

DISCIPLINE COMMITTEE
OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

PANEL:	Mr. Robert MacKay, Chair	Public Member
	Mr. Chris Pinelli	Registrant
	Mr. Stuart Sherman	Registrant

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

BETWEEN :

Appearances¹:

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002)	Mr. Husein Panju for the Registrar
- and -)	
STREETXTREME AUTOMOTIVE Inc.)	Self represented
and)	
PATRICK HOANG)	
)	
)	
)	Date of Hearing: November 1, 2022

¹ Also present at the hearing were independent legal counsel Mr. Edward Marrocco, Ms. Andrea Korth for OMVIC, and Hearing Administrator Ms. Tessa Lee who recorded the hearing.

Findings:

Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery and Patrick Hoang have breached the following:

Section 9(3) of the Code of Ethics, Regulation 332/08

Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery has breached the following:

Section 4(1) of the Code of Ethics, Regulation 332/08

Patrick Hoang has breached the following:

Section 6(1) of the Code of Ethics, Regulation 332/08

DECISION AND REASONS

Introduction

This was a hearing before a panel of the Discipline Committee (the "Panel") of the Ontario Motor Vehicle Industry Council ("OMVIC") pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, S.O. 2002, c. 30, Schedule B ("MVDA"). OMVIC has a mandate to maintain a fair and informed marketplace by protecting the rights of consumers, enhancing industry professionalism, and ensuring fair, honest, and open competition for registered motor vehicle dealers.

The half day hearing was convened November 1, 2022 (the "Hearing"). The Hearing was held virtually using video conferencing with the consent of the parties.

The Allegations

The allegations against Streetxtreme Automotive Inc, and Patrick Hoang were set out in a Notice of Complaint, dated March 29, 2022. The Notice of Complaint was entered as Exhibit 1 at the Hearing. The Notice of Complaint is attached to these reasons as Appendix "A".

At the outset of the Hearing, counsel for the Registrar, Mr. Panju, advised that discussions with the responding parties had resulted in an agreement which they intended to present.

Withdrawal of Certain Allegations

In the course of presenting the parties' joint position, Mr. Panju advised the Panel that the Registrar would be seeking leave to withdraw some of the allegations and particulars in the Notice of Complaint namely paragraphs 16 through 22. The parties confirmed that the Panel was only being requested to make findings with respect to remaining allegations in relation to Streetxtreme Automotive Inc. and Mr. Patrick Hoang (collectively the "Registrants").

Plea of the Registrants

The Registrants admitted the allegations contained in paragraphs 15 and 23 of the Notices of Complaint. A plea inquiry was conducted by the Panel Chair. At the conclusion of that process, the Panel was satisfied that the admissions of the Registrants were voluntary, informed, and unequivocal.

Agreed Statement of Facts

The Agreed Statement of Facts and Joint Submission on Penalty² which had been signed by the Registrants on October 12, 2022, and the Registrar on October 13, 2022, titled "Agreed Statement of Facts and Penalty", was separated into two documents. Pages 1 through 4, which dealt with the Agreed Statement of Facts was entered as Exhibit 2 and is attached to these reasons as Appendix "B". Pages 5 and 6 which dealt with the Joint Submission on Penalty was entered as Exhibit 3 and is attached to these reasons as Appendix "C". During the course of the submissions that followed, Mr. Panju and the Registrants, took the Panel through Exhibit 2. It was determined that a

² Prior to the beginning of the Hearing, the exhibit was delivered to the Panel members electronically in the interests of hearing economy and on consent of the parties.

revision to the allegations contained in the Agreed Statement of Fact would be useful. Once that was complete, the Chair confirmed with all the parties that the revision was acceptable, the revised Agreed Statement of Facts is what makes up Exhibit 2. The Panel then sought and received advice from its Independent Legal Counsel before rising to deliberate on the merits portion of the Hearing.

Decision of the Panel

Upon reconvening, the Panel stated it was satisfied that the admissions made by the Registrants were supported by the revised Agreed Statement of facts.

