

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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

417 AUTOMOTIVE IMPORTS INC. o/a 417 SUZUKI/THE MINI VAN STORE/
THE CAR CLUB/AUTOSONLINE

- AND -

ANDREW FELDCAMP

- AND -

LAWRENCE ALLEN

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: February 11, 2016

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 \$6,800 within 90 days of the date of the Discipline Committee Order.
2. Feldcamp is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. Allen is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
4. The Dealer is ordered to ensure all staff responsible for producing advertising on behalf of the Dealer attend the OMVIC advertising seminar within 90 days of the Discipline Committee Order, or if this is not offered within the prescribed period, at a mutually convenient date.



5. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be retained in this capacity. 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.
6. The Dealer shall 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:

1. 417 Automotive Imports Inc. o/a 417 Suzuki/The Mini VanStore/The Car Club/Autosonline (the "Dealer") was first registered as a motor vehicle dealer in or around February 2003. Andrew Feldcamp ("Feldcamp") was first registered as a motor vehicle salesperson in or around May 1991. Lawrence Allen ("Allen") was first registered as a motor vehicle salesperson in or around January 1997. At all material times, Feldcamp and Allen were officers of the Dealer. Moreover, since in or around May 2013, Allen has been the Person in Charge of the Dealer.
2. On or about May 27, 2010, Allen executed terms and conditions of registration on behalf of the Dealer. As per condition 6, the Dealer agreed to comply with the Code of Ethics.

ADVERTISING:

OMVIC publications:

3. In the winter of 2008, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes that would take place when the *Motor Vehicle Dealers Act, 2002* (the "Act") came into effect, including the requirement for dealers to prominently disclose a vehicle's former daily rental history in all advertisements, as well as the requirement to advertise an all-inclusive vehicle price.



4. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of these advertising requirements:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Summer 2012
 - e. Spring 2013
 - f. Summer 2013
 - g. Fall 2013
 - h. Winter 2014
 - i. Spring 2014
 - j. Summer 2014

5. Furthermore, OMVIC issued the following bulletins which also reminded dealers of the requirement to advertise an all-inclusive price:
 - a. January 2010 (2 separate publications)
 - b. April 2010 (2 separate publications)
 - c. February 2012
 - d. August 2012
 - e. September 2012
 - f. April 2013
 - g. April 2014

Direct correspondence with Dealer:

6. By email dated January 8, 2010, a representative of the Registrar reminded the Dealer of its obligation to advertise all inclusive vehicle prices.

7. By email dated February 12, 2010, a representative of the Registrar reminded the Dealer of its obligation to advertise all inclusive vehicle prices. In addition to this, the Dealer was also reminded to disclose all former daily rental vehicles prominently in advertisements.

8. By facsimile dated February 19, 2010, a representative of the Registrar reminded Allen, on behalf of the Dealer of its obligation to advertise all inclusive vehicle prices. In addition to this, the Dealer was also reminded to disclose all former daily rental vehicles prominently in advertisements.

9. By facsimile dated March 2, 2010, a representative of the Registrar reminded Allen, on behalf of the Dealer of its obligation to disclose all former daily rental vehicles prominently in advertisements.

10. By facsimile dated March 4, 2010, a representative of the Registrar reminded Allen, on behalf of the Dealer of its obligation to disclose all former daily rental vehicles prominently in advertisements.

11. On or about May 26, 2010, the Dealer solicited the advice of a representative of the Registrar with respect to advertising they wished to publish ("advertising proof"). The Dealer was reminded of its obligation to ensure former daily rental vehicles are disclosed in a clear, comprehensible and prominent manner.



