



ALBERTA MOTOR VEHICLE
INDUSTRY COUNCIL

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November 1, 2017

Administrative Review – 17-09-002

Administrative Penalty

Served email: dougr@rolaw.ca
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CITY FORD SALES LTD.
c/o REGISTERED OFFICE
#302, 7 ST. ANNE STREET
ST. ALBERT, AB T8N 2X4

Attention: Robert Balkan and Michael Vida

Dear Mr. Balkan and Mr. Vida:

**Re: City Ford Sales Ltd.
Automotive Business Licence B188373**

As the Director of Fair Trading (as delegated), I am writing to you pursuant to section 158.2 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 Alberta Motor Vehicle Industry Council ("AMVIC") Application Report (the "Application Report") prepared by an Industry Standards Officer ("ISO") and the Manager of Industry Standards. A copy of the Application Report is attached as Schedule "A" to this letter. As well as the correspondence forwarded to AMVIC by Mr. Michael Vida of City Ford Sales Ltd. on October 19, 2017, attached as Schedule "B". Based on that evidence, I find the facts in this matter to be as follows:

Licencee Status

City Ford Sales 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 July 27, 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 emailed to the business on July 29, 2015. The ISO

determined that a follow-up inspection would be required in six to eight months. The Findings Letter's concerns are summarized as follows:

- a) The Supplier was not adhering to all in pricing contrary to section 11(2)(l) of the Automotive Business Regulation ("ABR").
- b) The BOS for used vehicles did not contain the extended warranty purchased on the vehicle which is required as part of full disclosure pursuant to section 6(4)(h) of the FTA.
- c) There were various issues with the completion of and disclosure of the Mechanical Fitness Assessment ("MFA") in the deal jackets breaching section 15 of the Vehicle Inspection Regulation ("VIR").
- d) The deal jackets reviewed for eight used vehicle sales 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.

2. On February 24, 2016, a follow-up AMVIC Industry Standards inspection was completed on the Supplier. Several issues found during the July 27, 2015 inspection were still evident and several additional issues were noted. The findings of the inspection were discussed with the Supplier and a Findings Letter was completed and emailed to the business on March 17, 2016. The follow-up inspection's issues are summarized as follows:

- a) The Supplier was not adhering to all in pricing contrary to section 11(2)(l) of the ABR.
- b) There were various issues with the completion of and disclosure of the MFA in the deal jackets breaching section 15(1) of the VIR.
- c) One deal jacket contained a document showing the dealer had inflated the original purchase price to make it appear that the consumer had provided a \$3000.00 down payment in order for the consumer to obtain financing. It was also noted in the Findings letter that it was apparent on other deals that the Supplier was inflating the original purchase price to make it appear the consumer had provided a down payment to obtain financing. This is contrary to sections 6(2)(b), 6(2)(c), and 6(3)(b) of the FTA.
- d) The deal jackets reviewed 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.
- e) The Supplier was reminded to ensure all information regarding the sale of a vehicle must be contained on the Bill of Sales (BOS), including the consumer's information and information pertaining to any vehicle involved in the transaction pursuant to section 35 of the FTA.

3. A third AMVIC Industry Standards inspection was completed on the Supplier on May 29, 2017 to ensure compliance with the FTA and regulations. There were multiple issues found during the inspection, some of which were noted on the two previous inspections and others new. The findings of the inspection were discussed with the Supplier and a Findings Letter was completed and emailed to the business on June 14, 2017. The legislative breaches that were found during this inspection are summarized as follows:

- a) Online advertisements did not include the AMVIC licensed logo or equivalent wording contrary to section 11(1)(b) of the ABR.

- b) Advertisements regarding vehicles for sale did not include the stock numbers contrary to section 11(2)(m) of the ABR.
- c) The Supplier was not adhering to all in pricing contrary to section 11(2)(l) of the ABR.
- d) One salesperson showed on the AMVIC database as being linked with the business, but with an expired registration contrary to section 16 of the ABR.
- e) Of the seven used vehicle deal jackets reviewed two contained expired MFA contrary to section 16 of the VIR, two contained MFAs completed after the vehicle was sold and one file did not contain a MFA, indicating the consumers did not receive the MFA prior to entering into the sale contract contrary to section 15 of the VIR.
- f) One new vehicle deal jacket contained a credit application with a fictitious vehicle identification number ("VIN").