The Panel made findings against Streetxtreme Automotive Inc. and Mr. Hoang in relation to the admitted portions of the Notice of Complaint. Specifically, the Panel found that the admission of the Dealer, Streetxtreme Automotive Inc. that "As a person in charge of the Dealer, Hoang failed to ensure that the Dealer conducted its business in compliance with the Code of Ethics."³ And the admission of Mr. Hoang that "The dollar value of the subject vehicle featured was inaccurate."⁴

In reaching its decision the Panel relied exclusively on the evidence presented at the Hearing as contained in the revised Agreed Statement of Facts at Exhibit 2. The Panel found the facts contained in Exhibit 2 provided a sufficient foundation for the findings requested by the parties. Therefore, the Panel made the following findings:

Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery and Patrick Hoang each have breached:

Section 9(3) of the Code of Ethics, Ontario Regulation 332/08

Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery has breached:

Section 4(1) of the Code of Ethics, Ontario Regulation 332/08

³ Exhibit 2, Agreed Statement of Facts. Paragraph 12.

⁴ Exhibit 2, Agreed Statement of Facts. Paragraph 11.

Patrick Hoang has breached:

Section 6(1) of the Code of Ethics, Ontario Regulation 332/08

Penalty

The Joint Submission on Penalty contained in Exhibit 3 invited the Panel to make an order on penalty that:

1. The Dealer agrees to pay a fine in the amount of \$2,500 no later than **January 31, 2023**
2. Hoang agrees to complete to pay a fine in the amount of \$500 no later than **January 31, 2023.**
3. Hoang agrees to successfully complete the MVDA Key Elements course no later than **January 31, 2023**
4. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **January 31, 2023**
5. The Dealer and Hoang agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Mr. Panju, on behalf of the Registrar, stated that the proposed penalty contained orders that would serve to be a general and specific deterrent while remediating the Registrants. To assist the Panel on a possible type of penalty for this type of breach the Registrar provided the Panel with the Monaco Motorcars Inc. decision dates April 21, 2022.

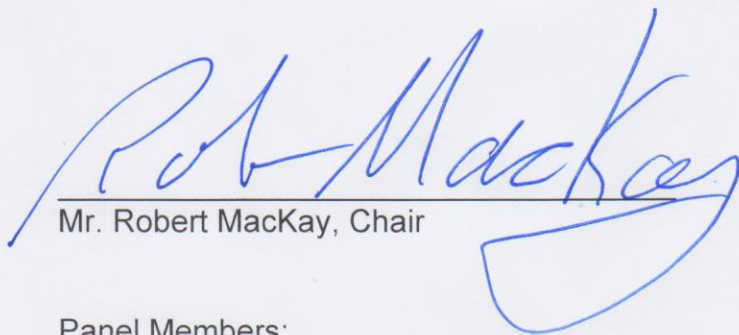
Penalty Decision and Reasons

The Panel was satisfied that the parties had come to a fair and equitable resolution, having carefully balanced the issues of protection of the public interest, remediation / rehabilitation of the Registrants and their conduct, and serving as a general deterrent to the profession. The Panel noted that the Registrants saved all the parties the delay and expense that would have been incurred in deciding the allegations at a contested hearing. The Registrants have one prior discipline history for an unrelated violation.

The Panel therefore made the following orders, consistent with the Joint Submission on Penalty, before the conclusion of the hearing:

1. The Dealer agrees to pay a fine in the amount of \$2,500 no later than **January 31, 2023**
2. Hoang agrees to complete to pay a fine in the amount of \$500 no later than **January 31, 2023.**
3. Hoang agrees to successfully complete the MVDA Key Elements course no later than **January 31, 2023**
4. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than **January 31, 2023**
5. The Dealer and Hoang agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

I, Robert MacKay, sign this decision and reasons for the decision as Chair of this discipline Panel and on behalf of the members of the discipline Panel as listed below.



Mr. Robert MacKay, Chair

Date: November 17, 2022

Panel Members:

Mr. Robert MacKay
Mr. Chris Pinelli
Mr. Stuart Sherman

Appendix "A"
IN THE MATTER OF

THE VIOLATION OF THE CODE OF ETHICS and Standards of Business Practice

TO: Streetxtreme Automotive Inc.
o/a Streetxtreme Auto Gallery
5829 Highway 7
Markham, ON L3P1A5

AND TO: Patrick Hoang
28 Saffron Street
Markham, ON L6E1 L7

NOTICE OF COMPLAINT

Take notice that pursuant to section 17 of the *Motor Vehicle Dealers Act, 2002*, (the "Act"), the Registrar is issuing a Notice of Complaint against STREETXTREME AUTOMOTIVE INC. o/a STREETXTREME AUTO GALLERY and PATRICK HOANG for violating the Code of Ethics, as set out in Ontario Regulation 332/08.

