

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 -

ISLINGTON CHRYSLER PLYMOUTH (1963) o/a CHRYSLER'S BIG 3

- AND -

KRISTOPHER RAMS

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, 2015

Findings: Breach of Sections 4, 7 and 9 of the Code of Ethics

Order:

1. The Dealer is ordered to pay a fine in the amount of \$14,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Kristopher Rams is ordered to successfully complete the in class OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.
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 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 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 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:

Material Fact disclosure—Incidents at or over \$3,000 and Daily Rental Disclosure:

1. In 2008, OMVIC issued the following Dealer Standard publications 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 disclose, in writing on contracts, incidents which exceed \$3,000 and a vehicle's past use in a clear, comprehensible and prominent manner.
 - a. Winter 2008
 - b. Summer 2008
2. In December of 2008, OMVIC issued a Bulletin 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 disclose if a vehicle was involved in an incident and suffered more than \$3,000 in damage, and if a vehicle is a previously daily rental, which has not been subsequently owned by a consumer.
3. In June of 2009, OMVIC issued a Bulletin 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 to disclose if a vehicle was a former daily rental, on contracts.
4. During an inspection which took place on or about July 21, 2011, a representative of the registrar reminded Kristopher that fees must be itemized, in a clear, comprehensible and prominent manner, on all retail contracts.
5. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to provide full disclosure of a vehicle's past-use, in writing on contracts:
 - a. Summer 2012
 - b. Fall 2012
 - c. Winter 2013

6. Furthermore, once the Act came into effect, OMVIC issued the following Bulletins which also reminded dealers of the requirement to provide full disclosure of a vehicle's past-use, in writing on contracts, including, but not limited to daily rental disclosure and incidents exceeding \$3,000:
 - a. January 2010
 - b. September 2012 (2 separate publications)
 - c. December 2013

Advertising Requirements—All-in price advertising and Daily Rental Disclosure:

7. In 2008, OMVIC issued the following Dealer Standard publications 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 and past use in a clear, comprehensible and prominent manner.
 - c. Winter 2008
 - d. Summer 2008
8. In December of 2008, OMVIC issued a Bulletin 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 past use and an all-inclusive vehicle price.
9. Once the Act came into effect, the following Dealer Standard publications further reminded dealers of the requirement to advertise an all-inclusive vehicle price, and/ or if the vehicle was a previous daily rental:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Fall 2012
 - e. Winter 2013
 - f. Spring 2013
 - g. Summer 2013
10. Furthermore, once the Act came into effect, OMVIC issued the following bulletins which also reminded dealers of the requirement to advertise an all-inclusive price, and/ or if the vehicle was a previous daily rental:
 - a. January 2010 (2 separate publications)
 - b. March 2010
 - c. April 2010 (2 separate publications)
 - d. December 2010

- e. February 2012
 - f. August 2012
 - g. September 2012 (2 separate publications)
 - h. April 2013
11. On or about March 28, 2011, a representative of the Registrar reminded the Dealer of its obligation to advertise all-inclusive prices.
 12. On or about April 5, 2011, a representative of the Registrar reminded the Dealer of its obligation to advertise all-inclusive prices.
 13. On or about April 6, 2011, a representative of the Registrar reminded the Dealer of its obligation to advertise all-inclusive prices.
 14. On or about July 28, 2011, a representative of the Registrar reminded the Dealer of its obligation to advertise all-inclusive prices.
 15. On or about December 18, 2012, a representative of the Registrar reminded the Dealer of its obligation to disclose, in a clear, comprehensible and prominent manner, if the vehicle was a previous daily rental.
 16. On or about December 5, 2013, a representative of the Registrar reminded the Dealer of its obligation to disclose, in a clear, comprehensible and prominent manner, if the vehicle was a previous daily rental.

PARTICULARS

The reasons for this notice are:

17. Islington Chrysler Plymouth (1963) o/a Chrysler's Big 3 the ("Dealer") was first registered as a motor vehicle dealer in or around June, 1982. Albert Rams ("Albert") was first registered as a motor vehicle sales person in or around March 1983. Kristopher Rams ("Kristopher") was first registered as a motor vehicle sales person in or around July, 2004. At all material times, Albert was the Officer of the Dealer, and Kristopher was the General Manager of the Dealer.
18. On or before March 20, 2014, an advertisement was placed by or on behalf of the Dealer for a 2011 Jeep Grand Cherokee, stock # X5943A (VIN 1J4RR5GG2BC561289), with a selling price of \$29,978. On or about March 20, 2014, the Dealer sold this vehicle with an additional \$393.00 registration fee, \$299.00 administration fee, \$289.00 pre-delivery fee, and a \$5.00 OMVIC fee. On or about March 24, 2014, the purchaser informed OMVIC, that she was charged above the advertised price. This is contrary to sub section 36(7) of Regulation 333/08, as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently compensated the consumer the amount charged over the advertised price.

