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STATE OF CALIFORNIA  
NEW MOTOR VEHICLE BOARD

In the Matter of the Appeal of )  
 )  
Wm. L. MORRIS-- MOORPARK, )  
A Corporation, )  
 )  
Appellant, ) Appeal No. A-72-76  
 )  
vs. )  
 ) FILED: January 26, 1977  
DEPARTMENT OF MOTOR VEHICLES )  
OF THE STATE OF CALIFORNIA, )  
 )  
Respondent. )  
\_\_\_\_\_ )

Time and Place of Hearing:

December 14, 1976, 9:30 a.m.  
5855 W. Century Boulevard  
Los Angeles, CA 90045

For Appellant:

Joseph P. D. Kern, Esq.  
533A Sespe Avenue  
Fillmore, CA 93015

For Respondent:

Alan Mateer, Chief Counsel  
Department of Motor Vehicles  
By: Benjamin F. Bucceri, Jr.  
Staff Counsel

FINAL ORDER

William L. Morris - Moorpark ("Morris"), a corporation licensed as a new motor vehicle dealer, was found by the hearing officer (Administrative Law Judge) to have placed advertisements in

violation of the terms of Vehicle Code section 11713.1(a)<sup>1/</sup> in "approximately" 25 instances. The Department of Motor Vehicles ("Department") adopted that finding as well as the recommendation that Morris' license be suspended for five days. In accordance with the recommendation, execution of the order was suspended for a probationary period of one year.<sup>2/</sup>

The finding of fact upon which the discipline imposed by the Department is predicated is in its entirety as follows:

"Between October 1, 1974 and April 1, 1975 respondent [Morris] caused certain advertisements for approximately 25 vehicles to be published in the Enterprise Sun and News, Simi Valley, California, News Chronicle, Thousand Oaks, California and the Ventura County Penny Saver Town Crier, Simi Valley, California, without identifying such vehicles by their complete vehicle identification numbers or license numbers."

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1. "It shall be unlawful and a violation of this code for the holder of any dealer's license issued under this article to do any of the following:

(a) To advertise any specific vehicle for sale without identifying such vehicle by either its vehicle identification number or license number."

All references are to the Vehicle Code.

2. Charles A. Ericksen, Chief Deputy Director, acted in lieu of Director Herman Sillas in this matter.

Neither the finding, nor the Department's position in this appeal, can be understood without a chronological exposition of the procedural and substantive background of this case.

The accusation, filed on October 9, 1975 charged that Morris had violated section 11713.1(a) between October 1, 1974 and April 1, 1975 by running advertisements ". . .without advertising [the] vehicles by their complete vehicle identification numbers or license number." (Emphasis added.) At the hearing, held on March 3, 1976, evidence was introduced which established that in the time period in question Morris had identified some vehicles only by the "production portion" of the vehicle identification number (VIN) rather than by the complete VIN. The Department's summary of the essentially undisputed facts is contained in its brief and is set forth below:

"From approximately June 20, 1974, until approximately October of that year Appellant's [Morris'] advertising complied with the provisions of Vehicle Code Section 11713.1(a) because the vehicles were advertised with the full and complete vehicle identification number, that is, with the portion of the VIN number designating the make, model, body style and point of origin along with the production series.

[Transcript references omitted.] However, in approximately October of 1974 Appellant began to advertise vehicles only by using the production series of the vehicle identification number, that is, that portion of the vehicle identification number distinguishing that vehicle from every other vehicle of like make, model, body style and point of origin.

"On April 9, 1975, Roth met with Morris and Flury (Appellant's General Manager), to discuss the advertisements which are the subject of the current Accusation. At that time Mr. Morris made some reference to errors by the newspapers in advertisements of those vehicles. Investigator Roth then talked to

Sharon Morrissette at the Enterprise in Simi Valley. Morrissette had informed Roth that the ads were published just as they were referred to the Enterprise by the dealership. At the time of the April 1975 meeting Flury told Roth that he considered the numbers appearing in the advertisements to be the identification numbers on those vehicles. Flury admitted that the full vehicle identification number was not specified in some of the advertisements, and that the I.D. number that was set forth in the ads was, according to Flury, the complete vehicle identification number.

"Mr. Flury stated to Investigator Roth that the reason that the six digit production portion of the serial number was used was because he had run out of room in the ads to put the complete vehicle identification number in, and he felt that the last six digits were in fact the serial number of those vehicles."

It is conceded that The Department of Motor Vehicle Dealer Handbook ("Handbook"), published by the Department in 1972 and reissued in 1975, contained the following information:

"Section 432.01. Identity of Vehicle. Any specific vehicle advertised for sale by a dealer shall be identified by either its vehicle identification number or license number so that a prospective purchaser may recognize it as the vehicle advertised for sale. (Comment: It is acceptable to use the production portion of the vehicle identification number only when the vehicle is also described by year, make and model.)"

The Department's counsel explained at the hearing that the parenthetical "Comment" is not indicative either of the Compliance or Legal Division's interpretation of the regulation.