REASONS

Section 17 of the Act establishes a Discipline Committee and empowers the Discipline Committee to deal with breaches of the Code of Ethics. The Code of Ethics applies to all Registrants registered under the *Motor Vehicle Dealers Act, 2002*. Any Registrants that disregard or violate the Code of Ethics are subject to having their conduct reviewed by the Discipline Committee. The Code of Ethics requires that all Registrants conduct business with Integrity, Accountability, Compliance, Respect and Professionalism as well as ensuring that minimum requirements are met when it comes to Disclosure in Marketing and the Disclosure of Information in Contracts of Sale and Lease.

STREETXTREME AUTOMOTIVE INC. o/a STREETXTREME AUTO GALLERY and PATRICK HOANG have violated one or more of the principles of the Code of Ethics and should therefore have their conduct reviewed by the Discipline Committee.

PARTICULARS

The reasons for this notice are:

Background:

1. Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery (the "Dealer") was first registered as a motor vehicle dealer in around December 2013. Patrick Hoang ("Hoang") was first registered as a motor vehicle salesperson in around December 2013.
2. At all material times, Hoang has been the Dealer's sole director and officer. Hoang has also been the Dealer's general manager and the person in charge of its day-to-day operations.
3. On or about March 21, 2012, Hoang successfully completed the Automotive Certification course (the "Course"). The Code of Ethics, Ontario Regulation 332/08 is included in the Course syllabus.
4. On or about November 29, 2013, Hoang executed terms and conditions of registration on behalf of the Dealer.
5. As per condition 6, the Dealer agreed to comply with the Code of Ethics, Ontario Regulation 332/08.
6. As per condition 27, the Dealer agreed that should any information come to light which the Registrar deems to be a material fact concerning a vehicle the Dealer has sold, whether or not the Dealer agrees with the disclosure, the Dealer will comply with all reasonable requests made by the Registrar to provide compensation to the purchaser.

Prior Discipline Committee Order:

7. On or about December 21, 2020, the Registrar issued a Notice of Complaint against the Dealer and Hoang.
8. On or about July 16, 2021, the Discipline Committee issued an order against the Dealer, pursuant to a negotiated resolution of the above referenced Notice of Complaint.

9. As per condition 3 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Dealer's Terms and Conditions:

10. On or about December 30, 2020, the Registrar issued a proposal to impose conditions on the Dealer's registration. The proposal was carried out and the conditions came into effect.
11. As per condition 1, the Dealer is obligated to comply with the Code of Ethics, Ontario Regulation 332/08.
12. As per condition 11, the Dealer is obligated to disclose all material facts about the vehicles it sells.
13. As per condition 13, the Dealer is obligated to comply with all requests made by the Registrar regarding disclosure obligations. The Dealer is further obligated to provide compensation to a purchaser where the Registrar considers the Dealer has failed to disclose a material fact.

Current contravention of the Code of Ethics:

14. On or before October 15, 2021, the Dealer advertised a 2021 Tesla Model Y (VIN 5YJYGDEE6MF195944) for sale by the Dealer. The vehicle was advertised as having a number of features, including, but not limited to, "long range AWD with auto pilot (\$10,600)". The enhanced auto pilot feature ("FSD") for this vehicle is valued at \$10,600.
15. The vehicle was not equipped with the FSD, as implied in the advertisement. This is misleading, contrary to sections 4 and 9 of the Code of Ethics, Ontario Regulation 332/08.
16. On or about October 15, 2021, Consumer A responded to the subject advertisement.
17. On or about October 16, 2021, Hoang sold Consumer A the vehicle on behalf of the Dealer.
18. Hoang, on behalf of the Dealer, failed to disclose to Consumer A prior to purchase the fact that the vehicle's features were not as advertised. This is contrary to section 42(25) of Ontario Regulation 333/08, condition 11 of the Dealer's conditions of registration, as well as sections 4 and 9 of the Code of Ethics, Ontario 332/08.
19. Shortly after taking delivery, Consumer A realized the vehicle was not equipped with the FSD. Consumer A contacted the Dealer and requested compensation for the missing feature. The Dealer refused Consumer A's requests for compensation.

