

December 2, 2021

Administrative Review – 21-09-008

Served via email:

### Administrative Penalty

SUPREME AUTO SALES 2008 LTD.  
o/a SUPREME AUTO  
c/o REGISTERED OFFICE  
426 MERIDIAN ROAD NE  
CALGARY, AB T2A 2N6

Attention: Ali Sadden

Re: **Supreme Auto Sales 2008 Ltd. operating as Supreme Auto**  
**AMVIC Business Licence No. B1025853**

As the Director of Fair Trading (as delegated)(the "Director"), I am writing to you pursuant to Section 158.1(1) of the *Consumer Protection Act* ("CPA") to provide you with written notice of the Administrative Penalty issued under that section.

### Facts

The evidence before me in relation to this matter consists of the material contained in an Alberta Motor Vehicle Industry Council ("AMVIC") investigations department application report (the "Application Report") prepared by the investigator and the senior manager of investigations. A copy of the Application Report is attached as Schedule "A" to this letter. I have taken into consideration the information exchanged during an administrative review held via teleconference call on Oct. 19, 2021. Supreme Auto Sales 2008 Ltd. operating as Supreme Auto provided written representations via email on Nov. 30, 2021 (attached as Schedule "B"), in response to the Proposed Administrative Penalty, which I have also taken into consideration.

### ***Licencee Status***

Supreme Auto Sales 2008 Ltd. operating as Supreme Auto (the "Supplier") holds an AMVIC business licence and carries on the business activities of used sales, wholesale and agent or broker in the Province of Alberta.

### ***History***

The Supplier has been in business for approximately 13 to 14 years and currently employs two salespeople including the sole director, Mr. Ali Sadden.

As a result of an administrative review held on Sept. 8, 2020, the Director imposed conditions on the Supplier's business licence for a 12 month period. The Supplier acknowledged and agreed to these

conditions on Sept. 19, 2020. The Supplier agreed to remain in full compliance with all laws and regulations relating to the automotive industry not limited to the CPA and Automotive Business Regulations ("ABR"). One of the conditions outlined in the conditional letter specifically outlined Section 6(4)(a) of the CPA and stated *"The Supplier will ensure that they do not say or do anything that might reasonably mislead or deceive a consumer..."*.

### ***Summary of Investigation***

#### Case File 21-04-554

1. In April 2020, AMVIC received a complaint alleging that a consumer had been misled about the condition of a vehicle that was purchased. The consumer ("AG") entered into an agreement with the Supplier on March 24, 2020 to purchase a 2015 Ford Lariat F-150 (the "Lariat").
2. According to AG, during the test drive of the vehicle she commented to the salesperson that the heated seats did not work but was assured by the salesperson that they did work.
3. AG was made aware that the Lariat was a rebuilt status vehicle and had previous claims made against it prior to entering into the purchase agreement. However, AG alleged she was not provided a copy of the Mechanical Fitness Assessment ("MFA") or Carfax when she purchased the Lariat and had to ask for it at a later date.
4. During the course of the investigation, the investigator identified two different bills of sale. One that was provided to AG that mentioned the rebuilt status of the Lariat and a second bill of sale ("BOS") that was provided to the finance company which failed to disclose the rebuilt status. The second BOS was provided to the investigator directly by the finance company and not by the Supplier despite requests to do so. Further, the BOS utilized in this transaction is not compliant with legislative requirements as it does not include the delivery date the vehicle was delivered to the consumer.
5. The AMVIC investigator spoke to the finance company who provided the consumer financing to purchase the Lariat. The finance company advised the AMVIC investigator via email dated Sept. 1, 2021, that they do not finance rebuilt vehicles and the Supplier should be aware of this from their newsletters and from when their representatives conduct site visits with businesses.
6. AG was not aware the Supplier would be submitting a different BOS to the finance company that would not indicate the rebuilt status of the Lariat.
7. Four days after purchase, the Lariat's check engine light came on and it was identified by AG that the heated seats were not working. According to AG she attempted to get ahold of the Supplier multiple times unsuccessfully. AG arranged to take the Lariat to a third party repair facility ("NF") on March 30, 2020 as the Service Engine Soon ("SES") light was on. NF identified safety concerns including the evaporator assembly failing for the SES light, the battery being low on voltage, the rear seat belt retractor not retracting and a leak from the brake vacuum pump among other maintenance items. It is to be noted that the battery, brake vacuum and seat belts all had been found to be compliant by the technician who completed the MFA on the Lariat which is dated Dec. 31, 2020.



