

DISCIPLINE DECISION

REVIEWING PANEL: Joe Wade, Discipline Tribunal Chair, Registrant
 Caroline Brett, Public Member
 Chris Pinelli, Registrant Member

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 :

ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL)
)
- and -)
)
2348347 ONTARIO INC. o/a WELLAND HONDA)
)
- and -)
)
MARKUS T. FALKENBERG)
)
)

This matter proceeded by way of Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. This Reviewing Panel has reviewed and considered written materials from the Parties together with a waiver of the requirement for an oral hearing and hereby makes the following Order:

Date of Decision: November 8, 2024

Findings: **2348347 Ontario Inc. o/a Welland Honda (the “Dealer”) has breached the following:**

- Sections 4(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Markus T. Falkenberg (“Falkenberg”) has breached the following:

- Sections 6(2) and 9(3) of the Code of Ethics, O. Reg. 332/08

Order:

1. 2348347 Ontario Inc. o/a Welland Honda (the "Dealer") shall pay a fine in the amount of \$2,500 no later than ninety (90) calendar days from November 8, 2024.
2. The Dealer shall offer to all current and future salespersons, employed by the Dealer, to fund their completion of the Automotive Certification Course, no later than ninety (90) calendar days from November 8, 2024.

Overview

This matter proceeded on the basis of an Agreed Statement of Facts, dated October 16, 2024, a Joint Submission on Penalty and a waiver of oral hearing, pursuant to Rule 1.07 of the Rules of Practice before the Discipline Tribunal and the Appeals Tribunal. The Agreed Statement of Facts states in relevant part as follows:

The allegations contained in paragraph 6 and point a. in paragraph 9 of the Notice of Complaint ("NOC") dated April 12, 2024, are hereby withdrawn.

Amendment:

1. The NOC is amended to reflect that the Ontario Motor Vehicle Industry Council ("OMVIC") replaces the Registrar, *Motor Vehicle Dealers Act, 2002* as a party to this proceeding.

Background:

1. 2348347 Ontario Inc. o/a Welland Honda (the "Dealer") was first registered as a motor vehicle dealer in and around November 2012.
2. Markus T. Falkenberg ("Falkenberg") was first registered as a salesperson in and around June 1984. At all material times, Falkenberg has been a Director, Officer, and Person in Charge of the day-to-day activities of the Dealer.

OMVIC Publications:

3. Since the Act was proclaimed in 2010, OMVIC has issued various educational materials, including publications, webinars and guidelines, reminding registrants of their all-in pricing obligations. The dates of said publications are attached hereto as Schedule "A". Educational materials continue to be available on OMVIC's website.

Prior OMVIC Inspections:

4. On or about January 29, 2013, a representative of the Registrar conducted an inspection of the Dealer's premises. The Registrar's representative reminded the Dealer of its all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.
5. On or about July 23, 2015, the same representative of the Registrar conducted an inspection of the Dealer's books and records. The Registrar's representative

reminded the Dealer of its all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

Dealer's Non-Compliance:

6. On or before September 14, 2023, the Dealer published an advertisement for a grey 2020 Honda Civic LX, stock# U24057 (VIN# *004476) with an advertised price of \$26,777 plus taxes.
7. On or about the same date, an OMVIC Representative made inquiries about the vehicle, while posing as a member of the public (also known as a mystery shop).
8. A salesperson, acting on behalf of the Dealer, provided the Representative with a worksheet for the vehicle. The worksheet showed the OMVIC fee of \$10 being added to the price of the vehicle ("the Error")
9. The worksheet was not the final bill of sale or an agreement on price to purchase the vehicle, but it nonetheless indicated that the Dealer's advertised vehicle price was not all-inclusive. This is contrary to section 36(7) of O. Reg. 333/08, and therefore, a contravention of sections 4(2) and 9(3) of the Code of Ethics.

Falkenberg's Non-Compliance:

10. Falkenberg failed to prevent the Dealer from committing the Error and not maintaining compliance with the Act, its regulations, and the Code of Ethics and thus personally contravened sections 6(2) and 9(3) of the Code of Ethics.