After the inspection, the ISO was completing the Findings Letter and noticed the Supplier allowed their AMVIC business licence to expire on May 31, 2017. The Supplier renewed one day after they were provided the ISO's Findings Letter. It is unlawful for an automotive business to operate without an active AMVIC business licence. An AMVIC business licence is valid for one year as per section 5(1) of the ABR and section 104(1) of the FTA states that no person may engage in a designated business unless that person holds a licence under the Act.

4. On October 19, 2017, AMVIC received the Supplier's written representation to the Proposed Administrative Penalty (see Schedule B).

APPLICABLE LEGISLATION

Automotive Business Regulation

Term of licence

Section 5

- (1) An automotive business licence has a term of one year and may be renewed for additional one-year terms.

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.

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.

(7) Where a salesperson ceases to act on behalf of a business operator the salesperson shall forthwith return to the Director the certificate issued in respect of the salesperson's acting for that business operator.

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,
 - (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
 - (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.

Licence required - designated businesses

Section 104

- (1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.

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.
- (2) Every licensee and former licensee must make the records referred to in subsection (1) available for inspection by an inspector at a place in Alberta and at a time specified by the inspector.

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?

A routine AMVIC Industry Standards inspection was completed on July 27, 2015. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business which outlined specifically which sections of applicable legislation were contravened. The ISO concluded that a follow-up inspection would be required due to the legislative breaches found during the inspection.

A subsequent inspection was completed on February 24, 2016. As with the initial inspection, the inspection findings were discussed with the Supplier and a second Findings Letter outlining the contraventions along with the applicable legislation was sent to the business. As well, specific links to the AMVIC website directly relating to the business's contraventions were provided. The inspection found legislative breaches consistent with those that had been previously identified in the initial inspections, such as not following all in pricing and selling vehicles above the advertised price; issues with MFAs missing information or being signed by the consumer after the BOS has been signed indicating the consumer had not been provided the MFA prior to entering into the sale; and issues with documentation regarding proper disclosure of prior history of the vehicle. As well as additional compliance concerns, namely:

- documentation pertaining to the purchase of a vehicle is not being kept in the deal jacket,
- including all required information on the BOS as required,
- proper maintenance of records as prescribed in the FTA and ABR,

- inflating the purchase price to make it appear as though the consumer provided a down payment to assist in obtaining financing.

The ISO concluded a follow-up inspection would be required due to the continued and new legislative breaches found during the inspection.

A third inspection was completed on May 29, 2017. As with the previous inspections, the findings were again discussed with the Supplier and the Findings Letter was sent to the business with the applicable and relevant legislation cited, coupled with additional links to the AMVIC website in regards to educational information relating to the contraventions. In addition to several ongoing legislative breaches, not adhering to all in pricing, various issues with the MFAs, documentation regarding proper disclosure of prior vehicle history, records maintained as required by the FTA and ABR, as well as multiple additional legislative breaches were identified as follows:

- a salesperson designated to act on behalf of the Supplier did not hold an active salesperson registration. It was indicated that the individual no longer worked for the Supplier however AMVIC was not notified of the salesperson ceasing to act on behalf of the Supplier as required by section 16(7),
- AMVIC logo or wording stating the Supplier is licensed with AMVIC was included in advertisements on Facebook,
- vehicles advertised on Facebook did not include the stock number of the specific vehicle being advertised,
- a credit application was inaccurately created using a fictitious VIN number to identify the vehicle. Section 132(1)(a) of the FTA states "Every licensee...must create and maintain complete and **accurate financial records...**",
- the Supplier allowed their AMVIC business licence to expire and operated with an expired business licence.

Details of the breaches that are currently under consideration are identified in the June 14, 2017 Findings Letter and the supporting documents attached to Schedule "A". Based on the facts outlined by the ISO and the documents provided there is evidence to support several of the aforementioned legislative breaches outlined in the June 14, 2017 inspection occurred.

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 inspection, the Supplier was made aware of what specific legislative requirements were expected of him while operating his automotive business. The Supplier was provided with several verbal explanations regarding what was found during the inspection which was also set forth in writing, in detail, in the Findings Letters. The Supplier has been given ample opportunity to implement changes to address the compliance concerns found during the 2015, 2016, and 2017 inspections to ensure his business practices were brought into compliance with the legislation. Based on the Findings Letters from all three inspections, the business has clearly not brought their business practices into compliance. Additionally, based upon the information contained within the last two Findings Letters, it would appear that the Supplier, not only failed to correct the contraventions, deficiencies, and/or shortcomings that were identified, but continued to breach multiple additional automotive legislative requirements.