8. On April 15, 2021 the Supplier agreed to reverse the deal with AG and the Lariat was returned to the Supplier. AG was responsible for paying the invoice at NF in the amount of \$1,489.82 (\$1,729.61 minus a refund for \$239.79 from NF for pre-paid parts that were ordered but not needed because the Lariat was returned to the Supplier).
9. On Sept. 1, 2021, the Lariat was noted to be advertised for sale on the Supplier's website. Based on the evidence obtained during the AMVIC investigation the mileage currently listed on the advertisement of the Lariat cannot be accurate. The odometer reading listed on a number of invoices shows a higher number of kilometres than the current advertisement states. The website advertisement also fails to mention that the truck is of a rebuilt status as required by Section 11(2)(b) and 11(2)(c) of the ABR. During the administrative review, the AMVIC investigator indicated the advertisement continues to be in violation of the legislation as of the date of the administrative review. On Feb. 10, 2017 AMVIC's industry standards department completed an inspection on the Supplier and sent the Supplier a summary of their findings on Feb. 17, 2017. On page four of the findings letter it states, *"A reminder that the Rebuilt status of vehicles need to be disclosed in the advertisements."*
10. During the administrative review, the Supplier indicated they have taken steps to improve their BOS. The Supplier disagreed that AG not was provided with a copy of the MFA or the Carfax prior to the purchase of the Lariat. The BOS indicates both were provided and the consumer signed acknowledging receipt of both reports. In addition, the Supplier advised they did have communication with AG shortly after purchase and were not avoiding her. The Supplier acknowledged the delivery date of the vehicle was not indicated on the BOS and on a go forward basis will endeavor to ensure this is indicated on their BOS to be compliant with the legislation.
11. The Supplier asserts that when the Lariat was returned they had to put money into the truck from damage that AG created while the Lariat was in her possession including a cracked windshield, the brakes pulsating, the alignment was off, the vehicle required to be detailed and the heated seats were functioning intermittently. The Supplier provided some invoices to the investigator in relation to some work that was completed on the Lariat after it was returned by AG.
12. With respect to the advertising concern, Mr. Sadden advised that his business employs a third party advertising company and all advertisements are uniformly advertised. This company also manages the Supplier's website. Mr. Sadden indicated he cannot change the information in the description as he does not have control over the advertisements posted. He further stated lead generating companies can take their advertisements without consent and re-post them on different websites as the industry has evolved and changed and these companies are paid on a referral base.
13. The Supplier indicated they did not furnish a second BOS when requested by the investigator as Mr. Sadden could not locate one in their sales jacket. The Supplier could not recall what the agreement was for this vehicle with the finance company. In this particular instance, the Lariat had been subject to a theft not a collision and Mr. Sadden advised to his knowledge there is an unwritten rule with finance companies that there is no need to notify them when the vehicle was previously involved in a theft resulting in a rebuilt status, as opposed to a collision resulting in a rebuilt status.
14. Although Mr. Sadden was not involved in the interaction with AG during the consumer transaction and even though AG stated she told her salesperson the heated seats were not working during the test

drive, Mr. Sadden does not believe the consumer was misled. The Supplier believes if the heated seats were not working it would have been listed on the BOS as a comment or as a condition to be repaired.

15. On Nov. 30, 2021, the Supplier provided their written representations in response to the Proposed Administrative Penalty (see Schedule "B").