Falkenberg's Compliance with All-in Pricing Obligations:

11. At all material times, Falkenberg has been a Person in Charge of the day-to-day activities of 2345824 Ontario Inc. o/a Subaru of Niagara ("Subaru of Niagara"), Willowdale Nissan Ltd. o/a Infiniti of Willowdale ("Infiniti of Willowdale"), and 2257638 Ontario Inc. o/a Hamburg Honda ("Hamburg Honda"), in addition to the Dealer.

Subaru of Niagara

12. On or about August 18, 2023, OMVIC Representatives attended the premises of Subaru of Niagara and made inquiries about one or more of its advertised motor vehicles, while posing as members of the public. The OMVIC Representatives identified that one or more of Subaru of Niagara's advertisements complied with its all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.
13. Among the advertised motor vehicles inquired, the OMVIC Representatives did not identify any non-compliance with Subaru of Niagara's all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

Infiniti of Willowdale

14. On or about March 20, 2024, OMVIC Representatives attended the premises of Infiniti of Willowdale and made inquiries about one or more of its advertised motor vehicles, while posing as members of the public. The OMVIC Representatives

identified that one or more of Infiniti of Willowdale's advertisements complied with its all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

15. Among the advertised motor vehicles inquired, the OMVIC Representatives did not identify any non-compliance with Infiniti of Willowdale's all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

Welland Honda

16. On or about June 25, 2024, an OMVIC Representative attended the premises of the Dealer and made inquiries about one or more of its advertised motor vehicles, while posing as a member of the public. The OMVIC Representative identified that one or more of the Dealer's advertisements complied with its all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.
17. Among the advertised motor vehicles inquired, the OMVIC Representative did not identify any non-compliance with the Dealer's all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

Hamburg Honda

18. On or about June 27, 2024, OMVIC Representatives attended the premises of Hamburg Honda and made inquiries about one or more of its advertised motor vehicles, while posing as members of the public. The OMVIC Representatives identified that one or more of Hamburg Honda's advertisements complied with its all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.
19. Among the advertised motor vehicles inquired, the OMVIC Representatives did not identify any non-compliance with Hamburg Honda's all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.

Generally

20. Falkenberg owns and controls numerous other registrant dealers who routinely comply with their all-in pricing obligations pursuant to section 36 of O. Reg. 333/08.
21. Falkenberg has displayed a knowledge of his dealers' all-in pricing obligations and a willingness and ability to routinely comply with them before and after the mystery shop at the Dealer. The Error, identified by the OMVIC Representative in the mystery shop, was an exception to Falkenberg's otherwise legally compliant practice.
22. As particularized above, the Dealer has contravened the following section of the Code of Ethics:

Disclosure and marketing

s. 4(2) A registrant shall ensure that all representations, including advertising, made by or on behalf of the registrant in connection with trading in motor vehicles, are legal, decent... and truthful.

23. As particularized above, the Dealer and Falkenberg have contravened the following section of the Code of Ethics:

Professionalism

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

24. As particularized above, Falkenberg has contravened the following section of the Code of Ethics:

Accountability

s. 6(2) A registered salesperson shall not do or omit to do anything that causes the registered motor vehicle dealer who employs or retains the salesperson to contravene this Regulation or any applicable law with respect to trading in motor vehicles.

Decision of the Reviewing Panel

Having reviewed and considered the Agreed Statement of Facts and written submissions provided by the Parties, the Reviewing Panel is satisfied that the evidence contained in the Agreed Statement of Facts substantiates the allegations that: (1) the Dealer has breached subsections 4(2) and 9(3) of the OMVIC Code of Ethics; (2) Falkenberg has breached subsections 6(2) and 9(3) of the OMVIC Code of Ethics.

Reasons for Decision

The Reviewing Panel accepted the Joint Submission on Penalty. The proposed order does not raise any concern that it may be inconsistent with the public interest. The Reviewing Panel is also satisfied that the parties have adequately address the relevant principles applicable to a penalty order. The order above is accordingly made, consistent with the terms of the Joint Submission on Penalty.

Ontario Motor Vehicle Industry Council
Discipline Tribunal

Dated: November 8, 2024



Joe Wade, Discipline Tribunal Chair
On behalf of:

Caroline Brett, Public Member
Chris Pinelli, Registrant Member

