

DISCIPLINE DECISION

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT 2002, S.O. 2002, C.30, Sch. B

B E T W E E N :

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

Power Sports Canada Inc.

Pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee, I, the Chair of the Discipline Committee, have reviewed and considered the written Agreed Statement of Facts and Joint Submission on Penalty together with both Parties' waiver of a Hearing to this Proceeding and provide the following Order:

Date of Decision: October 5, 2020

Findings: Breach of Sections 4 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,500 no later than **December 18, 2020**.
2. The Dealer is ordered to have the individual designated as the manager or sales manager at the Dealer successfully complete the MVDA Key Elements Course, no later than **February 5, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering this course within the specified time frame. The Dealer agrees to incur all costs associated with this.
3. The Dealer is ordered to have all staff view the "August 2017 – Advertising Webinar" available on OMVIC's webpage. This is to be completed no later than **December 18, 2020**.
4. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the "Course"). Current sales staff will be offered the Course no later than **December 18, 2020**. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

- The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Written Reasons:

Reasons for Decision

Introduction

This matter proceeded on the basis of an Agreed Statement of Facts, Joint Submission on Penalty and the Parties' Waiver of Hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Committee and the Appeals Committee.

Agreed Statement of Facts

The parties to this proceeding agree that:

- Power Sports Canada Inc. (the "Dealer") was first registered as a motor vehicle dealer in around June 2008.

OMVIC registrant education re: all-in pricing

- Since the Act was proclaimed, OMVIC has issued the following publications and webinars reminding dealers of their all-in pricing obligations, all of which continue to be available on OMVIC's website:

	Dealer Standard		Bulletin		Webinar
A	Winter 2008	U	January 2010	BB	April 2015
B	Spring 2010	V	April 2010	CC	April 2017
C	Spring 2011	W	February 2012		
D	Winter 2013	X	August 2012		
E	Spring 2013	Y	April 2014		
F	Summer 2013	Z	June 2014		
G	2014: Issue 1	AA	April 2015		
H	2014: Issue 2				
I	2014: Issue 3				
J	2014: Issue 2				
K	2015: Issue 3				
L	2015: Issue 4				
M	2016: Issue 1				
N	2016: Issue 2				
O	2016: Issue 3				
P	2016: Issue 4				
Q	2017: Issue 2				
R	2017: Issue 3				
S	2018: Issue 2				
T	2019: Issue 2				

Direct correspondence with Dealer:

3. By e-mail dated May 16, 2013, the Dealer was reminded of its all-in pricing obligations.
4. By email dated June 18, 2013, the Dealer was again reminded of its all-in pricing obligations.
5. During an inspection of the Dealer on about April 14, 2014, a representative of the Registrar reminded the Dealer of its all-in pricing obligations.
6. During an inspection of the Dealer on about April 11, 2017, a representative of the Registrar reminded the Dealer of its all-in pricing obligations.

Dealer's current non-compliance

7. On or before December 10, 2019, the Dealer published the following vehicle advertisements which did not promote all-inclusive pricing. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics:

	Vehicle	Advertised Price	Additional Fees
A.	2019 Ducati Scrambler Unit ID: 7879180	\$11,800	\$269 re-conditioning \$29 OMVIC & Enviro
B.	2016 Yamaha FJR1300 Unit ID: 7269279	\$12,999	\$269 Dealer Admin \$29 OMVIC & Enviro
C.	2016 Honda Africa Twin DCT Unit ID: 7256436	\$8,999	\$269 Dealer Admin \$29 OMVIC & Enviro
D.	2019 Ducati Multistrada 950 Unit ID: 1476777308	\$17,745	\$750 Freight & PDI \$269 Dealer Admin \$29 OMVIC & Enviro

8. The Dealer has since revised their advertisements to ensure compliance with all-inclusive pricing.

By failing to comply with the following:

Regulation 333/08

36. Advertising

7. If an advertisement indicates the price of a motor vehicle, the price shall be set out in a clear, comprehensible and prominent manner and shall be set out as the total of,

- (a) the amount that a buyer would be required to pay for the vehicle; and
- (b) subject to subsections (9) and (10), all other charges related to the trade in the vehicle, including, if any, charges for freight, charges for inspection before delivery of the vehicle, fees, levies and taxes.

It is thereby agreed that the Dealer has breached the following sections of the Code of Ethics as set out in Regulation 332/08:

Disclosure and Marketing

4 (1) A registrant shall be clear and truthful in describing the features, benefits and prices connected with the motor vehicles in which the registrant trades and in explaining the products, services, and programs and prices connected with those vehicles.

Professionalism

9 (3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$5,500 no later than **December 18, 2020**.
2. The Dealer agrees that the individual designated as the manager or sales manager at the Dealer will successfully complete the MVDA Key Elements Course, no later than **February 5, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering this course within the specified time frame. The Dealer agrees to incur all costs associated with this.

3. The Dealer agrees have all staff view the “August 2017 – Advertising Webinar” available on OMVIC’s webpage. This is to be completed no later than **December 18, 2020**.
4. The Dealer agrees to offer all current and future sales staff the opportunity to complete the OMVIC Automotive Certification Course (the “Course”). Current sales staff will be offered the Course no later than **December 18, 2020**. Future sales staff will be offered the Course within 90 days of being retained in this capacity by the Dealer. The Dealer will incur all costs associated with this. It is understood between the parties this clause does not apply to sales staff who have completed the course after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
5. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Decision of the Chair

Having reviewed and considered the Agreed Statement of Facts, the Chair of the Discipline Committee hereby concludes that the Dealer has breached subsections 4 and 9 of the OMVIC Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*. The Chair of the Discipline Committee also agrees with the Parties’ Joint Submission on Penalty and, accordingly, makes the following Order:

1. The Dealer is ordered to pay a fine in the amount of \$5,500 no later than **December 18, 2020**.
2. The Dealer is ordered to have the individual designated as the manager or sales manager at the Dealer successfully complete the MVDA Key Elements Course, no later than **February 5, 2021**. This date is subject to any pandemic related disruptions Georgian College may encounter in delivering this course within the specified time frame. The Dealer agrees to incur all costs associated with this.
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5. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair

