



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 -

GLOBAL FINE IMPORTS AND RAWAD ABDEL SAMAD

Date of Hearing: April 4, 2014

Date of Decision: April 22, 2014

Findings: Breach of Section 4 and 9 of the Code of Ethics Ontario Regulation 332/08

The Decision

Having reviewed and considered the oral testimony and the evidence presented, this panel concludes that the Dealer breached Section 4 and 9 of the Code of Ethics, as more particularly set out at Paragraphs 6 to 19 of the Notice of Complaint.

Reasons for Decision

Introduction

This matter proceeded before a Panel of the Discipline Committee pursuant to Section 17 of the Motor Vehicle Dealers Act 2002, on April 4, 2014.

The Registrar was represented by Michael Rusek and Andrea Korth, and the Registrants, Rawad Abdel Samad represented himself and Global Fine Imports Inc. (hereinafter collectively referred to as the "Dealer"). The Panel consisted of Wennie Lee (Chair), Tom Kramer (Vice-Chair), and Charles Pope (Vice-Chair). Ms. Luisa Ritacca attended as Independent Legal Counsel to the Panel.



On consent, the Panel marked the Book of Document as Exhibit #1. The Notice of Complaint, dated September 20, 2013, was contained therein at Tab 1.

The allegations against the Dealer were set out in the Notice of Complaint and in summary related to the Dealer's publishing of advertisements on Kijiji, which did not include the required "Unfit" disclosure statement, contrary to sections 4 and 9 of the Code of Ethics.

The Evidence:

1. OMVIC called Farah Mohammed to give evidence. She has worked at OMVIC for 4 years, one year as a Complaints Handler and 3 years as a Business Standards Representative. Her duties include review of daily advertisements for compliance.
2. She testified that Global Fine Imports Inc. was not a franchise, and has operated independently since 2008. Mr. Samad is identified as the Director of the Global Fine Imports Inc. in the MCCR – Companies Branch since March 27, 2008.
3. The new "All-in" Pricing regulations which came into effect on January 1, 2010, require all Ontario registered dealers to include all charges a customer is required to pay in the advertised price. The advertised price must therefore include all fees and taxes and does not allow for additional fees to be added. Dealers normally sell vehicles that are roadworthy, certified and e-tested and the "All-in" pricing reflect this fact. In other words, the consumers will know that the all inclusive price they are paying is for a road-worthy vehicle.
4. However, dealers are allowed to offer to sell vehicles that are not certified or e-tested and therefore not roadworthy. If they choose to do so, the dealer must state in a clear and prominent manner the "Unfit" statement clause, namely that the vehicle is "not drivable, not certified, and not e-tested". The dealer can then include information with regard to the additional cost associated with making the car roadworthy. Ms. Mohammed explained that the "Unfit" statement exists for consumer protection and creates transparency such that the consumer knows the state of the vehicle they are purchasing. This also helps to create a level playing field among the dealers.
5. OMVIC had issued a bulletin in and around January 2010, reminding dealers of their disclosure obligations concerning advertising "As is" and "Unfit" vehicles.
6. In and around April 2010, OMVIC issued a bulletin reminding dealers of their disclosure obligations concerning advertising "As Is" and "Unfit vehicles".
7. Also, around June 2011, OMVIC issued another bulletin reminding dealers of their disclosure obligations concerning advertising "As Is" and "Unfit" vehicles.