The contraventions which are noted in the third inspection are serious not only to consumers in regards to the provision of inaccurate, incomplete, and possibly misleading information, but to the automotive

industry as a whole in terms of public perception as the operation of this business has not been following legislated practices. At the time the third Finding letter was sent out, the Supplier was operating with an expired AMVIC business licence. There exists an onus on the Supplier to do their due diligence and ensure they are complying with the legislation that governs the regulated industry they have chosen to be a member of. The amount of the administrative penalty must be sufficient in that the Supplier and other Suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the governing legislation.

Based on the Findings Letters from the second and third inspection, the business clearly has not complied with the legislation.

A written representation was received by AMVIC on October 19, 2017 from Mr. Vida acting on behalf of the Supplier. Mr. Vida aside from responding the contents of the proposed administrative penalty also indicated the Supplier "[has] never had a consumer-initiated, AMVIC investigation decided against us and we are told that consumer complaints to AMVIC about City Ford are extremely low when compared to our volume and our peers." Upon examination of the Supplier's recent history with AMVIC in response the aforementioned comment, AMVIC had over a dozen case files opened in direct relation to the Supplier in 2016, 5 of which were promoted to investigations, which resulted in 1 warning letter, 1 settlement obtained and the 3 remaining files were found to have no grounds. As for the current year, just under 10 case files thus far have been opened which have resulted in 1 warning letter and another file is currently still open, so it would be a misstatement to say the Supplier has never had any consumer-initiated AMVIC investigations decided against them.

The Supplier, in response to the issue relating to online advertisements not including the AMVIC licensed logo or equivalent wording, indicated that they contracted out the management of this service to a company on March 5, 2017. Further, on the day they became aware of the logo omission they contacted the company managing this aspect of their advertising and the issue was corrected. I acknowledge that there were no concerns addressed regarding advertising deficiencies during the first and second inspection so I am prepared to accept that the Supplier relied upon the company overseeing their advertising, both in print and online, to ensure their advertisements were in compliance with the ABR. Although I have found the Supplier not to have acted intentionally in contravention of the ABR, the Supplier owes a duty to ensure that those they contract services with comply with the applicable legislation as the Supplier is ultimately vicariously liable for the information that is contained within their advertisements. Section 166 of the FTA addresses the vicarious liability held by businesses in the automotive industry.

Fair Trading Act
Vicarious liability
Section 166

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

In regards, to the issue of advertising a motor vehicle online without a stock number, I accept that the advertisement was not advertising one specific motor vehicle which would have required stock number. The advertisement was generic in nature, inviting customers to visit there dealership to test drive a Ford Explorer as part of "National Ford Explorer Day." Thereby I find there was no contravention of the ABR in this instance.

In terms of the issue relating to "all in pricing" I find the Supplier was operating in contravention of the ABR. The Supplier in the first and second inspections was provided not only with a verbal explanation as to what to do to correct this contravention and direct links to AMVIC sites that address all in pricing and fees, as well as, advertising regulations and a checklist. Section 11(2)(l) of the ABR as cited earlier is clear as to what the responsibility of the Supplier is when advertising the total price of a motor vehicle, in that the advertised price must include, but not limited to, all fees and charges such as the cost of accessories, optional equipment physically attached to the vehicle, transportation charges, and applicable taxes or administrative fees but not including GST or costs related to financing.

The Supplier believes the Manufacturers Suggested Retail Price (MSRP) label present on all of their new vehicles:

"are exempt from AMVIC's all-in-pricing rules as this label is the Manufacturers Suggested Retail Price (and explanation of all standard equipment and options) set by the Ford Motor Company of Canada Limited and is governed by federal legislation."

The Federal government has no legislation that specifically addresses MSRP in relation to motor vehicle pricing. However, Federal legislation has been enacted, the *Motor Vehicle Safety Act* which regulates the manufacturing and importation of motor vehicles and motor vehicle equipment to reduce the risk of death, injury and damage to property and the environment. This information that is often found directly affixed to the window decal/sticker (which is often synonymous with MSRP information forming part of the decal/sticker) often addresses the vehicle and equipment requirements as outlined in section 5(1) of the *Motor Vehicle Safety Act* which states:

"5(1) No company shall apply a national safety mark to any vehicle or equipment, sell any vehicle or equipment to which a national safety mark has been applied, or import into Canada any vehicle or equipment of a prescribed class unless

(a) the vehicle or equipment conforms to the standards prescribed for vehicles or equipment of its class at the time the main assembly of the vehicle was completed or the equipment was manufactured;

(b) evidence of that conformity has been obtained and produced as provided for in the regulations or, if the regulations so provide, to the Minister's satisfaction;

