

**DISCIPLINE COMMITTEE
OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL**

PANEL:	Mr. Robert MacKay, Chair	Public Member
	Mr. Orest Saczyk	Registrant
	Mr. Stuart Sherman	Registrant

BETWEEN:

)	
)	
REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002)	Mr. Brian Osler for the Ontario Motor Vehicle Industry Council
)	
- and -)	
)	
PLATINUM CARS INC. and Mr. SHAUN JALILI)	Mr. Shaun Jalili, self-represented
)	
)	

Heard: February 4, 2014, and
March 18, 2014

Also present at the hearing were:

Ms. Luisa Ritacca - Independent Legal Counsel to the Panel (February 4)
Mr. Brian Gover - Independent Legal Counsel to the Panel (March 18)
Ms. Andrea Korth – Business Standards Coordinator OMVIC
Ms. Mindy Ralston - Court Reporter (February 4)
Mr. Travis Green - Court Reporter (March 18)

Findings:

Breaches of Section 9 of the Code of Ethics, as contained in *Ontario Regulation 332/08*, and breaches of Subsection 36(7) (Advertising) of *Ontario Regulation 333/08*.

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") convened pursuant to Section 17 of the *Motor Vehicle Dealers Act 2002* (the "Act").

The Hearing was first convened February 4, 2014. At that time, the Notice of Complaint dated July 8, 2013 was marked and entered as Exhibit 1 and the Notice of Complaint Notice of Further and Other Particulars dated November 6, 2013 was marked and entered as Exhibit 2. Mr. Jalili (the "Respondent") was not represented or present at the outset. Mr. Osler submitted to the Panel a Request For Adjournment sent by Mr. Jalili. The request, dated February 3, was marked and entered as Exhibit 3. The request stated that the Respondent was away on business and unable to return to Canada in time for the Hearing due to a passport issue. The Panel reviewed the request, heard from Mr. Osler, and received advice from Ms. Ritacca. The Panel then granted the uncontested request for an adjournment. Mr. Jalili at that point arrived at the Hearing and participated in setting a date to reconvene. The Panel's written decision on the Request For Adjournment was released to the parties on February 10, 2014.

On March 18, 2014 the Hearing reconvened with the Respondent present but unrepresented by legal counsel. The Hearing proceeded. The Panel heard submissions from the parties and from two witnesses; one called by each party. OMVIC's witness was Ms. Andrea Korth. Ms. Korth has worked for OMVIC since 2005, and has been the Business Standards Coordinator since 2007. The Respondent, Mr. Shaun Jalili gave evidence in response to the allegations. A total of seven exhibits were entered at the Hearing.

Exhibits

1. Notice of Complaint, dated July 8, 2013
2. Notice of Complaint, dated November 6, 2013

3. Request for Adjournment, dated February 3, 2014
4. OMVIC's Book of Documents Volume 1, tabs 2 thru 14(A thru R)
5. OMVIC's Book of Documents Volume 2, tabs 16, 17, and 18
6. Letter dated July 24, 2013 from Mr. Jalili to Ms. Korth in reply to Notice of Complaint
7. Mr. Jalili's of Book of Documents

Allegations

The allegations against Platinum Cars Inc. and Mr. Shaun Jalili were set out in two Notices of Complaint. One, dated July 8, 2013, was marked as Exhibit 1, and is attached as Appendix "A". The second, dated November 6, 2013 was marked as Exhibit 2, and is attached as Appendix "B".

Evidence

Undisputed Facts

At the outset of the Hearing, the parties agreed to dispense with further proof of some of the particulars in the Notices of Complaint (Exhibits 1 and 2). Specifically, items 1 and 2 of Exhibit 1 and item 1 of Exhibit 2 were admitted.¹

¹ These are as follows:

Exhibit 1

1. Platinum Cars Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around October 2011. Shaun Jalili ("Jalili") was first registered as a motor vehicle salesperson in or around May 2004. At all material times, Jalili was officer and director of the Dealer.
2. On or about October 11, 2011, Jalili executed terms and conditions of registration on behalf of the Dealer, attached herto as Schedule "A". As per condition 6, the Dealer agreed to comply with the Act and the Code of Ethics.

Exhibit 2

1. As of on or about August 19, 2013, the Dealer's web based vehicle advertisements continued to include the statement "All prices do not include \$399 admin[istration fee]". As such, the advertisements did not promote all inclusive vehicle prices, as required by sub section 36(7) of Regulation 333/08.

OMVIC's Evidence

Through the testimony of Ms. Andrea Korth and a series of publications², the documents contained in Exhibit 4, tabs 3 thru 13, OMVIC was able to demonstrate there had been regular communication to registrants, sales representatives and dealerships, with respect to advertising. Among other things, the various publications reminded registrants of the requirement under the Act that "All In" pricing must include all costs and fees in relation to the sale of vehicles. The only exception being taxes and licencing, and that must be indicated in the advertisement. The various communiques in Exhibit 4 were those sent out by either post or email for the period of winter 2008 to August 2012.

Mr. Jalili's registration information with OMVIC indicates that his status is 'active' and that he first registered as a motor vehicle salesperson in 2004.³

Ms. Korth's evidence was that on June 28, 2013 she reviewed the online advertisements placed on behalf of Platinum Cars. She confirmed the advertisements were the Respondent's by Dealership name, registration and phone number of the Registrant, Mr. Jalili. In her testimony, Ms. Korth identified 18 advertisements for cars offered by Platinum Cars Inc. on that date, all of which she stated did not comply with the requirements for "All-In" pricing in advertising under the Act.⁴

Subsequently, on August 14, 2013, a scheduled books and records inspection was performed on site at Platinum Cars Inc. by OMVIC personnel, Ms. Emma Didier and Ms.

² These included the following, all of which are found in Exhibit 4:

1. *The Dealer Standard*, Winter 2008 (Tab 3), Spring 2010 (Tab 8), Summer 2010 (Tab 9) and Spring 2011 (Tab 10);
2. *The Dealer Bulletin*, January 2010 (Tabs 4 and 5), April 2010 (Tab 6 and 7), February 2013 (Tab 12) and August 2012 (Tab 13).

³ Exhibit 4, Tab 2.

⁴ Exhibit 4, Tab 14(A) through (R).

Anisah Patel. Among other things, the report prepared in relation to this inspection⁵ informed the Registrant that “*any vehicles advertised with a price must be inclusive of all fees i.e.: admin fee. Dealer ads must also be clear, comprehensible and prominent stating if vehicle being offered AS-IS, unfit or certified.*”⁶ Directly below in the section “ACKNOWLEDGEMENT” appears Mr. Jalili’s signature.⁷

On August 19, 2013, five days after the inspection, Ms. Korth again scrutinized online advertisements of vehicles being offered by the Respondent, this time observing 22 of them.⁸ In each case, these advertisements show administration fees that are not included in the advertised price. Similarly, a further five online advertisements of vehicles being offered by the Respondent that were accessed on November 5, 2013 all showed administration fees that were not included in the advertised price. Ms. Korth’s evidence was that none of the advertisements accessed on August 19 and November 5, 2013 complied with the requirements for “All-In” pricing in advertising under the Act.

Respondent’s Evidence

Mr. Jalili stressed that he did not become a Dealer until mid-2011. It was his evidence that he did not receive, or could not recall receiving, the communications from OMVIC contained in Exhibit 4.⁹ Furthermore, in his evidence, Mr. Jalili contended that OMVIC has no way to confirm any Registrant has received communications from OMVIC.

The Registrant testified that at the relevant time he had approximately 60 cars being advertised on 10 websites, resulting in about 600 advertisements. Mr. Jalili testified that it was too much of a burden to check that many advertisements for compliance with

⁵ Exhibit 5, Tab 16.

⁶ Exhibit 5, Tab 16, p. 13.

⁷ *Ibid.*

⁸ Exhibit 5, Tab 17.

⁹ See Note 2, above.

OMVIC's requirements, which is why he uses a third party, Boost 3.0, to manage the advertisements.

In Mr. Jalili's letter in reply to the Notice of Complaint, he acknowledged that "Platinum Cars Inc. has placed ads with a note at the bottom that a \$399 admin fee is not included in the advertised price of the vehicle".¹⁰ He goes on to state, "The reason for this advertising is because not all of our customers are charged an administration fee (which) covers the expense of safety and emission tests".¹¹

In his testimony, Mr. Jalili admitted that he didn't understand "all in" pricing requirements in advertisements. He acknowledged that he did receive and sign the inspector's report of August 14, 2013. He testified that he requested Boost 3.0 to remove the reference to "admin fees" being extra. Mr. Jalili conceded that he never checked to see if the advertisements were updated, and this being due to the volume of advertisements placed by Platinum Cars Inc.

