

November 30, 2018

Served Personally

Administrative Review – 18-10-012

**Administrative Penalty**

771922 ALBERTA INC.  
OPERATING AS NORTH HILL MAZDA  
1211 CENTRE STREET,  
CALGARY, AB T2E 2R3

**Attention: Asheet Ruparell**

Dear Sir:

**Re: 771922 Alberta Inc. operating as North Hill Mazda  
Automotive Business Licence B301795**

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 November 16, 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***

771922 Alberta Inc. operating as North Hill Mazda (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 March 27, 2017, 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 dated April 3, 2017 was completed and sent to the business. The Findings Letter outlined the following concerns:

- a) There were a number of issues with the Suppliers advertising, which were identified by the industry standards officers ("ISO") during the inspection.
  - b) There were various issues with the completion of and disclosure of the Mechanical Fitness Assessments ("MFAs") in the deal jackets breaching Section 15 Vehicle Inspection Regulation ("VIR").
2. On April 9, 2018, the advertising ISO completed a review of the Supplier's advertising and noted that the Supplier's website and Facebook page were not in compliance with legislation. An email summarizing the issues identified by the ISO were discussed with the Supplier on April 11, 2018 via teleconference call. The review found:
  - a) Advertisements on the website included fine print which did not reflect the all in pricing requirements contrary to Section 11(2)(l) of the Automotive Business Regulation ("ABR").
  - b) The AMVIC logo or wording was not on the Supplier's Facebook pages as per Section 11(1)(b) of the ABR.
  - c) The Supplier failed to include stock numbers of vehicles being advertised on the Supplier's Facebook page contrary to Section 11(2)(m) of the ABR.
  - d) The Supplier's website allowed consumers to "build and price" on vehicles that were no longer available, which is misleading to consumers and contrary to Section 6(4)(a) of the CPA.
3. On May 11, 2018, a second AMVIC industry standards inspection was completed on the Supplier. The findings of the inspection were discussed with the Supplier and a Findings Letter dated June 15, 2018 was completed and sent to the business. The follow up inspection found:
  - a) The Supplier was not adhering to all-in pricing contrary to Section 11(2)(l) of the ABR. 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.
  - b) There were various issues with the completion of and disclosure of the MFAs in the deal jackets breaching Sections 15(1) of the VIR.
4. The legislative breach that was found during more than one inspection was:
  - a) Various issues with the completion of and/or disclosure of the MFAs in the deal jackets breaching Section 15(1) of the VIR.
5. On November 16, 2018, the Supplier provided AMVIC with its written representations to the proposed Administrative Penalty see schedule "B". The Supplier advised that they have made a number of changes over the past year, based on the recommendations made by the AMVIC industry standards department. The Supplier's representations reflect that they were surprised by the proposal of an administrative penalty as they state, "they were told that enforcement could occur if recurring issues were not resolved by the next (third) inspection, as was AMVIC's practice." Resources to help businesses understand their obligations under Alberta's consumer protection laws are available on AMVIC's website. The Industry Standards Policy as well as information on AMVIC's progressive enforcement are examples of these type of resources. It is not AMVIC's practice to only take enforcement action upon a third inspection. AMVIC follows a progressive enforcement model which may include written warnings or administrative action.



When determining an appropriate enforcement measure, AMVIC will consider several factors which include: compliance issues in the past or whether the contravention was repeated, systemic, or a one-time occurrence, the willingness of the licensee to make changes to address the contravention and the steps the licensee has voluntarily taken, the seriousness of the contravention, the goals of enforcement, the individual circumstances and what is in the public interest.

### **Applicable Legislation**

#### **Automotive Business Regulation**

##### **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

#### **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.

### **Consumer Protection Act**

#### **Unfair Practices**

##### **Section 6**

- (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:
  - (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer

#### **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, ABR, and VIR?**

A routine AMVIC industry standards inspection was completed on March 27, 2017. The inspection findings were discussed with the Supplier and the Findings Letter was sent to the business via email on April 3, 2017. The inspector concluded that a follow-up inspection may be required due to the legislative breaches found during the inspection.

On April 9, 2018, the Supplier was sent an email from the AMVIC advertising ISO outlining her advertising concerns. On April 11, 2018, the ISO had a teleconference with the Supplier to discuss the advertising concerns outlined in the email dated April 9, 2018. A follow up inspection was scheduled for May 11, 2018.

On May 11, 2018, a second AMVIC industry standards inspection was completed. The inspection findings were discussed with the Supplier and the Findings Letter dated June 15, 2018, was provided to the Supplier. The second inspection found a number of legislative breaches regarding the appropriate completion and disclosure of MFA's, consistent with those that had been previously identified in earlier inspections.

