

## 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 -

MOTTOLA'S QUALITY CARS LTD.

- AND -

PETER MOTTOLA

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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:** May 31, 2015

**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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. Mottola is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete the course. Current sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 Motor Vehicle Dealers Act, 2002.
4. The Dealer and Mottola shall comply with the Motor Vehicle Dealers Act, 2002 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. Mottola's Quality Cars Ltd (the "Dealer") was first registered as a motor vehicle dealer in or around March 2001. Peter Mottola ("Mottola") was first registered as a motor vehicle salesperson in or around November 1992. At all material times, Mottola was an officer and director of the Dealer.

### **Daily rental vehicles in advertisements:**

2. 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 to disclose former daily rental vehicles in all advertisements, in a clear, comprehensible and prominent manner.
3. The following Dealer Standard publications also reminded dealers of this requirement:
  - a. Summer 2010
  - b. Spring 2011
  - c. Summer 2012
  - d. Fall 2013
4. In addition to the above mentioned publications, OMVIC also issued the following bulletins reminding dealers of this advertising requirement:
  - a. April 2010
  - b. September 2012
5. During an inspection on or about November 26, 2014, (the "inspection") a representative of the Registrar discovered the following non-compliant vehicle trades:
6. On or before July 28, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Chrysler 300, Stock# DH660706. This vehicle is a former daily rental unit and the advertisement failed to disclose this information. This is contrary to section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer subsequently disclosed the vehicle's former daily rental history on the Bill of Sale.
7. On or before July 28, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Kia Rio, Stock# E6899316. This vehicle is a former daily rental unit and the advertisement failed to disclose this information. This is contrary to section 36(5) of



Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer subsequently disclosed the vehicle's former daily rental history on the Bill of Sale.

**Cost of borrowing information in advertisements:**

8. In or around June 2010, OMVIC issued a bulletin reminding dealers of what information is required to be disclosed when advertising a credit or lease offer, as per the *Consumer Protection Act, 2002*.
9. On or about April 6, 2011, a representative of the Registrar reminded the Dealer of what information is required to be disclosed when advertising a credit or lease offer, as per the *Consumer Protection Act, 2002*.
10. On or about September 22, 2011, a representative of the Registrar reminded the Dealer of what information is required to be disclosed when advertising a credit or lease offer, as per the *Consumer Protection Act, 2002*.
11. On or about April 2, 2012, a representative of the Registrar reminded the Dealer of what information is required to be disclosed when advertising a credit or lease offer, as per the *Consumer Protection Act, 2002*.
12. During the inspection the representative of the Registrar reviewed with the Dealer what information is required to be disclosed when advertising a credit or lease offer, as per the *Consumer Protection Act, 2002*.
13. On or before January 29, 2015, advertisements were published on the Dealer's website which did not disclose all required credit information, as per the *Consumer Protection Act, 2002*. Specifically, the advertisements in question did not disclose the term or cost of borrowing information. This is contrary to section 61 of Regulation 17/05 of the *Consumer Protection Act, 2002*. As such, the Dealer has contravened sections 4 and 9 of the Code of Ethics.

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

*Consumer Protection Act, 2002:*

Regulation 17/05

**61. Credit Advertising:**

*Any person who makes representations in respect of a credit agreement, or causes representations to be made in respect of a credit agreement, in an advertisement shall do so in accordance with this section, regardless of whether the representations are made orally, in writing or in any other form.*

*An advertisement that offers fixed credit and discloses the interest rate payable by the borrower under the credit agreement or the amount of a payment to be made by the borrower to the lender in connection with the credit agreement shall also disclose the following information:*

1. *The annual percentage rate for the credit agreement.*



2. *The length of the term of the credit agreement.*

3. *If the advertisement is for a supplier credit agreement and applies to a specifically identified good or service,*

- i. the cash price of the good or service, and*
- ii. the cost of borrowing, unless,*

*A. the only element of the cost of borrowing is interest, or*

*B. the advertisement is broadcast on radio or television, displayed on a billboard or bus board or made through any other medium with similar time or space limitations.*

4. *If the advertisement is for a supplier credit agreement, applies to a range of goods or services and uses a representative credit agreement, the cash price of the good or service represented in the representative credit agreement.*

*Motor Vehicle Dealers Act, 2002:*

Regulation 333/08:

### **36. Advertising:**

(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.

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

4. 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, programs and prices connected with those vehicles.

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 \$4,500 within 90 days of the date of the Discipline Committee Order.



2. Mottola agrees to complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer agrees to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete the course. Current sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 Motor Vehicle Dealers Act, 2002.
4. The Dealer and Mottola agree to comply with the Motor Vehicle Dealers Act, 2002 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 and Mottola 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 \$4,500 within 90 days of the date of the Discipline Committee Order.
2. Mottola is ordered to successfully complete the OMVIC certification course (the "course") within 90 days of the date of the Discipline Committee Order.
3. The Dealer is ordered to offer all current and future sales staff, including managers and individuals in positions of authority at the Dealer, the opportunity to complete the course. Current sales staff will be offered the course within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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 Motor Vehicle Dealers Act, 2002.
4. The Dealer and Mottola shall comply with the Motor Vehicle Dealers Act, 2002 and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council  
Discipline Committee



Catherine Poultney, Chair

