

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 -

FROST CHEVROLET BUICK GMC CADILLAC LTD

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 25, 2019

Findings: Breach of the following sections of Code of Ethics:

Section 4 of the Code of Ethics, Regulation 332/08 as it relates to vehicle advertising and/or pricing only;

Section 6 of the Code of Ethics, Regulation 332/08 as it relates to vehicle advertising and/or pricing only; and

Section 9 of the Code of Ethics, Regulation 332/08 as it relates to vehicle advertising and/or pricing only.

Order:

1. The Dealer is ordered to pay a fine in the amount of \$3,000.00 no later than **May 31, 2019.**
2. The Dealer is ordered to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "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 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

3. The Dealer agrees to 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. Frost Chevrolet Buick GMC Cadillac Ltd. (the "Dealer") was first registered as a motor vehicle dealer in about January 1983.

OMVIC publications:

2. In or around December 2008, OMVIC issued a Dealer Standards publication advising dealers of up and coming changes to the Act. Included in the publications was the requirement for dealers to advertise all-inclusive vehicle prices ("all-in pricing") in advertisements.
3. After the Act was proclaimed, OMVIC further issued the following Dealer Standard publications reminding dealers of their all-in pricing advertising obligations:
 - a. Spring 2010
 - b. Summer 2010
 - c. Spring 2011
 - d. Spring 2013
 - e. Fall 2013
 - f. Issue #1
 - g. Issue #2
 - h. Issue #3 2014
 - i. Issue #4 2014
 - j. Issue #3 2015
 - k. Issue #1 2016
 - l. Issue #2 2016

- m. Issue #3 2016
- n. Issue #4 2016
- o. Issue #3 2017

4. Furthermore, OMVIC issued the following dealer bulletins which also reminded dealers of their all-in pricing advertising obligations:

- a. January 2010 (2 publications)
- b. April 2010 (2 publications)
- c. February 2012
- d. August 2012
- e. April 2013
- f. June 2014 (2 publications)
- g. April 2015
- h. July 2017
- i. August 2017

Direct prior warnings regarding all-in price advertising:

5. The Dealer was directly reminded on the following dates of its obligation to advertise all-inclusive vehicle prices:

- a. January 26, 2010
- b. January 27, 2010
- c. February 10, 2016
- d. December 2, 2016

Current advertising non-compliance:

6. On or before February 23, 2018 the Dealer published an advertisement for a 2018 Chevrolet Equinox LS with an advertised price of \$29,985.

7. On or about February 23, 2018 OMVIC representatives visited the Dealer and made inquiries about the above referenced vehicle while posing as members of the public. A salesperson on behalf of the Dealer advised the OMVIC representatives that in order to obtain the \$29,985 advertised vehicle price, purchasers were required to apply for a Visa credit card. As such, the Dealer's advertisement omitted the necessary requirements to obtain the price. This is misleading and contrary to sections 4(1) and 9(1) of the Code of Ethics as these sections relate to vehicle advertising only.

8. Moreover, said salesperson, on behalf of the Dealer, also advised the OMVIC representatives that the advertised vehicle price did not include the following mandatory fees:

- a. \$10 OMVIC
- b. \$50 gas
- c. \$295 administration fee
- d. \$25 environmental tax

As such, the Dealer's advertised price was not all inclusive. This is contrary to section 36(7) of Regulation 333/08, as well as sections 4(1) and 9(1) of the Code of Ethics, as these sections related to vehicle advertising only.

9. The Dealer has failed to ensure its registered salesperson carried out his duties in compliance with the Act and Code of Ethics; this is contrary to section 6(1) of the Code of Ethics.

By failing to comply with the following:

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

4 (1) 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.

6 (1) A registered motor vehicle dealer shall ensure that every registered salesperson that the dealer employs or retains to act as a salesperson carries out his or her duties in compliance with this Regulation.

9(1) 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 \$3,000.00 no later than **May 31, 2019.**
2. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "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 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.

3. 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 breached subsections 4, 6 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 agrees to pay a fine in the amount of \$3,000.00 no later than **May 31, 2019**.
2. The Dealer agrees to offer all current and future sales staff the opportunity to complete the Automotive Certification course (the "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 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 after January 1, 2009, or who are otherwise required to do so pursuant to the Act.
3. The Dealer agrees to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee



Paul Burroughs, Chair