

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 -

EAST-COURT FORD LINCOLN SALES LIMITED

- and -

PUNIT JYOTI SIBAL

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: November 5, 2020

Findings: Breach of Sections 4, 6 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the total amount of **\$18,500**. The amount of \$5,000 shall be paid no later than December 31, 2020 and the remaining \$13,500 shall be paid no later than February 28, 2021.
2. Sibal is ordered to pay a fine in the total amount of **\$5,000**. The amount of \$1,000 shall be paid no later than December 31, 2020 and the remaining \$4,000 shall be paid no later than February 28, 2021.
3. Sibal is ordered to successfully complete the Automotive Certification course (the "Course") no later than January 30, 2020.
4. The Dealer is ordered to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer shall provide OMVIC with

written confirmation from said staff that this has occurred, no later than **January 30, 2020.**

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 no later than **January 30, 2020.** Future sales staff will be offered the Course within 90 days of being 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 and Sibal agree 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:

1. East-Court Ford Lincoln Sales Limited (the "Dealer") is currently registered as a motor vehicle dealer under the *Motor Vehicle Dealers Act, 2002* (the "Act") and was originally registered on or about March 2, 1983. The Dealer operates as a general dealer, new and used motor vehicles subclass.

2. Punit Jyoti Sibal (also known as Prince) ("Sibal") is currently registered as a motor vehicle salesperson under the Act and was originally registered on or about June 9, 1992. At all material times, he has been the general manager and person in charge of the day to day activities of the Dealer.

OMVIC registrant education

3. Since approximately December 2008, OMVIC issued the following publications and webinars reminding dealers of their obligation to advertise all-inclusive vehicle prices ("all-in pricing") and to disclose former daily rental vehicles in advertisements in a clear, comprehensible and prominent matter ("daily rental disclosure"), all of which continue to be available on OMVIC's website:

	Publication Date	All-In Pricing s. 36(7) O. Reg. 333/08	Daily Rental Disclosure s. 36(5) O. Reg. 333/08
	<u>Dealer Standard</u>		
a.	Winter 2008	x	x
b.	Spring 2010	x	x
c.	Spring 2011	x	x
d.	Winter 2013	x	
e.	Spring 2013	x	
f.	Summer 2013	x	
g.	Fall 2013		x
h.	2014: Issue 1	x	
i.	2014: Issue 2	x	x
j.	2014: Issue 3	x	x
k.	2014: Issue 4	x	
l.	2015: Issue 3	x	
m.	2015: Issue 4	x	
n.	2016: Issue 1	x	
o.	2016: Issue 2	x	
p.	2016: Issue 3	x	
q.	2016: Issue 4	x	
r.	2017: Issue 2	x	
s.	2017: Issue 3	x	
t.	2018: Issue 2	x	
u.	2019: Issue 2	x	
	<u>Bulletin</u>		
v.	January, 2010	x	
w.	April, 2010	x	x
x.	February, 2012	x	
y.	August, 2012	x	
z.	April, 2014	x	
aa.	June, 2014	x	
bb.	April, 2015	x	

	<u>Webinar</u>		
cc.	April, 2015	x	x
dd.	April, 2017	x	x

2014 Notice of Complaint

4. On or about December 31, 2014, the Registrar issued a Notice of Complaint against the Dealer and Sibal as a result of the Dealer's non-compliance with the requirements to advertise all-in pricing and to disclose former daily rental vehicles in advertisements in a clear, comprehensible and prominent manner.
5. On or about June 17, 2015, the Discipline Committee issued a Discipline Decision pursuant to a negotiated resolution among the parties. Among other things, the subject parties agreed to the following:
 - a. Sibal agreed to complete the OMVIC certification course;
 - b. The Dealer agreed to offer all current and future sales staff, including managers and individuals in positions of authority, the opportunity to complete the OMVIC certification course; and
 - c. The Dealer and Sibal agreed to comply with the Act and Standards of Business Practice.

2018 Notice of Complaint

6. On or about February 16, 2018, the Registrar issued a Notice of Complaint against the Dealer and Sibal as a result of misleading advertisements being published by or on behalf of the Dealer.
7. Specifically, the Dealer's advertisements failed to indicate that the advertised prices were only available to purchasers who presented membership cards issued by Costco Wholesale Canada Ltd. They also failed to display, in a clear, comprehensible and prominent manner, the prices to be paid by purchasers who did not qualify for that rebate.
8. On or about August 30, 2018, the Discipline Committee issued a Discipline Decision pursuant to a negotiated resolution among the parties. Among other things, the subject parties agreed to the following:
 - a. The Dealer agreed to ensure that all of its sales staff reviewed the August 2017 OMVIC advertising webinar;
 - b. The Dealer agreed to offer all current and future sales staff, including managers and individuals in positions of authority, the opportunity to complete the OMVIC certification course; and
 - c. The Dealer and Sibal agreed to comply with the Act and Standards of Business Practice.