19. On or before March 25, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Jeep Grand Cherokee Laredo, stock # X5894A (VIN 1C4RJFAGXDC585077), with a selling price of \$31,897. On or about April 9, 2014, the Dealer sold this vehicle with an additional \$393.00 registration fee, \$299.00 administration fee, \$289.00 pre-delivery fee, and a \$5.00 OMVIC fee. Additionally, the advertisement and the bill of sale, did not disclose that this vehicle was a previous daily rental unit. This is contrary to sub section 36 (5), and (7), and sub section 42(7) of Regulation 333/08, as well as section 4, 7 and 9 of the Code of Ethics.
20. On or before March 25, 2014, an advertisement was placed by or on behalf of the Dealer for a 2014 Jeep Grand Cherokee Limited, stock # X5895A (VIN 1C4RJFBG2EC127694). This vehicle is a former daily rental unit. On or about April 9, 2014, the Dealer sold this vehicle without providing written disclosure of the vehicle's daily rental status. This is contrary to sub section 42(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently contacted the consumer to inform them of the vehicles previous daily rental status.
21. On or before March 25, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Chrysler 200 Limited, stock # X5889A (VIN 1C3CCBCGXD742945). This vehicle is a former daily rental unit. On or about April 1, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure that this vehicle's daily rental status. This is contrary to sub sections 36(5) and 42(7) of Regulation 333/08 as well as sections 4, 7 and 9 of the Code of Ethics. The Dealer has subsequently contacted the consumer to inform them of the vehicles previous daily rental status.
22. On or before March 25, 2014, an advertisement was placed by or on behalf of the Dealer for a 2012 Jeep Compass North SUV, stock # X5788A (VIN 1C4NCABXCD595747), with a selling price of \$19,499. On or about March 25, 2014, the Dealer sold this vehicle with an additional \$393.00 registration fee, \$299 administration fee, \$289.00 pre-delivery fee, and a \$5.00 OMVIC fee. This is contrary to sub section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently compensated the consumer the amount charged over the advertised price.
23. On or before March 25, 2014, an advertisement was placed by or on behalf of the Dealer for a 2013 Dodge Avenger SXT, stock # X5853A (1C3CDZCB8DN555925), with a selling price of \$16,494 plus an additional \$5.00 OMVIC fee. This vehicle is a former daily rental unit. On or about April 1, 2014, the Dealer sold this vehicle without providing the purchaser with written disclosure that this vehicle was a previous daily rental unit. This is contrary to sub sections 36(7) and 42(7) of Regulation 333/08 as well as sections 4, 7 and 9 of the Code of Ethics. The Dealer has subsequently contacted the consumer to inform them of the vehicles previous daily rental status.
24. On or before March 25, 2014, an advertisement was placed by or on behalf of the Dealer for a 2012 Ford F-150, stock # RAPTOR (VIN 1FTFW1R68BFA66883), with a selling price of \$43,399. On or about March 31, 2014, the Dealer sold this vehicle with an additional \$393.00 registration fee, \$299.00 administration fee, \$289.00 pre-delivery fee and a \$5.00 OMVIC fee. This is contrary to sub section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics. The Dealer has subsequently compensated the consumer the amount charged over the advertised price.

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

Section 28:

No registrant shall make false, misleading or deceptive statements in any advertisement, circular, pamphlet or material published by any means relating to trading in motor vehicles.

Regulation 333/08:

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.

36 (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.

42 (7) For the purposes of section 30(1) of the Act, the information mentioned in paragraph 22 of subsection 39 (2) and paragraph 11 of subsection 41(1) of this Regulation is the following: If any of the following is true of the motor vehicle, a statement to the effect that the vehicle was previously,

- i. leased on a daily basis, unless the vehicle was subsequently owned by a person who was not registered as a motor vehicle dealer under the *Motor Vehicle Dealers Act* or the *Motor Vehicle Dealers Act, 2002*,
- ii. used as a police cruiser or used to provide emergency services, or
- iii. used as a taxi or limousine.

It is thereby agreed that the Dealer has 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.

7. A registrant shall ensure that all documents used by the registrant in the course of a trade in a motor vehicle are current and comply with the law.

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 \$14,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Kristopher Rams agrees to successfully complete the in class OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.
3. 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 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 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, Albert and Kristopher breached subsections 4, 7 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 \$14,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Kristopher Rams is ordered to successfully complete the in class OMVIC certification course within 90 days of acceptance of this offer. The Dealer will incur all costs associated with this.
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 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 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 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



Catherine Poultney, Chair