The Registrant stated that due to the lack of a reply from OMVIC in relation to his letter of July 24, 2013 responding to the Notice of Complaint,¹² he assumed that meant he was then in compliance. He became aware advertisements were not in compliance the day of the scheduled inspection of August 14, 2012.

Mr. Jalili agreed the online advertisements were not all updated. It was his evidence that, through his staff, he was working with Boost to remove the references to administration fees. This was confirmed by an email exchange between Platinum Cars Inc and Boost that occurred between November 12 and 15, 2013.¹³

¹⁰ Exhibit 6.

¹¹ *Ibid.*

¹² Exhibit 6.

¹³ See Exhibit 7, eighth through eleventh pages.

In his testimony, Mr. Jalili emphasized that it was not his intention to mislead clients in any way. As he put it, "We do not cheat or swindle our customers or play games with OMVIC."

Parties' Submissions

OMVIC's Submissions

On behalf of OMVIC, Mr. Osler submitted that Platinum and Mr. Jalili are in breach of s. 36(7) of *Ontario Regulation 333/08*. Specifically, the advertised price must include all charges and fees, including the \$399 administration fee. Although the first Notice of Complaint¹⁴ alleges that on June 28, 2013, at least 18 web based advertisements included the statement "All prices do not include \$399 admin[istration] fee", there are actually 60 such advertisements. It is noteworthy, Mr. Osler contended, that even after the first Notice of Complaint was issued, nothing changed. In fact, his advertisements remained non-compliant after Platinum Cars Inc. was inspected on August 14, 2013.

Mr. Osler further pointed out that despite the reference to vehicles being sold "As Is" in the Registrant's response to the Notice of Complaint,¹⁵ none of the vehicles advertised on June 28, 2013 were being offered for sale on that basis.

Moreover, despite Mr. Jalili's assertions that he instructed Boost to take corrective action, some advertisements remained non-compliant, namely those accessed on August 19 and November 5, 2013. It was Mr. Osler's submission that Platinum Cars Inc. and Mr. Jalili remain responsible for this non-compliance.

¹⁴ Exhibit 1, Notice of Complaint dated July 8, 2013.

¹⁵ Exhibit 6 ("... not all of our customers are charged an administration fee. Our administration fee covers the expense of safety and emission tests. Some customers don't require this service, as they are purchasing the vehicle "As Is" or they are out of Province.")

Mr. Jalili's Submissions

Essentially, Mr. Jalili made three points in the course of his submissions:

1. He did not collect the \$399 administration fee after August, 2013;
2. He does not dispute OMVIC's interpretation of the "All In Pricing Requirement" and
3. He cannot take "full blame" for the non-compliance, given Boost's failure to change the information on the websites.

Reasons

We are satisfied that OMVIC provided sufficient communication to the dealer community, including this Registrant, about the requirements of "All-In" pricing.

As a Registered dealer, it is Mr. Jalili responsibility to know the Regulations that govern the trade of motor vehicles in Ontario.

The wording in subsection 36(1) of *Ontario Regulation 333/08 (Advertising)* under the *Motor Vehicle Dealers Act, 2002* is clear and states dealers "shall ensure that any advertisement placed by the dealer complies with this section". Subsection 36(7) goes on to state that advertisements "shall be set out as the total of" the amount that a buyer would be required to pay for the vehicle including any charges like "fees".

Delegating the activities of placing ads on multiple websites to a third party doesn't alleviate the Registrant's responsibilities under the Act.

The Respondent's assertion that the noncompliant advertisements were due to the acts or omissions of a third party and that he was unaware of this is inconsistent with his assertion (in his July 24, 2013 letter, responding to the first Notice of Complaint) that not

all customers are charged the administration fee as some customers require safety and emission tests and others either purchase vehicles on an “As Is” basis or are from outside Ontario.¹⁶

Even after receiving the Notice of Complaint and the inspection report, Platinum Cars Inc. continued to publish online advertisements that were not in compliance. Mr. Jalili failed to take reasonable steps to review and ensure his advertisements were consistent with the requirements under the Act.

