

## 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

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

- AND -

HOGAN CHEVROLET BUICK GMC LIMITED

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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:** September 27, 2017

**Findings:** Breach of Section 4 of the Code of Ethics

**Order:**

1. The Dealer is ordered to pay a fine in the amount of \$2,500 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 OMVIC Automotive Certification 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 days of being retained in this capacity. The Dealer will pay 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<sup>st</sup>, 2010, or who are otherwise not required to do so pursuant to the Act.
3. The Dealer is ordered to provide OMVIC with the name and contact information of the person in charge of advertising for the Dealer within 5 business days of the date of the Discipline Committee Order.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and the 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. Hogan Chevrolet Buick Limited (the "Dealer") was first registered as a motor vehicle dealer in or around March 1983.

### ***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 Dealer Act, 2002 (the "Act") came into effect. Included in the bulletin was the requirement for dealers to advertise all-inclusive vehicle prices in advertisements.
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of the requirement for dealers to advertise all-inclusive vehicle prices:
  - a. Spring 2010
  - b. Summer 2010
  - c. Spring 2011
  - d. Winter 2013
  - e. Spring 2013
  - f. Fall 2013
  - g. Winter 2014
4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of the requirement for dealers to advertise all-inclusive vehicle prices:
  - a. January 2010 (2 publications)
  - b. April 2010 (2 publications)
  - c. February 2012
  - d. August 2012
  - e. April 2013
  - f. April 2014
  - g. June 2014
  - h. November 2014
  - i. April 2015 (2 publications)



***Direct Correspondence with the Dealer:***

5. During an inspection on or about Monday April 23, 2012, the Dealer was reminded of its obligation to ensure advertised vehicle prices are all-inclusive.
6. On or about October 22, 2012, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of an outstanding Notice of Complaint. As per condition 5 of this Order, the Dealer agreed to ensure that all future advertising complies with both the Act and the Standards of Business Practice, as may be amended from time to time.
7. On or about June 8, 2015, the Discipline Committee issued an Order against the Dealer, pursuant to a negotiated resolution of an outstanding Notice of Complaint. As per condition 4 of this Order, the Dealer agreed to ensure that all future advertising complies with both the Act and the Standards of Business Practice, as may be amended from time to time.

**Dealer non-compliance:**

8. On or before August 10, 2016, an advertisement was placed on the Dealer's website for a 2016 Chevrolet Spark (VIN KL8CA6SA3GC559854), with a selling price of \$11,595.
9. The Dealer's website was being maintained at that time exclusively by CDK, an external website provider that the Dealer was obligated to engage by its OEM, GM Canada.
10. On or about August 10, 2016, a representative of the Registrar contacted the Dealer and made inquiries while posing as a member of the public. The representative was advised by the salesperson at the dealership that an additional \$100 air conditioning tax, \$29.20 environmental tax, \$10 OMVIC fee and \$499 administration fee would be applied in addition to the advertised price for the 2016 Chevrolet Spark.
11. CDK has acknowledged that, during its regular website maintenance for the Dealer, CDK inadvertently removed the administration fee, environmental tax, and OMVIC fee from the all in price without the knowledge of the Dealer. The disclosure required by section 36(10) of Regulation 333/08, indicating that sales tax and licensing fees were not included in the price, was also inadvertently removed by CDK without the knowledge of the Dealer.
12. As a result of CDK's error, the advertisement published on the Dealer's website for the 2016 Chevrolet Spark did not set out an all-inclusive price, contrary to section 36(7) of the Regulation 333/08, as well as section 4 of the Code of Ethics.
13. The Dealer subsequently corrected the missing disclosure.



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 CDK's actions during the website maintenance process resulted in the Dealer being in breach of the following section 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.

### Joint Submission on Penalty

1. The Dealer agrees to pay a fine in the amount of \$2,500 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 OMVIC Automotive Certification 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 being retained in this capacity. The Dealer will pay 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<sup>st</sup>, 2010, or who are otherwise not required to do so pursuant to the Act.
3. The Dealer agrees to provide OMVIC with the name and contact information of the person in charge of advertising for the Dealer within 5 business days of the date of the Discipline Committee Order.
4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and the 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 breached subsection 4 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 \$2,500 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 OMVIC Automotive Certification 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 days of being retained in this capacity. The Dealer will pay 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<sup>st</sup>, 2010, or who are otherwise not required to do so pursuant to the Act.
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4. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and the 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*