## Legislation

### **Automotive Business Regulation**

#### **Advertising**

##### **Section 11**

- (2) A business operator must ensure that every advertisement for an automotive business that promotes the use or purchase of goods or services
- (b) identifies vehicles that have been used as taxi cabs, police cars or emergency vehicles or that have been recertified when the previous use or condition of the vehicles is known to the business operator,
  - (c) does not misrepresent, through statements or omissions, a vehicle's mechanical or structural condition,

#### **Bill of sale**

##### **Section 31.2**

- (1) A business operator engaged in automotive sales must use a bill of sale that includes the following:
- (i) the date that the vehicle is to be delivered to the consumer;

### **Consumer Protection Act**

#### **Unfair practices**

##### **Section 6**

- (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:
- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;

#### **Vicarious liability**

##### **Section 166**

For the purposes of this Act, an act or omission by an employee or agent of a person is deemed also to be an act or omission of the person if the act or omission occurred

- (a) in the course of the employee's employment with the person, or
- (b) in the course of the agent's exercising the powers or performing the duties on behalf of the person under their agency relationship.

### **Administrative Penalties**

#### **Notice of administrative penalty**

##### **Section 158.1**

- (1) If the Director is of the opinion that a person
- (a) has contravened a provision of this Act or the regulations, or



- (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations,
- the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.
- (2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.
- (3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.
- (4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.
- (5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

**Right to make representations****Section 158.2**

Before imposing an administrative penalty in an amount of \$500 or more, the Director shall

- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
- (b) provide the person with an opportunity to make representations to the Director.

**Analysis – Did the Supplier fail to comply with the provisions of the CPA and ABR?**

The material which formed the Application Report was the result of one consumer complaint received by AMVIC regarding a consumer allegedly being misled regarding the condition of the vehicle, AMVIC case file 21-04-554. The subsequent investigation identified other breaches of the legislation pertaining to a deficiency with respect to the BOS and advertising concerns.

**A. Mislead and Deceive (CPA Section 6(4)(a))**

On a balance of probabilities, the Director found that the Supplier misled AG that the heated seats of the Lariat were functioning when they in fact were not contravening Section 6(4)(a) of the CPA. The concern regarding the heated seats was noted by AG during the test drive of the Lariat and passed on to the salesperson who assured AG they were functioning. Four days after the purchase, AG noted the deficiency again and arranged to take the Lariat to NF. The Supplier advised the AMVIC investigator that the heated seats were functioning intermittently after AG returned the vehicle on April 15, 2021 and provided a receipt for a heated seat module dated April 21, 2021 to have it fixed.

The paperwork reflecting this consumer transaction does not indicate any issues with regards to the functionality of the heated seats. However, during the test drive the consumer indicated she believed the heated seats were not functioning. The salesperson did not take any reasonable steps at the time of sale to check the functionality of the heated seats or address the concern of the consumer. The salesperson advised they were working and no notes were included on the BOS identifying the issue. After the Supplier took back the Lariat, a technician found the heated seats had potential wiring issues and were only working intermittently, which in the opinion of the Director, confirms there was issues with the functionality of the heated seats at the time of the sale.

The Director finds it particularly concerning that the Supplier is completing multiple bills of sale that are different to the material facts: one to the consumer stating the vehicle is of rebuilt status and a different BOS to the finance company that fails to mention the rebuilt status. The finance company advised the AMVIC investigator that they do not finance rebuilt status vehicles and the Supplier should be aware of this. Unbeknownst to the consumer, the Supplier failed to supply true and accurate records to the finance company potentially placing the consumer in financial jeopardy by failing to disclose the true nature of the vehicle being purchased.

The Supplier's words and actions reasonably misled the consumer therefore, the Supplier did contravene Section 6(4)(a) of the CPA.

#### B. Non-compliant BOS (ABR Section 31.2(l)(i))

The BOS involved in this consumer transaction does not include the delivery date to the consumer. During the administrative review, the Supplier acknowledged this deficiency and discussed with the Director the option to include a delivery date in their notes section on their BOS to become compliant. By failing to include the delivery date the consumer received the vehicle, the Supplier has contravened Section 31.2(l)(i) of the ABR.

