

## 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 -

AUTOCANADA NEWMARKET MOTORS GP o/a  
NEWMARKET INFINITI/NEWMARKET NISSAN

- AND -

MACON DOUBLET

---

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 23, 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 \$7,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to ensure the General Manager[s] and/or General Sales Manager[s] of the Dealer successfully complete the OMVIC certification course (the "course") within 180 days of the date of the Discipline Committee Order.
3. 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 or who are otherwise required to do so pursuant to the Act.
4. 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. AutoCanada Newmarket Motors GP Inc o/a Newmarket Infinity/Newmarket Nissan (the "Dealer") was first registered as a motor vehicle dealer in or around March 2008. Macon Doublet ("Doublet") was first registered as motor vehicle salesperson in or around March 2005. Since in or around February 2014, Doublet has been the Person in Charge and General Manager of the Dealer.
2. On or about Mach 4, 2014, Doublet successfully completed the OMVIC certification course.

### **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 advertise an all-inclusive vehicle price ("advertising"), as well as the requirement for dealers to provide consumers with written disclosure of vehicle's history and condition, such as accident histories and previous out of province registrations ("disclosure").
4. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the advertising and/or disclosure requirements:
  1. Spring 2010
  2. Summer 2010
  3. Spring 2011
  4. Summer 2012
  5. Spring 2013
  6. Summer 2013
  7. Winter 2014
  8. Spring 2014
  9. Fall 2014
5. Furthermore, OMVIC issued the following bulletins which also reminded dealers of the advertising and/or disclosure requirements:
  1. January 2010
  2. April 2010
  3. February 2012



4. August 2012
5. September 2012
6. April 2013
7. December 2013
8. April 2014
9. April 2015

**Dealer history:**

6. On or about February 26, 2008 the Dealer executed terms and conditions of registration. As per condition 6, the Dealer agreed to comply with the Act and the Code of Ethics.
7. On or about May 16, 2008, a representative of the registrar reviewed terms and conditions with the Dealer.
8. By email dated February 29, 2012, a representative of the registrar reminded the Dealer of their obligation to ensure that advertised vehicle prices include all additional fees, as per section 36(7) of the Act.
9. On or about September 17, 2012, the Registrar issued a Notice of Complaint against the Dealer *inter alia* for failing to advertise all inclusive vehicle prices.
10. On or about December 3, 2012, the Discipline Committee issued an Order, pursuant to a negotiated resolution of the above mentioned Notice of Complaint. As per condition 3 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.
11. On or about June 20, 2014, the Registrar issued an Order to Cease False Advertising against the Dealer, for failing to advertise all inclusive vehicle prices.

**Current Dealer non-compliance issues:**

12. During an inspection on or about July 23, 2015, a representative of the Registrar found the following areas of non-compliance:

**Advertising:**

1. On or before June 26, 2015, the Dealer advertised a 2015 Nissan Micra (VIN 3N1CK3CPXFL218477) with a selling price of \$14,801. On or about June 26, 2015, the Dealer sold this vehicle for \$504 above the advertised price. As such, the advertisement did not promote an all-inclusive vehicle price, contrary to section 36 (7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has since agreed to refund the purchaser of this vehicle the amount they were charged above the advertised price.
2. On or before July 8, 2015, the Dealer advertised a 2014 Nissan Murano (VIN JN8AZ1MW6EW517861) with a selling price of \$34,991. On or about July 8, 2015, the Dealer sold this vehicle for \$504 above the advertised price. As such, the advertisement did not promote an all-inclusive vehicle price, contrary to section 36 (7) of Regulation 333/08, as well as sections 4 and 9 of the Code of



Ethics. The Dealer has since agreed to refund the purchaser of this vehicle the amount they were charged above the advertised price.

3. On or before July 14, 2015, the Dealer advertised a 2014 Nissan Juke (VIN JN8AF5MR3ET362522) with a selling price of \$23,650. On or about July 14, 2015, the Dealer sold this vehicle for \$362.24 above the advertised price. As such, the advertisement did not promote an all-inclusive vehicle price, contrary to section 36 (7) of Regulation 333/08, Act as well as sections 4 and 9 of the Code of Ethics. The Dealer has since agreed to refund the purchaser of this vehicle the amount they were charged above the advertised price.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002*:  
Regulation 333/08

**36. Advertising:**

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 Doublet 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 \$7,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer agrees to ensure the General Manager[s] and/or General Sales Manager[s] of the Dealer successfully complete the OMVIC certification course (the "course") within 180 days of the date of the Discipline Committee Order.
3. The Dealer is 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 or who are otherwise required to do so pursuant to the Act.

4. 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 and Doublet 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 \$7,500 within 90 days of the date of the Discipline Committee Order.
2. The Dealer is ordered to ensure the General Manager[s] and/or General Sales Manager[s] of the Dealer successfully complete the OMVIC certification course (the "course") within 180 days of the date of the Discipline Committee Order.
3. 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 or who are otherwise required to do so pursuant to the Act.
4. 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