Details of the breaches that are currently under consideration are identified in the June 15, 2018 Findings Letter and the supporting documents attached in 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 inspection 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 inspection for educational purposes and during the advertising review. During the second inspection, the ISO reviewed 10 vehicles sold by the Supplier and compared them to their advertised price. This ISO found one of the 10 vehicles sold which were reviewed, were sold above the advertised price contrary to Section 11(2)(l) of the CPA. The Supplier provided representations that this was a clerical error and understands the concern about past industry practice in adding fees and costs at the time of the sale that are not disclosed in the advertised price. The Supplier states they do not attempt to sell their vehicles for higher than advertised prices and cannot explain why this occurred in this sales transaction. The Director can appreciate this was an oversight on the part of the Supplier and not a common occurrence as part of their business practices, however this was a contravention of the legislation and direct breach of Section 11(2)(l) of the CPA.

Both Findings Letters discussed the legislative requirements regarding MFA compliance pursuant to Section 15 of the VIR. In the second inspection, ten used sale deal jackets were reviewed and of the ten used vehicle sales, eight MFAs did not comply with the legislative requirements. One file was missing the technician's certificate number contrary to Section 15(f) of the VIR. Eight of the MFAs were missing a statement that indicated that the MFA expires 120 days after the date of which it was issued contrary to Section 15(d) of the VIR. One file contained an MFA which was signed after the bill of sale, indicating the consumer was not provided the MFA prior to entering into an agreement to purchase the vehicle contrary to Section 15 of the VIR. Four files had MFAs which did not have a date in which the consumer signed the MFAs contrary to Section 15 of the VIR. Based on the material facts and documents before me, I am not satisfied that the MFAs were disclosed to the consumers prior to entering into the transactions as required by Section 15 of the VIR. In the Supplier's representations they acknowledge that their business practices relating to the MFAs were not brought into compliance by the time of the second inspection. They take ownership that the completion of the dates and obtaining customer signatures was sloppy and their technicians were not filling out the dealership name and address but have now implemented processes in place to correct the deficiencies. The Supplier disagrees with the conclusion of the Director that the MFAs were not disclosed to the consumers prior to entering into the transactions as required by legislation. The Supplier states that all of the deal jackets reviewed contained an MFA and indicated the vehicles were in compliance. Section 15 of the VIR clearly sets out what is required in an MFA and the Supplier was not adhering to the legislation.

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 had been given the opportunity to implement changes to ensure business practices with regards to advertising and MFAs were brought into compliance with the legislation. Based on the Findings Letter from the second inspection, the Supplier improved their business practices with regards to advertising and this is acknowledged by the Director, however the Supplier has not brought their business practices regarding MFAs into compliance. The Supplier states, *"the fact is that the dealer management has responded to AMVIC's inspections and reacted in a manner that the inspections were designed for"*. The Director does not agree with this representation as the fact remains that it took over one year between the first comprehensive inspection that took place on March

27, 2017 and the second inspection on May 11, 2018 before the Supplier made changes to their MFA business processes to bring them into compliance with the legislation when an Administrative Penalty was proposed.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in 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 a 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.

In reaching an Administrative Penalty, the Director of Fair Trading has also reviewed previous Administrative Penalty decisions, as well as Appeal Panel decisions and the nature and amount of Administrative Penalties issued by AMVIC to other business operators in similar circumstances. An 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 law. The overall goal of applying an enforcement measure is not limited to being responsive to and appropriate for the particular facts of the non-compliance, encourage future compliance by the Supplier and within the industry as a whole, reduce the risk of further harm, and change the behavior of the non-compliant Supplier.

### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that 771922 Alberta Inc. operating as North Hill Mazda pay an Administrative Penalty. This is based on the evidence presented by the Industry Standards department and contained in the Application Report that 771922 Alberta Inc. operating as North Hill Mazda contravened Section 11(2)(l) of the ABR and Section 15 of the VIR.

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 \$5,500.

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 inspection were not rectified by the time of the second inspection;
4. The potential harm to the public of the types of conduct outlined, including the fact that consumers were given incomplete MFAs at the time of purchase;
5. The degree of willfulness or negligence in the contravention or failure to comply;
6. Previous Administrative Penalties issued to business operators by AMVIC in similar circumstances; and
7. The maximum penalty under Section 158.1(3) of the CPA of \$100,000.

**The amount of the Administrative Penalty is \$5,500.**

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 CPA and further disciplinary action will be considered.

Section 179 of the CPA 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, 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 (*Consumer Protection 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.

Yours truly,

"original signed by"

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

/cz  
Encl.

cc: [REDACTED], Manager of Industry Standards, AMVIC