

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 -

2174704 ONTARIO LTD. o/a FINCH HYUNDAI

- AND -

RYAN FINCH

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: March 10, 2015

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 \$9,000 within 90 days of the date of the Discipline Committee Order.
2. 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 acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealers 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.
3. The Dealer and Finch shall comply with the Act and Standards of Business Practice, as may be amended from time to time.



Ontario Motor
Vehicle Industry
Council

Conseil ontarien
du commerce des
véhicules automobiles

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. 2174704 Ontario Ltd. o/a Finch Hyundai (the "Dealer") was first registered as a motor vehicle dealer in or around November 2008. Ryan Finch ("Finch") was first registered as motor vehicle salesperson in or around June 1994. At all material times, Finch was an officer and director of the Dealer.
2. On or about November 6, 2008, Finch executed terms and conditions of registration on behalf of the Dealer. As per condition 6, the Dealer agreed to comply with the Code of Ethics and Standards of Business Practice, as may be amended from time to time.
3. During an inspection on or about March 5, 2009, a representative of the Registrar reviewed with the Dealer their terms and conditions of registration.
4. On or about September 20, 2013, the Registrar issued a Notice of Complaint against Finch Chevrolet Cadillac Buick GMC Ltd, the Dealer, and Finch, as a result of continued advertising compliance issues.
5. On or about December 9, 2013, the Discipline Committee issued an Order, pursuant to a negotiated resolution of the above mentioned Notice. As per condition 4 of the Order, Finch Chevrolet Cadillac Buick GMC Ltd, the Dealer, and Finch agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

OMVIC publications concerning daily rental vehicle disclosure in advertisements:

6. In the spring of 2010, OMVIC issued a Dealer Standard publication which highlighted some of the upcoming changes which would take place when the Motor Vehicle Dealers Act, 2002 (the "Act") came into effect. This included the requirement for dealers to advertise an all-inclusive vehicle price and to disclose former daily rental vehicles in advertisements in a clear, comprehensible and prominent manner.
7. Once the Act came into effect, OMVIC the following Dealer Standard publications further reminded dealers of these requirements:
 - a. Summer 2010
 - b. Spring 2011
 - c. Summer 2012
 - d. Fall 2013



8. In addition to the above mentioned publications, OMVIC also issued the following bulletins reminding dealers of these advertising requirements:
 - a. April 2010
 - b. September 2012

OMVIC publications concerning credit and lease disclosure in advertisements:

9. The Dealer Standard publication issued in the summer of 2010 and referred to in paragraph 5(a) of this document also reminded dealers of what information is required when advertising a credit or lease offer.
10. In addition to this, in June 2010 OMVIC issued a bulletin which further reminded dealers of the credit and lease advertising disclosure requirements.

Direct correspondence to the Dealer concerning credit disclosure in advertisements:

11. By email dated August 30, 2010, a representative of the Registrar reminded the Dealer of the credit advertising requirements.
12. By email dated December 8, 2011, a representative of the Registrar reminded Finch, on behalf of the Dealer, of the credit advertising requirements.

Non-compliant advertisements published by or on behalf of the Dealer:

13. On or about October 23, 2014, an advertisement was published by or on behalf of the Dealer which promoted vehicle credit offers but failed to disclose all of the required of information. Specifically, the advertisement failed to disclose the cash prices of the vehicles, and the annual percentage rates were not disclosed as prominently as the corresponding bi-weekly payments. As such, the advertisement failed to comply with Regulation 61 of the *Consumer Protection Act, 2002*. This is contrary to sections 4 and 9 of the Code of Ethics.
14. On or before October 29, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Hyundai Sonata, (VIN 5XYZUDLB6EG125201). This vehicle is a former daily rental unit and the advertisement failed to disclose this information. This is contrary to sub-section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. In addition to this, the advertisement advertised a vehicle credit offer but failed to disclose all of the required of information. Specifically, the advertisement failed to disclose the term, annual percentage rate and cost of borrowing information. As such, the advertisement failed to comply with Regulation 61 of the *Consumer Protection Act, 2002*. This is contrary to sections 4 and 9 of the Code of Ethics.
15. On or before October 29, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Hyundai Accent, (VIN KMHCT4AE7DU472714). This vehicle is a former daily rental unit and the advertisement failed to disclose this information. This is contrary to sub-section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. In addition to this, the advertisement advertised a vehicle credit offer but failed to disclose all of the required of information. Specifically, the advertisement failed to disclose the term, annual percentage rate and cost of borrowing information. As such,



