



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 -

HOGAN CHEVROLET BUICK GMC LIMITED

- AND -

JORGE DESOUSA

- AND -

ANDREW FOSS

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: October 22, 2012

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

Order:

1. The Dealer agrees to pay a fine in the amount of \$12,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Jorge Desousa agrees to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
3. Andrew Foss agrees to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
4. 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 so pursuant to the Act.

5. The Dealer agrees to ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
6. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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. Hogan Chevrolet Buick GMC Limited (the "Dealer") was first registered as a motor vehicle dealer in or around March 1983. Jorge Desousa ("Desousa") was first registered as motor vehicle salesperson in or around April 1995. At all material times Desousa has been the person in charge of the Dealer. Andrew Foss ("Foss") was first registered as a motor vehicle salesperson in or around June 1982 and at all material times has been the officer and director of the Dealer.
2. In or around January 2010, OMVIC issued a bulletin reminding dealers of obligation to ensure that advertised vehicle prices include all additional fees, as per section 36(7) of Regulation 333/08.
3. In or around January 2010, OMVIC issued a bulletin reminding dealers of requirements when advertising "as is" vehicles. The bulletin also reminded dealers of "all in" pricing regulations
4. In or around April 2010, OMVIC issued a bulletin advising dealers of advertising related offences, including failure to include prior daily use in advertisements and reminding dealers that advertised vehicle prices are to include all additional fees, as per section 36(7) of Regulation 333/08.
5. In or around April 2010, OMVIC issued a bulletin reminding dealers of requirements when advertising "as is" vehicles. The bulletin also reminded dealers of "all in" pricing regulations
6. In or around February 2012, OMVIC issued a bulletin reminding dealers of various advertising disclosure obligations, including ensuring advertised vehicle prices include all additional fees, as per section 36(7) of Regulation 333/08.



7. On or before March 29, 2012, the Dealer advertised a 2011 Chevrolet Cruze (stock # A137947) with a selling price of \$15,992. This vehicle was a prior daily rental vehicle. The advertisement did not include disclosure of prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics. On or about March 29, 2012, the Dealer sold this vehicle with a selling price of \$21,165 plus an additional \$504 in fees. As such, this advertisement did not feature an all inclusive price, contrary to section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
8. On or before March 30, 2012, the Dealer advertised a 2010 Dodge Avenger (stock # A164611) with a selling price of \$9,988. This vehicle was a prior daily rental vehicle. The advertisement did not include disclosure of prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics. On or about March 30, 2012, the Dealer sold this vehicle for \$10,248 plus an additional \$504 in fees. As such, this advertisement did not feature an all inclusive price, contrary to section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
9. On or before April 3, 2012, the Dealer advertised a 2010 Nissan Sentra (stock # A690122) with a selling price of \$12,492. On or about April 3, 2012, Desousa, on behalf of the Dealer sold this vehicle for \$12,350 plus an additional \$504 in fees. As such, this advertisement did not feature an all inclusive price, contrary to section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
10. On or before April 9, 2012, the Dealer advertised a 2011 Mazda 3 (stock # A406718) with a selling price of \$15,588. This vehicle was a prior daily rental vehicle. The advertisement did not include disclosure of prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics. On or about April 9, 2012, the Dealer sold this vehicle for \$19,988 plus an additional \$504 in fees. As such, this advertisement did not feature an all inclusive price, contrary to section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
11. On or before April 9, 2012, the Dealer advertised a 2008 Pontiac G5 (stock # A224332) with a selling price of \$9,588. On or about April 9, 2012, the Dealer sold this vehicle for \$14,184 plus an additional \$504 in fees. As such, this advertisement did not feature an all inclusive price, contrary to section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.
12. On or before April 10, 2012 the Dealer advertised a 2011 Chevrolet Impala (stock # A100693) with a selling price of \$14,492. This vehicle was a prior daily rental vehicle. The advertisement did not include disclosure of prior daily rental use, contrary to section 36(5) of Regulation 333/08 as well as section 4 and 9 of the Code of Ethics. On or about April 10, 2012, Desousa, on behalf of the Dealer sold this vehicle for \$14,588 plus an additional \$504 in fees. As such, this advertisement did not feature an all inclusive price, contrary to section 36(7) of Regulation 333/08 as well as sections 4 and 9 of the Code of Ethics.



By failing to comply with the following regulations under the *Motor Vehicle Dealers Act, 2002*:

Advertising

36. (1) A registered motor vehicle dealer to whom this section applies shall ensure that any advertisement placed by the dealer complies with this section. O. Reg. 333/08, s. 36 (1).

(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. O. Reg. 333/08, s. 36 (5).

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.

It is thereby agreed that the Dealer, Foss and Desousa 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 \$12,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Jorge Desousa agrees to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.



3. Andrew Foss agrees to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
4. 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 so pursuant to the Act.
5. The Dealer agrees to ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.
6. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* 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, Desousa and Foss 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 agrees to pay a fine in the amount of \$12,000 within 90 days of the date of the Discipline Committee Order. The fine is payable to the Ontario Motor Vehicle Industry Council.
2. Jorge Desousa agrees to complete the OMVIC certification course, within 90 days of the date of the Discipline Committee Order. The Dealer will incur all costs associated with this.
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5. The Dealer agrees to ensure that all future advertising is in compliance with *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.



6. The Dealer agrees to comply with the *Motor Vehicle Dealers Act, 2002* and Standards of Business Practice, as may be amended from time to time.

Ontario Motor Vehicle Industry Council
Discipline Committee

A handwritten signature in cursive script, reading "C. Poultney", positioned above a horizontal line.

Catherine Poultney, Chair