DEALER'S CURRENT NON-COMPLIANCE

July 2019 Inspection

9. During an inspection on or about July 18, 2019 (the "Inspection"), representative(s) of the Registrar discovered the following non-compliance issues:

Failure to Comply with All-In Pricing Requirements

10. On or before April 24, 2019, the Dealer published numerous advertisements on its website ("eastcourtfordlincoln.com") which displayed specific purchase prices. It subsequently sold the advertised vehicles to purchasers at prices that were higher than those advertised, as outlined below. As such, the Dealer's advertised prices were not all inclusive, contrary to section 36(7) of Ontario Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

Failure to Properly Disclose Daily Rentals in Advertisements

11. The Inspection also revealed that the Dealer published website advertisements which failed to indicate, in a clear, comprehensible and prominent manner, that the advertised vehicles were previously leased on a daily basis. This is contrary to section 36(5) of Ontario Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
12. Particularly, there were website advertisements published on or before July 18, 2019 which indicated "ex-rental" in an inconspicuous manner at the end or within the vehicle description section of the advertisement.
13. On or about July 22, 2019, the inspector wrote to a representative of the Dealer and, among other things, reminded him that the disclosure on advertisements of a vehicle's former use as a daily rental must be made in a clear, comprehensible and prominent manner.
14. On or about August 29, 2019, the inspector spoke with a representative of the Dealer via telephone and reminded, among other things, that the disclosure of a vehicle's former use as daily rental on advertisements must be made in a clear, comprehensible and prominent manner.

Advertised Vehicles Not Available for Purchase

15. The Inspection also revealed that the Dealer published several advertisements in the Toronto Sun newspaper for vehicles that, at the time of the advertisement, were no longer available for purchase. This is contrary to section 36(12) of Ontario Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

Continuing Non-Compliance

Failure to Properly Disclose Daily Rentals on Advertisements

16. On or about September 3, 2019, a representative of the Registrar reviewed the Dealer's website advertisements and discovered that it continued to publish the non-

compliant advertisements described in paragraph 12 above.

17. The Registrar's representative also discovered additional advertisements which similarly failed to indicate, in a clear, comprehensible and prominent manner, that the advertised vehicles were previously leased on a daily basis.
18. This is contrary to section 36(5) of Ontario Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

Misleading Prices on Advertisements

19. On or before August 29, 2019, East-Court Ford published advertisements on its website ("eastcourtfordlincoln.com") that displayed misleading or deceptive vehicle prices.
20. Particularly, the Dealer's advertisements displayed, in a prominent manner, purchase prices that included a \$1,000 rebate. Within the vehicle description section of the advertisement, in an inconspicuous manner, the Dealer indicated that this rebate is available only to purchasers who trade in (or exchange) their existing vehicles to the Dealer.
21. These advertisements failed to display, in a clear, comprehensible and prominent manner, that the prices being advertised by the Dealer are only available to certain classes of purchaser. They also failed to display, in a clear, comprehensible and prominent manner, the prices to be paid by purchasers who do not qualify for that rebate.
22. This is contrary to section 36(7) of Ontario Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.

SIBAL'S CURRENT NON-COMPLIANCE

23. As the person in charge of the Dealer, Sibal has failed to ensure that the Dealer conducts its business in compliance with the Code of Ethics, and thus has contravened sections 6 and 9 of the Code of Ethics.

By failing to comply with the following sections of Ontario 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.

(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.

(12) An advertisement that advertises a motor vehicle for sale shall not indicate the price of the vehicle unless the vehicle is available from the registered motor vehicle dealer at that price during the time to which the advertisement applies.

It is thereby agreed that the Dealer has breached section 4(2) of the Code of Ethics, as set out in Regulation 332/08:

Disclosure and marketing:

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, ethical and truthful.

It is thereby agreed that Sibal has breached section 6(2) of the Code of Ethics, as set out in Regulation 332/08:

Accountability:

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.

It is thereby agreed that the Dealer and Sibal have breached section 9(1) of the Code of Ethics, as set out in Regulation 332/08:

Professionalism

9. (1) 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 shall pay a fine in the total amount of **\$18,500**. The amount of \$5,000 shall be paid no later than December 31, 2020 and the remaining \$13,500 shall be paid no later than February 28, 2021.

2. Sibal shall pay a fine in the total amount of **\$5,000**. The amount of \$1,000 shall be paid no later than December 31, 2020 and the remaining \$4,000 shall be paid no later than February 28, 2021.
3. Sibal shall successfully complete the Automotive Certification course (the "Course") no later than January 30, 2020.
4. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer shall provide OMVIC with written confirmation from said staff that this has occurred, no later than January 30, 2020.
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 no later than January 30, 2020. Future sales staff will be offered the Course within 90 days of being 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 and Sibal agree 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 and Sibal have breached subsections 4, 6 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 total amount of **\$18,500**. The amount of \$5,000 shall be paid no later than December 31, 2020 and the remaining \$13,500 shall be paid no later than February 28, 2021.
2. Sibal is ordered to pay a fine in the total amount of **\$5,000**. The amount of \$1,000 shall be paid no later than December 31, 2020 and the remaining \$4,000 shall be paid no later than February 28, 2021.
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6. The Dealer and Sibal agree 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

A handwritten signature in black ink, appearing to read 'Paul Burroughs', with a horizontal line underneath it.

Paul Burroughs, Chair