20. On or about November 1, 2021, Consumer A contacted OMVIC about her purchase.
21. OMVIC was unable to find a resolution to the matter that was satisfactory to both parties.
22. The Dealer refused to compensate Consumer A for the missing FSD. This is contrary to condition 13 of the Dealer's conditions of registration, as well as section 9 of the Code of Ethics, Ontario Regulation 332/08.

Hoang's contravention of the Code of Ethics:

23. As person in charge of the Dealer, Hoang failed to ensure that the Dealer conducted its business in compliance with the Code of Ethics, and thus personally contravening sections 6 and 9 of the Code of Ethics.

If you disagree with the allegations contained in this notice, please provide a written Statement of Response to the particulars set out above, to OMVIC within 15 days of service of this notice.

The Discipline Committee can order one or more of the following:

- Dismiss the file
- Order a fine up to \$25,000, per party
- Require the registrant to take further educational courses
- If the Registrant is a motor vehicle dealer, require the motor vehicle dealer to fund educational courses for salespersons employed by the dealer or to arrange and fund such educational courses
- Award Costs

Decisions of the Discipline Committee will be published. Hearings before the Discipline Committee will be recorded.

APPLICATION OF THE STATUTORY POWERS PROCEDURE ACT

The *Statutory Powers Procedure Act*, R.S.O 1990 c.s.22, applies to the hearing to be held by this Discipline Committee. A party to a proceeding may be represented by counsel or an agent.

The Registrar states that the good character, propriety of conduct or competence of the Dealer shall be an issue in any hearing before the Discipline Committee and OMVIC has, therefore, furnished herein reasonable information of allegations with respect thereto.

The Rules of Practice of the Discipline Committee will apply, copy attached. A Notice of Hearing and Book of Disclosure will be provided in accordance with the Rules of Practice of the Discipline Committee.

Take note that as per the attached Rules of Practice, failure to attend a hearing before the Discipline Committee will result in a decision being determined *ex parte*, in your absence.

APPLICATION OF THE RULES OF PRACTICE OF THE DISCIPLINE COMMITTEE

This is to serve notice that the Registrar shall make application for its cost pursuant to Rule 13 of the Rules of Practice

FURTHER PARTICULARS/SUPPLEMENTAL NOTICE

The Registrar may provide further and other particulars in respect of any other matters herein or in respect to any other matter including further particulars of violations of the Code of Ethics, Standards of Business Practice.

DATED at Toronto, this day of , 2022

Thaya Gengatharan

Deputy Registrar,

Motor Vehicle Dealers Act, 2002

Appendix "B"

DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT, 2002, S.O. 2002, c.30, Sch. B

BETWEEN:

REGISTRAR, MOTOR VEHICLE DEALERS ACT, 2002

-and-

STREETXTREME AUTOMOTIVE INC o/a
STREETXTREME AUTO GALLERY

-and-

PATRICK HOANG

AGREED STATEMENT OF FACTS AND PENALTY

Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery and Patrick Hoang have breached the following:

Section 9(3) of the Code of Ethics, Regulation 332/08

Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery has breached the following:

Section 4(1) of the Code of Ethics, Regulation 332/08

Patrick Hoang has breached the following:

Section 6(1) of the Code of Ethics, Regulation 332/08

SUMMARY OF AGREEMENT

The parties to this proceeding agree that:

1. Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery (the "Dealer") was first registered as a motor vehicle dealer in around December 2013. Patrick Hoang ("Hoang") was first registered as a motor vehicle salesperson in around December 2013.
2. At all material times, Hoang has been the Dealer's sole director and officer. Hoang has also been the Dealer's general manager and the person in charge of its day-to-day operations.

3. On or about March 21, 2012, Hoang successfully completed the Automotive Certification course (the "Course"). The Code of Ethics, Ontario Regulation 332/08 is included in the Course syllabus.
4. On or about November 29, 2013, Hoang executed terms and conditions of registration on behalf of the Dealer.
5. As per condition 6, the Dealer agreed to comply with the Code of Ethics, Ontario Regulation 332/08.