the advertisement failed to comply with Regulation 61 of the *Consumer Protection Act, 2002*. This is contrary to sections 4 and 9 of the Code of Ethics.

16. On or before October 29, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Hyundai Sonata, (VIN 5NPEC4AC7EH849730). This vehicle is a former daily rental unit and the advertisement failed to disclose this information. This is contrary to sub-section 36(5) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. In addition to this, the advertisement advertised a vehicle credit offer but failed to disclose all of the required of information. Specifically, the advertisement failed to disclose the term, annual percentage rate and cost of borrowing information. As such, the advertisement failed to comply with Regulation 61 of the *Consumer Protection Act, 2002*. This is contrary to sections 4 and 9 of the Code of Ethics.
17. On or about January 10, 2015, an advertisement was published by or on behalf of the Dealer which promoted vehicle credit offers but failed to disclose all of the required of information. Specifically, the advertisement failed to disclose the cash prices of the vehicles, and the annual percentage rates were not disclosed as prominently as the corresponding bi-weekly payments. As such, the advertisement failed to comply with Regulation 61 of the *Consumer Protection Act, 2002*. This is contrary to sections 4 and 9 of the Code of Ethics.

By failing to comply with the following:

Regulation 61 of the *Consumer Protection Act, 2002*

(1) Any person who makes representations in respect of a credit agreement, or causes representations to be made in respect of a credit agreement, in an advertisement shall do so in accordance with this section, regardless of whether the representations are made orally, in writing or in any other form.

(2) An advertisement that offers fixed credit and discloses the interest rate payable by the borrower under the credit agreement or the amount of a payment to be made by the borrower to the lender in connection with the credit agreement shall also disclose the following information:

1. The annual percentage rate for the credit agreement.
2. The length of the term of the credit agreement.
3. If the advertisement is for a supplier credit agreement and applies to a specifically identified good or service,

- i. the cash price of the good or service, and
- ii. the cost of borrowing, unless,

A. the only element of the cost of borrowing is interest, or

B. the advertisement is broadcast on radio or television, displayed on a billboard or bus board or made through any other medium with similar time or space limitations.



4. If the advertisement is for a supplier credit agreement, applies to a range of goods or services and uses a representative credit agreement, the cash price of the good or service represented in the representative credit agreement.

(3) Subsection (2) applies even if the advertisement discloses that the interest rate payable by the borrower or the amount of a payment to be made by the borrower to the lender is zero. O. Reg. 17/05, s. 61 (3).

(4) The annual percentage rate referred to in paragraph 1 of subsection (2) shall be disclosed as prominently as the most prominently disclosed of,

- (a) the interest rate payable by the borrower under the credit agreement; and
- (b) the amount of a payment to be made by the borrower to the lender in connection with the credit agreement.

Regulation 333/08 of the *Motor Vehicle Dealers Act, 2002*

36(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.

It is thereby agreed that the Dealer and Finch have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

4. 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.

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 \$9,000 within 90 days of the date of the Discipline Committee Order.
2. 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 within 90 days of acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in



this capacity by the Dealer. The Dealers 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.

3. The Dealer and Finch 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 Finch 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 \$9,000 within 90 days of the date of the Discipline Committee Order.
2. 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 acceptance of this offer. Future sales staff will be offered the course within 90 days of being retained in this capacity by the Dealer. The Dealers 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.
3. The Dealer and Finch 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



Catherine Poultney, Chair