(c) Repealed, 1999, c. 33, s. 351]

(d) prescribed information is marked on the vehicle or equipment as provided for in the regulations;

(e) prescribed documentation or prescribed accessories accompany the vehicle or equipment as provided for in the regulations;

(f) prescribed information relating to the operation of the vehicle or equipment is disseminated as provided for in the regulations;

(g) records are maintained and furnished, as provided for in the regulations, in relation to the design, manufacture, testing and field performance of the vehicle or equipment, for the purpose of

(i) enabling an inspector to determine whether the vehicle or equipment conforms to all requirements applicable to it, and

- (ii) facilitating the identification and analysis of defects referred to in subsection 10(1); and
- (h) in the case of equipment, the company maintains, as provided for in the regulations, a registration system by which any person who has purchased equipment manufactured, imported or sold by the company and who wishes to be identified may be so identified.

The only Federal legislation which addresses the concept of “pricing” when speaking in terms of motor vehicles is the *Competition Act*, an Act which is designed to provide a general regulation of trade and commerce in respect of conspiracies, trade practices and mergers affecting competition. The Act contains criminal and civil provisions to address false or misleading representations and deceptive marketing practices as it pertains to business interests for example. Part VII.1, Section 74.01(1) of this Act addresses “Deceptive Marketing Practices and Reviewable Matters”. This section states:

“74.01(1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,
(a) makes a representation to the public that is false or misleading in a material respect;

Section 74.05(1) of this same Act specifically relates to “Sale above advertised price” and reads:

“74.05(1) A person engages in reviewable conduct who advertises a product for sale or rent in a market and, during the period and in the market to which the advertisement relates, supplies the product at a price that is higher than the price advertised.”

As part of the Federal government’s regulation of the *Competition Act*, the Competition Bureau was established, as a means to provide information and guidance to “promote truth in advertising in the marketplace by discouraging deceptive business practices and by encouraging the provision of sufficient information to enable informed consumer choice”¹.

As already stated, there is no specific Federal legislation which speaks directly to how automotive pricing is established, such a practice is left to the individual provinces to oversee, which is what the ABR does in the province of Alberta. The Supplier is incorrect in his belief that the concept of “all-in-pricing” is a rule established by AMVIC, this concept comes from provincial legislation, specifically section 11(2)(l) of the ABR. AMVIC was established by the Alberta Government through a delegation agreement with the Minister of Service Alberta to oversee and regulate the automotive industry through established legislation, namely the FTA and its regulations with overarching guidance provided through the *Motor Vehicle Safety Act* and *Competition Act* as briefly addressed above.

The Supplier in his response indicated that he was advised by AMVIC that MSRP stickers are not required by law. This is true, there is no law that requires vehicles have MSRP decals/stickers affixed to them as addressed above. The Supplier further stated he was informed by AMVIC that the MSRP sticker could be removed and replaced by his own price label. This is true as well, as long as the consumer is provided with the information as required by the *Motor Vehicle Safety Act* which is often or not included the

¹ http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/h_00529.html

decal/sticker that has the MRSP on it. The Supplier by affixing his own sticker would still have to abide by section 11(2)(l) of the ABR, all-in-pricing.

Upon examination of the advertisements and BOS the ISO provided as part of the third inspection, it was clearly evident consumers were being charged fees, such as administration fees (documentation fees), AMVIC levy, and tire levy, for example which should have formed part of the advertised all in price. Once the dealership advertised the vehicles online with the price, as shown in Exhibit 7 of Schedule "A", this price is the advertised price for their store in Alberta and must comply with section 11(2)(l) of the ABR. It was also noted in a couple of matters the advertised price of the vehicle included a \$1,000.00 discount for a Costco membership. A Supplier cannot include this discount in the actual advertised price as this does not represent the true advertised price of the vehicle, as not everyone has a Costco membership.

In regards to the 2017 Fusion, which was still being advertised online at the sale price which was valid until the end of the month, yet was sold to the unsuspecting consumer at full price, as the sale allegedly ended according to a newspaper ad the day prior, the Supplier owes a duty to consumers to honour the advertised sale price, as it was still being advertised on sale, online. The Supplier indicates the salesperson who sold this vehicle was unaware the vehicle was still advertised online at a discounted price. The Supplier stated that have put a process in place to ensure conflicting sale start and end dates do not occur in the future. However as addressed earlier the Supplier is vicariously responsible for the actions of their employees and should ensure they employees are providing correct and accurate information to consumers.