8. Then, in or around February 2012, OMVIC issued yet another bulletin reminding dealers of their disclosure obligations concerning advertising “As Is” and “Unfit” vehicles.
9. In addition to the bulletins, OMVIC has offered information through its website and seminars to assist its registrants with advertising compliance and OMVIC’s representatives are also available by telephone to assist registrants if they have questions.
10. The Dealer had advertisements placed on Kijiji for 14 vehicles that did not include the required “Unfit” disclosure statement. The advertisements did include a suggested cost for certification and emission, which are two integral components of the “Unfit” statement. However, the advertisements did not include a statement that the vehicles are not “drivable” in their current state. For a dealer to be compliant, the “Unfit” statement must be clear and prominent in the advertisement and include the following language:

“Vehicle is not drivable, not certified and not e-tested”

In the instant case, the 14 advertisements only suggested the vehicles required certification and e-tested but failed to mention that they were not drivable and failed to include the statement required by OMVIC

11. Mr. Samad testified that the advertisements were placed by the company, but indicated that there were no consumer complaints arising from these particular advertisements, and that no prior warnings were given by OMVIC before the issuance of the Notice of Complaint. The Dealer explained that no site visits were made by OMVIC, except once when the business initially opened.
12. Mr. Samad further testified it was difficult to be involved in the day to day operations of the business and that many tasks had to be delegated to the employees and the Sales Manager was responsible for the advertising.
13. Mr. Samad did not deny that he had received OMVIC’s bulletins and acknowledged that he was aware of the disclosure obligations. In fact, he testified that he would often review these issues with his staff at their regular Monday meetings. In his letter to OMVIC responding to the Notice of Complaint, Mr. Samad, on his own behalf and on behalf of the Dealer acknowledged the “Unfit statement” was missing but that he had taken measures to correct their practice.

Decision of the Panel:

Having reviewed and considered all the evidence, both oral and documentary, presented by both parties, the Panel of the Discipline Committee hereby concludes that the Dealer breached sections 4 and 9 of the Code of Ethics, as set out in Ontario Regulation 332/08, made under the *Motor Vehicle Dealers Act, 2002*.

Section 4 of the Code states:



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, programs and prices connected with those vehicles. O. Reg. 332/08, s. 4 (1).

(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. O. Reg. 332/08, s. 4 (2).

(3) Before entering into a contract with a customer who is not a registered motor vehicle dealer in respect of a trade in a motor vehicle, a registered motor vehicle dealer shall explain to the customer the terms of the contract between the customer and the dealer, including the financial and other obligations, if any, of the customer under the contract. O. Reg. 332/08, s. 4 (3).

Section 9 of the Code states:

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. O. Reg. 332/08, s. 9 (1).

(2) In carrying on a business, a registrant shall act with honesty, integrity and fairness. O. Reg. 332/08, s. 9 (2).

(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. O. Reg. 332/08, s. 9 (3).

(4) A registrant shall provide conscientious service to the registrant's customers in the course of a trade in a motor vehicle and shall demonstrate reasonable knowledge, skill, judgment and competence in providing the services. O. Reg. 332/08, s. 9 (4).

(5) If,

- (a) a registered motor vehicle dealer enters into a contract to sell or lease a motor vehicle to a purchaser or lessee who is not another registered motor vehicle dealer;
- (b) the purchaser or lessee trades in another motor vehicle to the dealer under the contract or to another registered motor vehicle dealer under a separate contract; and
- (c) the dealer who receives the vehicle being traded in agrees to pay any outstanding loan on the vehicle or to pay any outstanding bill for the repair or storage of the vehicle,

the dealer who receives the vehicle being traded in shall fulfill the dealer's obligations under the agreement described in clause (c). O. Reg. 332/08, s. 9 (5).

In Mr. Samad's response dated October 10, 2013, to the Notice of Complaint, he writes:



Throughout the years, we attended seminars, read articles and obtain (*sic*) up to date information about these laws, and make sure these rules are included in our training of any individual involved in sales.

Our sales staff, from sales manager to sales staff in charge of placing those ads are very aware of these clauses, (as AS IS, ALL IN , UNFIT Clauses) in addition, we do review OMVIC and UCDA bulletins in every Monday meeting to remind and update any news, in addition to addressing complaints, setting new week targets and increasing performance.

The Dealer was therefore well aware of “Unfit Clause” as required in advertising vehicles for sale. In testimony, Mr. Samad further confirmed that he was aware of the Bulletins issued by OMVIC found in TABS 5 and 6 of Exhibit 1.