Decision

Having heard the parties’ submissions and the advice of Independent Legal Counsel in the presence of the parties, and for these reasons the Panel finds that Platinum Cars Inc. and Mr. Shaun Jalili have breached Section 9 of the Code of Ethics as set out in *Ontario Regulation 332/08* in that their actions would reasonably be regarded as unprofessional and unbecoming of a registrant.

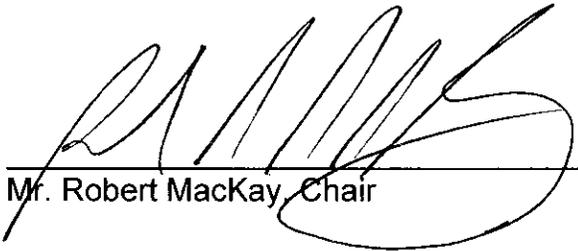
Furthermore, they have breached section 36(7) of *Ontario Regulation 333/08* by not providing “All-In” pricing in their advertising.

Other

The parties are directed to make arrangements to make submissions to the Panel in relation to penalty.

¹⁶ Exhibit 6

I, Robert MacKay, sign this decision and reasons for the decision as Chair of this Discipline Panel and on behalf of the members of the Discipline Panel as listed below.



Mr. Robert MacKay, Chair

Date: April 10, 2014

Panel Members:

Mr. Robert MacKay
Mr. Orest Saczyk
Mr. Stuart Sherman

Appendix "A"

IN THE MATTER OF

THE VIOLATION OF THE CODE OF ETHICS and Standards of Business Practice

TO: Platinum Cars Inc.
60 Martin Ross Avenue
North York, ON M3J2L4

AND TO: Shaun Jalili
38 Avenue Road, Unit 204
Toronto, ON M5R2G2

NOTICE OF COMPLAINT

Take notice that pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, (the "Act"), the Registrar is issuing a Notice of Complaint against PLATINUM CARS INC. and SHAUN JALILI for violating the Code of Ethics, as set out in Ontario Regulation 332/08.

REASONS

Section 17 of the Act establishes a Discipline Committee and empowers the Discipline Committee to deal with breaches of the Code of Ethics. The Code of Ethics applies to all Registrants registered under the *Motor Vehicle Dealers Act, 2002*. Any Registrants that disregard or violate the Code of Ethics are subject to having their conduct reviewed by the Discipline Committee. The Code of Ethics requires that all Registrants conduct business with Integrity, Accountability, Compliance, Respect and Professionalism as well as ensuring that minimum requirements are met when it comes to Disclosure in Marketing and the Disclosure of Information in Contracts of Sale and Lease. PLATINUM CARS INC. and SHAUN JALILI have violated one or more of the principles of the Code of Ethics and should therefore have their conduct reviewed by the Discipline Committee.

PARTICULARS

The reasons for this notice are:

1. Platinum Cars Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around October 2011. Shaun Jalili ("Jalili") was first registered as a motor vehicle salesperson in or around May 2004. At all material times, Jalili was officer and director of the Dealer.
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 for dealers to advertise an all-inclusive vehicle price.

3. In or around January 2010, OMVIC issued a bulletin reminding dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
4. In or around January 2010, OMVIC issued a second bulletin concerning advertising "As Is" vehicles. Said bulletin also reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
5. In or around April 2010, OMVIC issued a bulletin advising that 75 dealers had recently been charged under the Act, with various advertising offenses, including failure to publish the all-inclusive prices of vehicles, as required by sub section 36(7) of Regulation 333/08.
6. In or around April 2010, OMVIC issued a bulletin reminding dealers of various advertising disclosure obligations, including ensuring advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
7. In the spring of 2010, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
8. In the summer of 2010, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
9. In the spring of 2011, OMVIC issued a Dealer Standard publication which reminded dealers of their obligation to ensure advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
10. On or about October 11, 2011, Jalili executed terms and conditions of registration on behalf of the Dealer, attached hereto as Schedule A. As per condition 6, the Dealer agreed to comply with the Code of Ethics.
11. In or around February 2012, OMVIC issued a bulletin reminding dealers of various advertising disclosure obligations, including ensuring advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
12. In or around August 2012, OMVIC issued a bulletin reminding dealers of various advertising disclosure obligations, including ensuring advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
13. On or before June 28, 2013, at least 18 web based advertisements were published by or on behalf of the Dealer which included the statement "All prices do not include \$399 admin[istration fee]". As such, the advertisements did not promote all inclusive vehicle prices, as required by sub section 36(7) of Regulation 333/08.