Prior Discipline Committee Order:

6. On or about December 21, 2020, the Registrar issued a Notice of Complaint against the Dealer and Hoang.
7. On or about July 16, 2021, the Discipline Committee issued an order against the Dealer, pursuant to a negotiated resolution of the above referenced Notice of Complaint.
8. As per condition 3 of the Order, the Dealer agreed to comply with the Act and Standards of Business Practice, as may be amended from time to time.

Dealer's Terms and Conditions:

9. On or about December 30, 2020, the Registrar issued a proposal to impose conditions on the Dealer's registration. The proposal was carried out and the conditions came into effect.
10. As per condition 1, the Dealer is obligated to comply with the Code of Ethics, Ontario Regulation 332/08.

Current contravention of the Code of Ethics:

11. On or before October 15, 2021, the Dealer advertised a 2021 Tesla Model Y (VIN 5YJYGDEE6MF195944) for sale by the Dealer. The vehicle was advertised as having a number of features, including, but not limited to, "long range AWD with auto pilot (\$10,600)". The dollar value of the subject vehicle feature was inaccurate. This is misleading, contrary to sections 4(1) and 9(3) of the Code of Ethics, Ontario Regulation 332/08.

Hoang's contravention of the Code of Ethics:

12. As person in charge of the Dealer, Hoang failed to ensure that the Dealer conducted its business in compliance with the Code of Ethics, and thus personally contravening sections 6 and 9 of the Code of Ethics.

It is thereby agreed that the Dealer and Hoang have breached the following sections of the Code of Ethics as set out in Regulation 332/08:

Professionalism

9(3) A registrant shall use the registrant's best efforts to prevent error, misrepresentation, fraud or any unethical practice in respect of a trade in a motor vehicle.

It is thereby agreed that the Dealer has breached the following section of the Code of Ethics, as set out in Regulation 332/08:

Disclosure and Marketing

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, and programs and prices connected with those vehicles.

It is thereby agreed Hoang has breached the following sections of the Code of Ethics as set out in Regulation 332/08:

Accountability

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.

By signature below, I acknowledge that I have read, understand, and agree with the facts outlined herein and that I exercised my right to be represented by Counsel or agent in this matter.

DATED AT _____ THIS _____ DAY OF _____, 2022.

(please print)

(signature)

I have the authority to bind the corporation:
Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery

By signature below, I acknowledge that I have read, understand, and agree with the facts outlined herein and that I exercised my right to be represented by Counsel or agent in this matter.

DATED AT _____ THIS _____ DAY OF _____, 2022.

Patrick Hoang (signature)

By signature below the Registrar agrees, acknowledges, and understands that the facts of this matter are as set out by this Agreed Statement of Facts.

DATED AT _____ THIS _____ DAY OF _____, 2022.

Maureen Harquail
Registrar, Motor Vehicle Dealers Act, 2002

Appendix "C"

DISCIPLINE COMMITTEE OF THE ONTARIO MOTOR VEHICLE INDUSTRY COUNCIL

IN THE MATTER OF A DISCIPLINE HEARING HELD PURSUANT TO THE MOTOR
VEHICLE DEALERS ACT, 2002, S.O. 2002, c.30, Sch. B

BETWEEN:

REGISTRAR, *MOTOR VEHICLE DEALERS ACT, 2002*

-and-

STREETXTREME AUTOMOTIVE INC o/a
STREETXTREME AUTO GALLERY

-and-

PATRICK HOANG

JOINT SUBMISSION ON PENALTY:

6. The Dealer agrees to pay a fine in the amount of \$2,500 no later than January 31, 2023
7. Hoang agrees to complete to pay a fine in the amount of \$500 no later than January 31, 2023.
8. Hoang agrees to successfully complete the MVDA Key Elements course no later than January 31, 2023
9. The Dealer agrees to ensure all sales staff employed by the Dealer have reviewed the August 2017 OMVIC advertising webinar. The Dealer will provide OMVIC with written confirmation from said staff that this has occurred, no later than January 31, 2023
10. The Dealer and Hoang agree to comply with the Act and Standards of Business Practice, as may be amended from time to time.

(please print)

(signature)

I have the authority to bind the corporation:
Streetxtreme Automotive Inc. o/a Streetxtreme Auto Gallery

Patrick Hoang (signature)

Maureen Harquail
Registrar, Motor Vehicle Dealers Act, 2002