For example, in Bulletin dated April 2010, it states:

Dealers normally sell vehicles that are roadworthy, certified and e-tested and the advertised price reflects this fact. Some dealers, however, choose to offer vehicles for sale that are not certified or e-tested, and in less frequent cases, dealers advertise a vehicle “as-is”. Price advertising of unfit or as-is vehicles require special disclosure statements be included in the ad.

Price advertising of unfit vehicles

When a dealer is price advertising a vehicle that is not certified and/or e-tested, the advertisement must state in a clear and prominent fashion the following statement:

“Vehicle is not drivable, not certified and not e-tested. Certification and e-testing available for \$xxx.”

If you intend to offer certification and e-testing services, the specific fee must be disclosed in the above statement. For vehicles advertised this way, certification and e-testing must NOT be a mandatory charge. Vehicle advertised unfit may not be sold at or above the advertised price using the “as-is” clause on the bill of sale.

Price advertising as is vehicles.

When a dealer is price advertising a vehicle that is “as-is”, the advertisement must state in a clear and prominent fashion the following statement:

“This vehicle is being sold “as-is”, unfit, not e-tested and is not represented as being in a road worthy condition, mechanically sound or maintained at any guaranteed level of quality. The vehicle may not be fit for use as a means of transportation and may require substantial repairs at the purchaser’s expense. It may not be possible to register the vehicle to be driven in its current condition.”



In the June 2011 Bulletin, dealers were again reminded of their advertising requirements, and it states further:

The details of this bulletin are not new. It is being sent out again to address areas where some dealers have violated the spirit and intent of the original bulletin. As such, this **bulletin serves as a final reminder** to all dealers of their disclosure requirements when advertising unfit or “as-is” vehicles. Failure to adhere to these instructions will result in disciplinary or enforcement action. [EMPHASIS ADDED]

The same bulletin goes on to state:

Price advertising of unfit vehicles

When a dealer is price advertising a vehicle that is not certified and/or e-tested, the advertisement must state in clear and prominent fashion the following statement:

“Vehicle is not drivable, not certified and not e-tested”

If you intend to offer certification and e-testing services, the following statement must be added:

“Certification and e-testing available for \$xxx.

It is clear that the Dealer is not denying it is aware of the Bulletins and the disclosure requirements. However, Mr. Samad argued that he was not warned of the potential for disciplinary action. He also argued that he and his business should not be held accountable, as it was the Sales Manager who was ultimately responsible in its dealership for the contents of the advertisements.

The Dealer also raised a number of other issues, such as, that this is the first instance of non-compliance; there is no history of prior complaints before the panel; the advertisements were not intended to mislead or misrepresent to the public; and once he was notified of the breach, Mr. Samad took corrective measures including suspending the Sales Manager and terminating the salesperson responsible for the advertisements.

In the Panel’s view, these issues may be mitigating factors which may be considered in determination of the appropriate penalty. However, they do not serve as a defence to the violations of the Code of Ethics. By Mr. Samad’s own admission, the Dealer was aware of the bulletins and of its duty of disclosure, and it does not deny the advertisements do not include the “Unfit” disclosure statement contrary to sections 4 and 9 of the Code of Ethics. The Dealer cannot lay the blame on the Sales Manager or the Salesperson. The Dealer and the Dealer principal bears the responsibility of ensuring the Code of Ethics is followed.



Ontario Motor
Vehicle Industry
Council

Conseil ontarien
de commerce des
véhicules automobiles

Penalty

The Panel asks the parties to schedule a hearing date that is convenient for them and the Panel to address the issue of penalty.

Ontario Motor Vehicle Industry Council
Discipline Panel

A handwritten signature in black ink, appearing to read 'Wennie Lee', is written over a horizontal line.

Wennie Lee, Chair

*Tom Kramer, Vice Chair
Charles Pope, Vice Chair*