12. On or about May 27, 2010, the Dealer solicited the advice of a representative of the Registrar with respect to an advertising proof. The Dealer was reminded of its obligation to ensure advertised vehicle prices are all-inclusive.
13. On or about May 27, 2010, the Dealer solicited the advice of a representative of the Registrar with respect to a second advertising proof. The Dealer was reminded of its obligation to ensure former daily rental vehicles are disclosed in a clear, comprehensible and prominent manner.
14. By email dated August 16, 2011, a representative of the Registrar reminded the Dealer of its obligation to disclose all former daily rental vehicles prominently in advertisements.
15. During an inspection on or about November 29, 2011, a representative of the Registrar reminded Allen, on behalf of the Dealer of its obligation to disclose all former daily rental vehicles prominently in advertisements.
16. By email dated July 11, 2012, a representative of the Registrar reminded the Dealer of its obligation to ensure advertised vehicle prices are all-inclusive.

Dealer history:

17. On or about November 18, 2010, the Dealer plead guilty to failing to comply with section 32(1) of Regulation 333/08, as a result of advertisement[s] being produced by or on behalf of the Dealer which failed to promote all inclusive vehicle prices.

Current advertising non-compliance:

18. During an inspection on or about January 21, 2015 , a representative of the Registrar found the following advertising issues:
 - a. On or about January 16, 2014, the Dealer sold a 2014 Chrysler 200, (Stock # CC2039), for \$474.54 above the vehicle's advertised price. As such, the advertisement for this vehicle did not promote an all-inclusive price. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Since the OMVIC inspection, the Dealer has refunded the purchaser of this vehicle the amount they were over charged.
 - b. On or about October 28, 2014, the Dealer sold a 2013 Kia Sorento (Stock # 6329P) for \$3819 above the above the vehicle's advertised price. As such, the advertisement for this vehicle did not promote an all-inclusive price. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Since the OMVIC inspection, the Dealer has refunded the purchaser of this vehicle the amount they were over charged.
 - c. On or about November 5, 2014, the Dealer sold a 2010 Nissan Altima (Stock # 6375P) for \$1354 above the vehicle's advertised price. As such, the advertisement for this vehicle did not promote an all-inclusive price. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Since the OMVIC inspection, the Dealer has refunded the purchaser of this vehicle the amount they were over charged.



- d. On or about January 12, 2015, the Dealer sold a 2013 Nissan Rogue (Stock # 6247X) for \$1,000 above the vehicle's advertised price. As such, the advertisement for this vehicle did not promote an all-inclusive price. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. Since the OMVIC inspection, the Dealer has credited the purchaser of this vehicle the amount they were over charged.
19. On or before August 5, 2015, a 2015 Nissan Altima (VIN 1N4AL3APXFN306374) was advertised by or on behalf of the Dealer. This vehicle is a former daily rental unit and the advertisement failed to disclose this information, contrary to section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
20. Moreover, additional advertisements published on the aforementioned date failed to disclose that vehicles were former daily rental units in a clear, comprehensible and prominent manner. This is also contrary to section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics.
21. The Dealer has since rectified the former daily rental disclosure issues referenced in the aforementioned paragraphs.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:

Regulation 333/08

36(5) If any of the following is true of a motor vehicle, an advertisement that attempts to induce a trade in the specific vehicle shall indicate, in a clear, comprehensible and prominent manner, that the vehicle was previously,

- (a) leased on a daily basis, unless the vehicle was subsequently owned by a person who was not a registered motor vehicle dealer;
- (b) used as a police cruiser or used to provide emergency services; or
- (c) used as a taxi or limousine.

36(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 and Feldcamp and Allen have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. 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, ethical and truthful.

9. In carrying on business, a registrant shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming of a registrant.

Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$6,800 within 90 days of the date of the Discipline Committee Order.
2. Feldcamp agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. Allen agrees to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
4. The Dealer agrees to ensure all staff responsible for producing advertising on behalf of the Dealer attend the OMVIC advertising seminar within 90 days of the Discipline Committee Order, or if this is not offered within the prescribed period, at a mutually convenient date.
5. The Dealer agrees to offer all current and future sales staff the opportunity to complete the course. Current sales staff will be offered the course within 90 days of the date of the Discipline Committee Order. Future sales staff will be offered the course within 90 of be retained in this capacity. 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.
6. 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, Feldcamp and Allen 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 \$6,800 within 90 days of the date of the Discipline Committee Order.



2. Feldcamp is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
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6. The Dealer shall 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

