

DISCIPLINE COMMITTEE
OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

PANEL:	Ms. Caroline Brett, Chair	Public Member
	Mr. Stuart Sherman	Registrant
	Mr. Jon Lemaire	Registrant

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 :

Appearances¹:

**REGISTRAR, MOTOR VEHICLE
DEALERS ACT, 2002**

Mr. Vlad Bosis
for the Registrar

- and -

WOODSTOCK USED CAR CENTRE INC

Ms. Cassandra Economopoulos
for the Registrants

and

CALEB BERGEN

Date of Hearing: May 16, 2023

Findings:

Woodstock Used Car Centre Inc. has breached sections 8(1) and 9(1) of the Code of Ethics, Ontario Regulation 332/08.

Caleb Bergen has breached Section 6(2) of the Code of Ethics, Regulation 332/08.

¹ Also present at the hearing were the Panel's independent legal counsel Ms Karen Bernofsky, and Hearing Administrators Mr. David Dailly and Ms Tessa Lee who recorded the hearing.

DECISION AND REASONS

Introduction

This was a hearing before a panel of the Discipline Committee (the “Panel”) of the Ontario Motor Vehicle Industry Council (“OMVIC”) pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B (“MVDA”). OMVIC has a mandate to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest, and open competition for registered motor vehicle dealers.

The hearing was convened on May 16, 2023, and held virtually by video conference with the consent of the parties (the “Hearing”). The Hearing proceeded on the basis of an Agreed Statement of Facts and Joint Submission on Penalty.

The Allegations

The allegations against Woodstock Used Car Centre Inc. (defined below as the “Dealer”) and Caleb Bergen (collectively the “Registrants”) were set out in the Notice of Complaint (the “**Notice of Complaint**”), dated November 3, 2021. The Notice of Complaint was entered as Exhibit 1 at the Hearing. The Registrar advised the Panel it was withdrawing all the allegations in a Notice of Further and Other Particulars dated January 26, 2022.

At the outset of the Hearing, counsel for the Registrar, Mr. Vlad Bosis, advised that discussions with the responding parties had resulted in an agreement which they intended to present.

Plea of the Registrants

Through their legal counsel, who attend the Hearing as the agent of the Registrants, the Registrants admitted all the allegations contained in the Notice of Complaint. These allegations had been reproduced in their entirety in an Agreed Statement of Facts which the Panel received in advance and which will be discussed below.

Agreed Statement of Facts

The Panel received an Agreed Statement of Facts which had been signed by the parties on April 6, 2023, and was entered as Exhibit 2 at the Hearing (the “ASF”). The parties agreed to the following:

Background

1. Woodstock Used Car Centre Inc (the “Dealer”) was first registered as a motor vehicle dealer in around October 2017.
2. Caleb Bergen (“Bergen”) was first registered as a motor vehicle salesperson in or around October 2017.
3. At all material times, Bergen was the sole Officer, as well as the person in charge of the day-to-day activities at the Dealer.
4. On or about September 13, 2017, Bergen successfully completed the Course. The Code of Ethics is included in the Course syllabus.

Dealer’s failure to comply with the Code of Ethics:

Unprofessional advertisement:

5. On or before July 26, 2021, the Dealer published an advertisement for a 2018 Dodge Charger (VIN 2C3CDXKT0JH237199). The advertisement contained a statement that could reasonably be regarded as offensive. This is contrary to sections 8(1) and 9(1) of the Code of Ethics.
6. On or about July 27, 2021, OMVIC received a complaint about the advertisement. On this same date, an OMVIC investigator spoke to Bergen, on behalf of the Dealer. The investigator advised Bergen the above referenced statements were offensive and requested the advertisement be revised.
7. On or before July 28, 2021, the advertisement was revised, but the offensive statement was replaced with another unprofessional statement. This is contrary to section 9(1) of the Code of Ethics.
8. The Dealer subsequently removed the revised advertisement. Bergen submits he was not personally the author of the initial advertisement and has since added

additional controls at the Dealer to prevent staff from creating advertisements without Bergen's approval.