On Oct. 31, 2018, new legislation was put into effect with regards to BOS requirements. Between Sept. 25, 2018 and Nov. 6, 2018 AMVIC sent out a number of industry bulletins, updated the AMVIC website with information regarding the new legislation, sent multiple bulletins to inform the industry and the public regarding the changes, updated social media regularly, sent out a special edition of the IMPACT newsletter to the industry regarding the legislative changes and all AMVIC employees had an email signature attached to staff emails regarding the legislative changes. These are just a few of the initiatives that AMVIC took to ensure all licensees were advised of the legislative changes that were coming into effect on Oct. 31, 2018 regarding the BOS.

#### C. Non-compliant Advertising (ABR Sections 11(2)(b) & 11(2)(c))

On Sept. 1, 2021, the Lariat was noted to be advertised for sale on the Supplier's website. Based on the documentation obtained during the AMVIC investigation the mileage listed in the current advertisement of the Lariat cannot be accurate as the invoices for the various repairs completed indicate a higher number of kilometres than the advertisement. Further, the advertisement does not disclose the rebuilt status of the Lariat. The AMVIC investigator checked the advertisement before the administrative review and advised the advertisement continues to be in violation of the legislation. During the administrative review, the Supplier confirmed the advertisement was still on their website. On Feb. 10, 2017 AMVIC's industry



standards department completed an inspection on the Supplier and sent the Supplier a summary of their findings on Feb. 17, 2017. On page four of the findings letter it states, *"A reminder that the Rebuilt status of vehicles need to be disclosed in the advertisements."* During the administrative review, the Supplier advised it employs an advertising company for all its advertising and for their website and they have no control over the advertisements and cannot make changes. In their written representations of Nov. 30, 2021 (see Schedule "B"), the Supplier indicated they have brought their advertising into compliance however, no evidence was provided by the Supplier to support this statement. As per Section 166 of the CPA, the Supplier is vicariously liable for a third party agent exercising its powers or duties on behalf of the Supplier. The website advertisement failed to mention that the truck is of a rebuilt status and therefore the Supplier has contravened Sections 11(2)(b) and 11(2)(c) of the ABR.

#### D. Other Considerations

AMVIC follows a progressive enforcement model when enforcing consumer protection laws. Administrative action may include a written warning, condition(s) added to the licence, charges under the legislation, Administrative Penalty, Director's Order, Undertaking, and suspension or cancellation of a licence as outlined in Section 127 of the CPA. When determining an appropriate enforcement measure, the Director will consider several factors before making his decision to ensure what level of enforcement is appropriate to the contravention.

At the administrative review, the Supplier took responsibility for some of the legislative breaches and stated a willingness to work with the regulator and improve upon their business practices. On average, the Supplier sells approximately 10 to 15 motor vehicles on a monthly basis. Although the Supplier is not inclined to have to pay an Administrative Penalty, they asked the Director for leniency through the difficult financial times caused by the COVID-19 pandemic. The Director considered the representations from the Supplier regarding their position on an appropriate Administrative Penalty. An Administrative Penalty must be sufficient in that the Supplier and other Suppliers do not view the amount of the penalty as a cost of doing business that is preferable to following the law.

The Director also considered whether entering into a voluntary Undertaking with the Supplier would be appropriate however given the continued non-compliance, the Director is not satisfied that the Supplier has ceased the contraventions.

The Supplier was subject to a previous administrative action just over one year ago in which the Director imposed conditions on the Supplier's business licence for a 12 month period. This previous administrative action resulted from a consumer complaint where the Supplier contravened the same or similar sections of the legislation.

The aggravating factors in this matter include the recent continued non-compliance despite the education previously provided to the Supplier, recent administrative enforcement action imposing conditions on the Supplier's business licence and the Supplier's inability to comply with the rather straight forward requirements of the legislation.

The mitigating factors in the matter include the Supplier's willingness to work with the consumer and reverse the deal and the Supplier's cooperation during the course of the investigation.

