclosure statement required under Part 9;
- (m) where there is a trade-in arrangement, a description of and the value of the trade-in;
- (n) the signatures of the consumer and the supplier.

## **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 – Did the Supplier fail to comply with the provisions of the CPA (formerly *Fair Trading Act*), ABR, and VIR?**

A routine AMVIC Industry Standards inspection was completed on June 5, 2015. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business. The inspector concluded that a follow-up inspection was required due to the legislative breaches found during the inspection.

A second inspection was completed on July 25, 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 legislative breaches consistent with those that had been previously identified in the initial inspection as well as additional legislative breaches.

On September 13, 2017, a third inspection was completed. As with the first two inspections, the findings were discussed with the Supplier and the Findings Letter dated October 17, 2017 was provided to the Supplier. The third inspection found multiple legislative breaches consistent with those that had been previously identified in earlier inspections.

Details of the breaches that are currently under consideration are identified in the October 17, 2017 Findings Letter and the supporting documents attached to Schedule "A". Based on the facts outlined by the Inspector and the documents, there is evidence to support the breaches as alleged.

Although the previous inspections did not find the Supplier was in breach of section 11(2)(l) of the ABR, the legislative requirement regarding all-in pricing was discussed with the Supplier during the first two inspections for educational purposes. During the third inspection, the ISO reviewed vehicles sold by the Supplier and compared them to their advertised price. This ISO found three of the ten sold vehicles which were reviewed, were sold above the advertised price contrary to section 11(2)(l).

All three Findings Letter's discuss the legislative requirements regarding MFA compliance pursuant to section 15 and 16 of the VIR. In the third inspection, the deal jackets of the sale of ten used vehicles were reviewed. Of the ten used vehicle sales, six MFAs did not comply with the MFA requirements. One file was missing an MFA and one file had an MFA which was not signed by the consumer indicating the consumers were not provided the MFAs contrary to section 15 of the VIR. Three files contained MFAs which were signed after the bill of sale indicating the consumers were not provided the MFA prior to entering into an agreement to purchase the vehicles as required by section 15 of the VIR. One MFA was completed more than 120 days before the vehicle was sold contrary to section 16 of the VIR. Section 12(o) of the ABR requires automotive businesses to comply with all legislation regarding the sale of vehicles, therefore by breaching sections 15 and 16 of the VIR the Supplier has further breached section 12(o) of the ABR.

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 the initial two inspections the Supplier had been given the opportunity to implement changes to ensure business practices were brought into compliance with the legislation. Based on the Finding Letters from the inspections, the business had not brought all their business practices into compliance.



In response to the proposed administrative penalty, the Supplier provided evidence that it has taken steps to address the legislative breaches identified by AMVIC. The Supplier has provided written representations to support that they have made changes to their advertising to include the AMVIC logo and documentation fees in a manner that is compliant with the all-in pricing requirements as per section 11(2)(l) of the ABR. The Supplier has put processes in place to ensure all documentation is completed properly to include a breakdown of insurance, taxes and any other goods and services that may be bought through the dealership at the time of purchase. I can appreciate that the Supplier re-issues a new MFA after 90 days of the initial inspection when an MFA is valid for 120 days, as well as conducts random internal audits for compliance. However, in the Supplier's written representations the General Manager states "Shaganappi didn't realize that our customer had to sign the Mechanical Fitness Assessment at time of sale which is now in full action prior to getting approved for the vehicle or picking it up". It is the Director's belief they still do not have a clear understanding of the legislative requirements regarding MFA's and that the MFA shall be given to the consumer to review and sign before entering into a contract to purchase. The Supplier's efforts to achieve regulatory compliance have been taken into account in determining the amount of the administrative penalty.

#### **Action**

In accordance with section 158.1(a) of the CPA and based on the above facts, I am requiring that Shaganappi Motors (1976) Ltd. pay an administrative penalty. This is based on my decision that the Supplier contravened sections 11(2)(l), and 12(o) of the ABR, sections 15(1) and 16 of the VIR, and sections 6(2)(c), 6(3)(b), 35(e), and 35(g) of the CPA.

Taking into consideration the representations made by the Supplier and the representations made by AMVIC's Industry Standards department, the amount of the administrative penalty is **\$7,000.00**.

The amount takes into consideration the factors outlined in section 2 of the Administrative Penalties (*Consumer Protection 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 seriousness of the contravention or failure to comply;
2. The fact that the dealership is a large new and used dealership with a significant volume of sales;
3. The previous history of non-compliance identified in the previous inspections were not rectified by the time of the third inspection;
4. The potential harm to the public of the types of conduct outlined, including the fact that consumers were not given a copy of the MFA prior to entering into a contract to purchase;
5. The degree of wilfulness or negligence in the contravention or failure to comply;
6. The maximum penalty under section 158.1(3) of the CPA of \$100,000.

**The amount of the administrative penalty is \$7,000.00.**

Pursuant to section 3 of the Administrative Penalties (*Consumer Protection 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 CPA (formerly 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"

Gerald Gervais, Registrar  
Director of Fair Trading (as Delegated)

/cz  
Encl.

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