In relation to a new 2017 Ford Escape, the vehicle sold for thousands of dollars above the online advertised price. Once again the Supplier indicated the salesperson from the used car sales division who completed this sale was unaware that this new model vehicle was listed at a significantly lower price online then was it was sold for, but the consumer was happy, as he received a new vehicle as he was declined financing for a used one. The consumer may have been happy with his purchase but he did not receive the vehicle at the advertised price. The Supplier owes a duty to be forthright with consumers to ensure they are receiving the vehicle at the correct advertised price and the Supplier has a further responsibility to ensure their salespeople are aware of the correct advertised price of vehicles they are selling as the Supplier is vicariously liable for their employees' actions.

The Supplier in response to having a salesperson with an expired registration listed on the database indicated this person was not selling vehicles without a registration as is currently enrolled in school and he would be returning to the dealership to work for the next co-op term. I accept the individual was not working as a salesperson without an active registration, however the Supplier contravened section 16(7) of the ABR as when an individual ceases to act as a salesperson on their behalf, the Supplier must send notification of the same to AMVIC within 15 days after the salesperson ceases to be authorized to sell vehicles.

In regards to issues with MFAs, the most significant concern was that of expired ones, albeit one was only expired by one day and an acceptable reason was provided for the same, one was expired by nine days and another according to the Supplier was provided after the sale was completed as the consumer did not want to wait for one to be completed first, although the documentation regarding this sale did not reflect this condition. Having an MFA completed prior to the sale of a used vehicle is not only legislatively required but it is imperative, as it provides additional information regarding the condition of the vehicle, which assists the consumer in making an informed decision as to whether or not the vehicle

in question meets their needs. The Supplier indicates that a process since the ISO inspection, has been put in place to ensure that MFA's will not be allowed to expire prior to selling the vehicle. Nonetheless, in case of the expiration of the MFA by 9 days is in clear contravention of the regulation.

The Supplier in relation to the issue of utilization of a fictitious VIN number on a credit application, explained the reasoning behind this practice, in that, this was done to obtain pre-approval of credit for a vehicle as an exact vehicle model had not been determined, prior to the Supplier and consumer completing the actual purchase transaction. Although the Supplier did not provided the completed paperwork to support that this is in fact what occurred, I am prepared to accept his explanation regarding this issue.

The last issue to address in relation to the third inspection is that of the Supplier operating with an expired business licence, for two weeks and only renewed their business licence when informed of the same in the June 14, 2017 Findings Letter. The Supplier indicates that "up until this infraction, we have always paid our City Ford AMVIC licence fee and all Quarterly remittances on time...Until this year, the AMVIC licence invoice had always been mailed to City. This infraction resulted from our not receiving the now-email only invoice." Attached as Schedule "C" is a copy of the June 24, 2014 AMVIC Bulletin which outlined the new online process that had been implemented in regards to licence and registration renewals as well as remittance of levies. Regular mail renewal reminders have not been sent out since June 2014. Accordingly, AMVIC records show that on April 30, 2015 and April 29, 2016 email reminders were sent approximately one month prior to the Supplier regarding renewal of their business licence, and the email reminder was sent on May 2, 2017 for this current year. As well, according to AMVIC's licencing records, email reminders have been sent to the Supplier on a fairly consistent basis to remind them that their quarterly levies were due, it is evident the Supplier has been receiving and responding to AMVIC issued emails up until this year regarding their business licence.

The Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

"In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator." (Emphasis added).

The Supplier has been operating and has held an automotive business licence for decades and just as the court stated above, the Supplier owes a responsibility to at least develop a basic understanding of what he can and cannot in his business and well as ensure he follow the legislated requirements such as maintaining a valid business licence based upon the regulatory regime in which he operates.

Action

In accordance with section 158.1(a) of the FTA and based on the above facts, I am requiring City Ford Sales Ltd. pay an administrative penalty. This is based on my decision that City Ford Sales Ltd. contravened sections 5(1), 11(1)(b), 11(2)(l), 16(7) of the ABR, sections 15(1) and 16 of the VIR, and section 104(1) 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 **\$15,000.00**. 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 and second inspection with some issues not rectified by the time of the third 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;
6. The mitigating factors of the various efforts undertaken by the Supplier to achieve regulatory compliance in some areas;
7. The fact that the dealership is a large new and used dealership with a significant volume of sales.

The amount of the administrative penalty is \$15,000.00.

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, BSc.N., J.D., MSc.
Director of Fair Trading (as Delegated)

BC/ie
Enclos.

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