There exists an onus on the Supplier to do their due diligence and ensure they are complying with the law. As stated in the Supreme Court of British Columbia in *Windmill Auto Sales & Detailing Ltd. v. Registrar of Motor Dealers*, 2014 BCSC 903 addressed the issue of the onus and responsibility the Supplier has when operating within regulated industry. The court at paragraph 59 stated:

*In my view, it is incumbent upon a party that operates within a regulated industry to develop at least a basic understanding of the regulatory regime, including its obligations under the regime, as well as the obligations, and the authority, of the regulator.*

This Administrative Penalty is taking into account the number and seriousness of the breaches of the legislation found during the investigation, the Supplier's recent history with AMVIC which cannot be ignored as well as the cost of investigating the Supplier's activities.

### **Action**

In accordance with Section 158.1(a) of the CPA and based on the above facts, I am requiring that Supreme Auto Sales 2008 Ltd. operating as Supreme Auto pay an Administrative Penalty of **\$1,000**. This is based on my opinion that Supreme Auto Sales 2008 Ltd. operating as Supreme Auto contravened Sections 11(2)(b), 11(2)(c) and 31.2(1)(i) of the ABR and Sections 6(4)(a) of the CPA.

Taking into consideration all the representations made by the Supplier and the representations made by AMVIC's investigation department, the amount of the Administrative Penalty is **\$1,000**.

The amount takes into consideration the factors outlined in Section 2 of the Administrative Penalties (*Consumer Protection Act*) Regulation, AR 135/2013 and the principles referenced in *R v Cotton Felts Ltd., (1982), 2 C.C.C (3d) 287 (Ont. C.A.)* as being applicable to fines levied under regulatory legislation related to public welfare including consumer protection legislation. In particular the Director took into account:

1. The seriousness of the contraventions or failure to comply;
2. The previous history of enforcement and non-compliance;
3. The degree of willfulness or negligence in the contravention or failure to comply;
4. The maximum penalty under Section 158.1(3) of the CPA of \$100,000 and;
5. The deterrent effect of the penalty.

### **The amount of the Administrative Penalty is \$1,000.**

Pursuant to Section 3 of the Administrative Penalties (*Consumer Protection Act*) Regulation, you are required to submit payment within **thirty (30) days** of the date of service of this notice. Failure to pay the Administrative Penalty will result in a review of the licence status. Payment may be made payable to the "**Government of Alberta**" and sent to AMVIC at:

Suite 303, 9945 – 50th Street  
Edmonton, AB T6A 0L4.



If payment has not been received in this time period, the Notice may be filed in the Court of Queen's Bench and enforced as a judgement of that Court pursuant to Section 158.4 of the CPA and further disciplinary action will be considered.

Section 179 of the CPA allows a person who has been served a notice of administrative penalty to appeal the penalty. To appeal the penalty, the person must serve the Minister of Service Alberta

Minister of Service Alberta  
103 Legislature Building  
10800 - 97 Avenue NW  
Edmonton, AB  
Canada T5K 2B6

with a notice of appeal within **thirty (30) days** after receiving the notice of Administrative Penalty. The appeal notice must contain your name, your address for service, details of the decision being appealed and your reasons for appealing.

Pursuant to Section 180(4) of the CPA, service of a notice of appeal operates to stay the Administrative Penalty until the appeal board renders its decision on the appeal or the appeal is withdrawn.

Under Section 4 of the Administrative Penalties (*Consumer Protection Act*) Regulation, the fee for appealing an Administrative Penalty is the lesser of \$1,000 or half the amount of the penalty. As such, the fee for an appeal of this Administrative Penalty, should you choose to file one, would be \$500.

Yours truly,

"original signed by"

Alberta Motor Vehicle Industry Council (AMVIC)  
Gerald Gervais, Registrar  
Director of Fair Trading (as Delegated)

GG/kl  
Encl.

cc: [REDACTED] Senior Manager of Investigations, AMVIC