

Quebec company sentenced to pay 2 million dollars in punitive damages

Quebec's *Consumer Protection Act*¹ (the "Act") deserves a closer look by companies doing business in Quebec. An increasing number of consumers who are either dissatisfied with commercials or advertisements or feel misled thereby are now launching class action suits on the grounds of infringement of this socially significant public policy statute.

During this period of economic crisis, businesses run a genuine risk when they succumb to the temptation of setting up attractive promotional programs aimed at stimulating sales. The penalties provided for in the Act can be very stiff: a Quebec retail firm was recently sentenced to pay such a penalty. Brault et Martineau ("Brault") was sentenced by the Quebec Court of Appeal on February 26, 2010² to pay 2 million dollars in punitive damages for having engaged in illegal practices as defined in the Act. Interestingly, this order was made without any concomitant order for compensatory damages. This award makes Quebec a potential paradise for consumer deception class action suits.

To recap the facts of this case, Brault, a well established furniture retailer, for a number of years promoted the availability of purchase financing by equal instalment or deferred payment financing plans. The promotional material did not disclose that Brault was not the organisation offering these financing arrangements.

commercials and advertisements in breach of statutory requirements...

The particular focus of the class action suit launched against Brault were the statements in its commercials and advertisements regarding the availability of credit without the attendant detail regarding the specific terms of that credit as required by the Act and its Regulations³.

¹ *Consumer Protection Act*, R.S.Q., c. P-40.1.

² *Brault et Martineau Inc. vs. Riendeau*, [2010] J.Q. No. 1448, (CA).

³ See sections 216, 219, 228, 232 et 247 of the Act. See also the *Regulation respecting the application of the Consumer Protection Act*, R.R.Q., 1981, c. P-40.1, r. 1, sec. 80, sec. 85.

Section 247 of the Act is clearly provides that:

“No person may make use of advertising regarding the terms and conditions of credit, except the credit rate, unless such advertising includes the particulars prescribed by regulation.”

And 232 of the Act reads as follows:

“No merchant, manufacturer or advertiser may, by any means whatever, put greater emphasis, in an advertisement, on a premium than on the goods or services offered.”

The Court of Appeal held that in its advertisement, Brault particularly sought to direct consumers’ attention to the fact that they could obtain credit to pay for their purchases: *“Buy now - Pay in one year”*. Brault was therefore advertising credit availability but without complying with the rules in the Act and the Regulation. The Court held that if Brault wished to advertise any particular term of credit, it had to include all of the particulars thereof⁴ to make it possible for consumers to make an informed decision regarding the financing plan it was advertising.

The Court of Appeal emphasized that Brault was not entitled to plead in defense of its actions that the financing was being provided by Visa Desjardins or by any other corporation and thus to claim that its advertisement was not advertising credit.

Accordingly, the highest court in Quebec held that Brault’s advertisement did not meet the requirements of the Act.

punitive damages awarded without compensatory damages...

Honourable Justice Duval Hesler of the Court of Appeal considered what the appropriate remedy should be for contravening the Act, and more particularly, for engaging in prohibited practices.

The Court of Appeal confirmed that in matters involving prohibited business or trade practices, punitive damages could be awarded in the absence of an award of compensatory damages. This finding is different from the provisions of the Quebec Charter⁵, which expressly provides for the awarding of punitive damages *in addition to* compensatory damages.

The Court therefore granted the petitioners in the Brault case 2 million dollars in punitive damages with no concomitant award of compensatory damages. The Court also ordered collective recovery of the award and the implementation of a distribution scheme.

⁴ See section 85 RLPC.

⁵ *Charter of human rights and freedoms*, R.S.Q. Chapter C-12, sec. 49

sound advice ...

Quebec's *Consumer Protection Act* has very wide application, affecting not only merchants, but also manufacturers and advertisers. Companies engaged in advertising to consumers in Quebec are well-advised to seek legal advice from Quebec consumer law specialists regarding the content of their promotional materials.

Furthermore, because Quebec is a virtual spawning ground for class action litigation, companies are strongly counselled to seek expert advice immediately upon being threatened with any consumer court action, even an action before the Small Claims Court, as such suits often herald possible class action suits. McMillan's consumer law experts can assist companies in developing an effective strategy in anticipation of, and to reduce the possibility of, a class action suit being launched against the company. They can also help with managing the impact of any such action on the company's public image.

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a cautionary note

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted. © McMillan LLP 2009.