Bergen's failure to comply with the Code of Ethics:

9. Bergen failed to ensure the Dealer conducted itself in compliance with the Code of Ethics, and therefore has contravened section 6(2) of the Code of Ethics.

It is thereby agreed that Bergen has breached the following section of the Code of Ethics:

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 has breached the following sections of the Code of Ethics:

Respect

8. (1) In carrying on business, registrants shall not engage in any act or omission that, having regard to all of the circumstances, would reasonably be regarded as insulting to human dignity or integrity and shall not use symbols that, having regard to all of the circumstances, would reasonably be regarded as offensive.

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.

Mr. Bosis, on behalf of OMVIC, and then Ms. Economopoulos, on behalf of the Registrants, gave submissions on the ASF and liability.

The Panel sought and received advice from its Independent Legal Counsel, Ms. Bernofsky, before rising to deliberate on the merits portion of the Hearing.

Decision of the Panel

Upon reconvening, the Panel stated it was satisfied that the facts admitted by the Registrants in the ASF were sufficient to make findings of breaches against the Registrants as alleged in the Notice of Complaint and agreed to in the ASF. The Panel was satisfied that the admissions of the Registrants were voluntary, informed, and unequivocal. The Panel made findings against the Registrants relying exclusively on the ASF.

The Panel found that the Dealer breached sections 8(1) and 9(1) of the Code of Ethics, Ontario Regulation 332/08 and Caleb Bergen breached Section 6(2) of the Code of Ethics, Regulation 332/08.

Penalty

The Panel was presented with a Joint Submission on Penalty (the “JSP”) which was entered as Exhibit 3. The terms of the JSP are that:

1. The Dealer agrees to pay a fine in the amount of \$2,000 no later than **July 31, 2023**.
2. Bergen agrees to review the April 2015 and the August 2017 OMVIC advertising webinars. Bergen will provide OMVIC with confirmation this has occurred no later than **July 31, 2023**.
3. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the “Course”). Current sales staff will be offered the Course no later than **December 31, 2023**. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. 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.

4. The Dealer and Bergen agree to comply with the Act and Code of Ethics, as may be amended from time to time.

The parties then both made submissions about the JSP, and the Panel received advice from its independent counsel.

Penalty Decision and Reasons

The Panel accepted the JSP and made an order consistent with its terms before the conclusion of the Hearing. The JSP does not pose any risk to the publicly perceived integrity of the Tribunal.

The Panel was satisfied that the JSP contemplated the relevant objectives on penalty including public protection, remediation/rehabilitation, specific deterrence for the Registrants, and general deterrence to others in the profession. The JSP does not appear unhinged from the facts of the case and its terms are not inconsistent with other decisions involving comparable facts. The Panel was satisfied that the JSP poses no risk to the publicly perceived integrity of the Tribunal and that there were no grounds to reject it.

On the basis of the foregoing, the Panel made the following order before the conclusion of the Hearing:

1. The Dealer shall pay a fine in the amount of \$2,000 no later than **January 31, 2024**.

2. Bergen shall review the April 2015 and the August 2017 OMVIC advertising webinars. Bergen shall provide OMVIC with confirmation this has occurred no later than **January 31, 2024**.

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3. The Dealer shall offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "Course"). Current sales staff shall be offered the Course no later than **May 30, 2024**. Future sales staff shall be offered the course within 90 days of being retained in this capacity by the Dealer. 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*.

4. The Dealer and Bergen shall comply with the *Act* and Code of Ethics, as may be amended from time to time.

I, Caroline Brett, sign this decision as Chair of this discipline Panel and on behalf of the members of the discipline Panel as listed below.



Ms. Caroline Brett, Chair

Date: November 12, 2023

Panel Members:

Ms. Caroline Brett
Mr. Jon Lemaire
Mr. Stuart Sherman