

## 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 -

LEADING EDGE MOTOR CARS INC.

- AND -

DARRYN WILBUR

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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:** July 6, 2017

**Findings:** Breach of Sections 7 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$1500, no later than September 23, 2017.
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 no later than September 23, 2017. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer and Wilbur 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. Leading Edge Motor Cars Inc. (the "Dealer") was first registered as a motor vehicle dealer in or around January 1999. Darryn Wilbur ("Wilbur") was first registered as a motor vehicle salesperson in or around January 1997. At all material times, Wilbur was the person in charge and or officer of the Dealer.

#### **OMVIC publications:**

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. Included was the requirement for dealers to disclose former daily rental vehicles in advertisements.
3. In or around December 2008, OMVIC issued a bulletin advising dealers of up and coming changes to the Act. Included in the bulletin was the requirement to disclose former daily rental vehicles in advertisements.
4. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their obligations to disclose former daily rental vehicles in advertisements:
  - a. Spring 2010
  - b. Summer 2010
  - c. Spring 2011
  - d. Winter 2013
  - e. Fall 2013
  - f. Issue #3 2014
  - g. Issue #4 2014
  - h. Issues #2 2015
5. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their obligations to disclose former daily rental vehicles in advertisements:
  - a. April 2010
  - b. September 2012
6. On or about December 12, 2014, Wilbur successfully completed the OMVIC certification course.

**Direct correspondence with Dealer:**

7. By email dated December 17, 2014, a representative of the Registrar reminded the dealer of their requirements to ensure to disclose former daily rental vehicles in advertisements.
8. By email dated October 20, 2015, a representative of the Registrar reminded the dealer of their requirements to ensure to disclose former daily rental vehicles in advertisements.
9. By email dated January 20, 2016, a representative of the Registrar reminded the dealer of their requirements to ensure to disclose former daily rental vehicles in advertisements.

**Dealer non-compliance:**

10. On or before February 6, 2017, the Dealer advertised 2 vehicles without disclosing their prior daily rental use. This is contrary to sub section 36(5) of Regulation 333/08, as well as section 4 of the Code of Ethics. The Dealer did provide the end purchaser of the subject vehicles with written disclosure of this information on their bills of sale.

By failing to comply with the following sections of the *Motor Vehicle Dealers Act, 2002* (the "Act"):

Regulation 333/08:

**36. Advertising:**

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 Wilbur have breached the following sections of the Code of Ethics, as set out in Regulation 332/08:

**Disclosure and marketing:**

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.

**Joint Submission on Penalty**

1. The Dealer agrees to pay a fine in the amount of \$1500, no later than **September 23, 2017**.
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 no later than September 23, 2017. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer, and Wilbur, 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 Wilbur breached subsections 7 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 \$1500, no later than September 23, 2017.
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 no later than September 23, 2017. 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer and Wilbur 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



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*Paul Burroughs, Chair*