On March 19, 1976, after the conclusion of the hearing, the Department's counsel addressed the following letter to the Administrative Law Judge:

"Dear Judge Gallagher:

I have just been informed that the Division of Compliance of the Department of Motor Vehicles is formulating a new regulation which would, in effect, be supportive of respondent's position in the above-entitled matter. This proposed regulation will enable a dealer to advertise a specific vehicle by the use of the production series of the vehicle identification number, along with a description of the vehicle by year, make, model, and body style. In view of this development, complainant declines to submit written argument on this issue, and instead wishes that the matter be submitted at this time. However, it should be pointed out that the vehicles advertised without the full production series of numbers which were specified at the hearing still provide a ground for license discipline pursuant to the Vehicle Code.

Therefore, complainant recommends that a probationary period be imposed upon respondent's dealers license for those violations.

Very truly yours,

BENJAMIN F. BUCCERI, JR.  
Legal Counsel"

The letter of March 19 was received as Exhibit 4 and forms a part of the record. <sup>3/</sup>

The Department's position in this appeal is as follows:

First, it contends that notwithstanding information contained in the Handbook, and the contemplated change in the regulations, Morris was required to list the "complete" VIN.

Second, the Department argues that the finding entered by the Administrative Law Judge implicitly supports the conclusion

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3. Both parties were afforded the opportunity following the hearing to submit briefs. Morris apparently declined to do so and Exhibit 4 was treated as the Department's request to submit the matter without a brief.

that Morris authorized advertisements where the identification was deficient even by the standard contained in section 432.01 of the Handbook and the comment thereto.

Section 11713.1(a) does not require a listing of the "complete" VIN. The obvious reason the legislature chose to rely alternatively on the VIN or the license numbers is expressed in section 432.01 of the Handbook: use of these designations enables the purchaser to identify a vehicle as the one advertised. However, there is no evidence before us that a vehicle can be identified only by use of a "complete" VIN; on the contrary, the Department concedes that the VIN's production portion, when coupled with year, make, model, and body style sufficiently identifies a vehicle. This concession is eminently reasonable and constitutes a sound construction of Section 11713.1(a). Accordingly, the Department's contention, and the finding, that Morris violated the law by not using the "complete" VIN is contrary to applicable law (Section 11713.1(a)), the Department's own regulations (Section 432.01) and the evidence; and the decision would therefore have to be reversed for this reason alone. (Sections 3054(b) and (d).)

The Department, however, also contends that Morris fell short of even the Handbooks' standard in several instances. The Department's position is stated to its best advantage in its opening brief:

"Even a cursory examination of the evidence shows that there were hundreds of advertised vehicles. 4/ Therefore, it is reasonable to infer, in the light of Exhibit 4, that the Judge's determination of the existence of violations for only 25 of these vehicles must have been for a reason other than that those 25 vehicles were advertised only with the production portion. That is, with respect to the 25 vehicles, advertisements for those vehicles were in violation because: (1) not even the full production portion of the I.D. Number was used [referring to an Exhibit], or (2) no identification was used whatsoever, or (3) there was no verbal descriptions of the cars' year, make, model and type. In light of this, a 5 day suspension stayed upon 1 year's probation is not only justified, but lenient." (Emphasis added.)

Findings must rest on the evidence of record. (Vehicle Code § 3054(d).) The state of the record of this or any disciplinary proceedings is most unsatisfactory when, as here, the Department itself is forced to conjecture that there "must have been" evidence which supports the finding. Accordingly, we decline, as we must (Section 3054(d)), to affirm a decision where the finding upon which discipline is predicated is not supported by the evidence. 5/

The Department could have avoided its present predicament if it had moved to clarify, and make more specific, the finding upon which its decision rests. It may be that an examination of the record with such an objective in mind would have persuaded it that

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4. The Department concedes that approximately 500 advertisements were examined and found to comply with the standard approved by this opinion and already adopted by the Department.

5. At oral argument, counsel for the Department assured us that the offending advertisements "are there." Yet such assurances, advanced in good faith, are not enough. We cannot fulfill our statutory responsibility of an independent review of the Department's orders if we base our conclusions on the Department's assurances, and nothing more, that the facts upon which discipline is predicated are to be found somewhere in the record. In any event, our review of the record has disclosed only one advertisement without any VIN, complete or partial.

the prosecution of a dealer for (assertedly) 25 advertisements which (arguably) fell short of the statutory standard, when there was no suggestion of actual confusion or intent to deceive,<sup>6/</sup> is not required by the public or any other interest or policy. Such a conclusion would have been fortified by Morris' lengthy and spotless record as a dealer and by the Department's change of course, as exemplified by Exhibit 4, in the midstream of this prosecution.

The decision of the Department is reversed.

By /s/ Thomas Kallay  
THOMAS KALLAY, MEMBER

We concur:

/s/ JOHN B. OAKLEY

/s/ JOHN B. VANDENBERG

/s/ ELVIRA A. REED

/s/ JOHN DAVID BARNES

/s/ MELECIO H. JACABAN

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6. Evidence of confusion and intent to deceive is not required to establish a violation of Section 11713.1(a). The complete absence thereof, however, when added to a record such as the one before us is normally a factor in deciding whether a prosecution should be instituted or, if already instituted, maintained throughout the course of an administrative appeal.