If you disagree with the allegations contained in this notice, please provide a written Statement of Response to the particulars set out above, to OMVIC within 15 days of service of this notice.

Appendix "B"

IN THE MATTER OF

THE VIOLATION OF THE CODE OF ETHICS and Standards of Business Practice

TO: Platinum Cars Inc.
60 Martin Ross Avenue
North York, ON M3J2L4

AND TO: Shaun Jalili
38 Avenue Road, Unit 204
Toronto, ON M5R2G2

**NOTICE OF COMPLAINT
NOTICE OF FURTHER AND OTHER PARTICULARS**

Whereas by a Notice of Complaint dated July 8, 2013 the Registrar, *Motor Vehicle Dealers Act, 2002* (the "Act") did issue a Platinum Cars Inc. and Shaun Jalili for breaches of the Code of Ethics regulation and the Standards of Business Practice:

AND WHEREAS further information has come to the attention of the Registrar relating to the breaches of the Code and Standards;

NOW THEREFORE TAKE NOTICE THAT THE REGISTRAR REPEATS THE REASONS AS SET OUT IN THE NOTICE OF COMPLAINT DATED JULY 8, 2013 AND IS PROVIDING THE FOLLOWING FURTHER AND OTHER PARTICULARS:

FURTHER PARTICULARS

It is further alleged as follows:

1. During an inspection on or about August 9, 2013, a representative of the Registrar reminded Jalili, on behalf of the Dealer of the Dealer's requirement to ensure all advertised vehicle prices include all additional fees, as required by sub section 36(7) of Regulation 333/08.
2. As of on or about August 19, 2013, the Dealer's web based vehicle advertisements continued to include the statement "All prices do not include \$399 admin[istration fee]". As such, the advertisements did not promote all inclusive vehicle prices, as required by sub section 36(7) of Regulation 333/08.

3. To date, the Dealer's web based vehicle advertisements continue to include the statement "All prices do not include \$399 admin[istration fee]". As such, the advertisements do not promote all inclusive vehicle prices, as required by sub section 36(7) of Regulation 333/08.

STATEMENT OF RESPONSE

Since you have previously supplied a Statement of Response to the Notice of Complaint, issued, July 8, 2013, you do not need to file an additional Response, however if you dispute the additional particulars set out herein you are required to set out your reasons in writing, and forward them to OMVIC.

PLEASE TAKE NOTE

The Discipline Committee can order one or more of the following:

- Dismiss the file
- Order a fine up to \$25,000, per party
- Require the registrant to take further educational courses
- If the Registrant is a motor vehicle dealer, require the motor vehicle dealer to fund educational courses for salespersons employed by the dealer or to arrange and fund such educational courses
- Award Costs

Decisions of the Discipline Committee will be published. Hearings before the Discipline Committee will be recorded.

APPLICATION OF THE STATUTORY POWERS PROCEDURE ACT

The *Statutory Powers Procedure Act, R.S.O 1990 c.s.22*, applies to the hearing to be held by this Discipline Committee. A party to a proceeding may be represented by counsel or an agent.

The Registrar states that the good character, propriety of conduct or competence of the Dealer shall be an issue in any hearing before the Discipline Committee and OMVIC has, therefore, furnished herein reasonable information of allegations with respect thereto.

The Rules of Practice of the Discipline Committee will apply, copy attached. A Notice of Hearing and Book of Disclosure will be provided in accordance with the Rules of Practice of the Discipline Committee.

Take note that as per the attached Rules of Practice, failure to attend a hearing before the Discipline Committee will result in a decision being determined *ex parte*, in your absence.

APPLICATION OF THE RULES OF PRACTICE OF THE DISCIPLINE COMMITTEE

This is to serve notice that the Registrar shall make application for its cost pursuant to Rule 13 of the Rules of Practice.

FURTHER PARTICULARS/SUPPLEMENTAL NOTICE

The Registrar may provide further and other particulars in respect of any other matters herein or in respect to any other matter including further particulars of violations of the Code of Ethics, Standards of Business Practice.

DATED at Toronto, this day of 2013

Carl Compton
Registrar
Motor Vehicle Dealers Act, 2002