Québec consumer law and the automotive industry: keep your hands on the wheel!

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Lavery recently attended the Strictly Automotive Seminar organised by the Defence Research Institute in Detroit, Michigan. The seminar addressed legal issues which the automotive industry is currently facing worldwide. This newsletter provides an overview of the legal principles vehicle manufacturers and dealers should consider when carrying on business in Québec.

All transactions involving consumers in Québec are governed by the *Consumer Protection Act* ("CPA")[1]. The CPA covers several aspects of the activities of automotive manufacturers and dealers, including but not limited to warranties, credit contracts, advertising and price posting.

Warranties

The CPA sets out several legal warranties in favour of consumers which dealers, manufacturers and intermediaries are required to provide.[2] The two main legal warranties are: (1) the warranty of fitness for purpose[3] (goods must be fit for the purpose for which goods of that kind are ordinarily used) and (2) the warranty of durability[4] (goods must be durable in normal use for a reasonable length of time, having regard to their price, the terms of the contract and the conditions of their use).[5]

These warranties result in a lower burden of proof being imposed on consumers. Once a consumer has shown a deficit of use or lack of durability, the dealer or manufacturer has the burden of proving that there is no latent defect, that the defect results from improper use by the consumer, that the defect was known by the consumer at the time of purchase or that the lack of durability is the result of normal wear and tear.

Contracts of credit

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The form and content of contracts of credit (as well as statements of account) are strictly regulated by the CPA.[6] The main obligations of merchants who enter into credit contracts are: (1) the obligation to fully disclose credit charges and the credit rate; (2) the prohibition against charging fees not disclosed in the contract; and (3) the proper computation of the credit rate.

The CPA also governs advertising about credit, imposing strict disclosure obligations.[7] To ensure compliance with the duties prescribed by the CPA, dealers and manufacturers must carefully follow these requirements. Over the years, the credit industry has had to defend several class actions, many of them involving the disclosure requirements for credit contracts.[8]

The Québec Legislature has been planning to modernize the CPA provisions about credit contracts for many years. The Québec National Assembly is currently working on Bill 134, An *Act mainly to modernize rules relating to consumer credit and to regulate debt settlement service contracts, high-cost credit contracts and loyalty programs*[9]. Bill 134 contains measures which, if adopted, will allow consumers to take action against credit providers and rely on legal and conventional warranties against them.[10] At the time of writing, Bill 134 is undergoing final "section by section" reading and therefore, should be passed shortly. We will discuss these new measures in an upcoming bulletin.

Advertising

A complete chapter of the CPA covers business practices, including advertising.[11] These practices include: the prohibition against making false or misleading representations to consumers generally[12] or regarding the benefits or other attributes ascribed to goods or services,[13] the merchant's identity,[14] the rebates or premiums offered,[15] the nature of the transaction[16] and the price of the goods or services.[17] Failing to mention an important fact in commercial advertising or a representation is also prohibited.[18] These prohibited business practices are similar to what constitutes deceptive advertising practices in common law jurisdictions.

The standard of analysis for the determination of deceptive practices is applied from the perspective of the average, inexperienced and credulous consumer.[19] The CPA provides that such use of a prohibited practice creates a presumption that, had the consumer been aware of such practice, he would not have agreed to the contract or would not have paid such a high price.[20]

In the landmark decision *Richard v. Time,* the Supreme Court of Canada held that the use of a prohibited practice such as false or misleading advertising creates an absolute presumption of prejudice in favour of the consumer if (1) the merchant or manufacturer failed to fulfil an obligation imposed by the CPA; (2) the consumer saw the representation that constituted a prohibited practice; (3) this resulted in the formation, amendment or performance of a consumer contract; and (4) a sufficient nexus exists between the content of the representation and the goods or services covered by the contract. Where these four requirements are met, the court can conclude that "the prohibited practice is deemed to have had a fraudulent effect on the consumer". In such a case, the contract so formed, amended or performed constitutes, in itself, a prejudice suffered by the consumer".[21]

There is a strong relationship between the CPA provisions governing warranties and those governing prohibited business practices. Although both address commercial representations, they provide for different remedies. For example, failing to disclose a latent defect known to a manufacturer can trigger liability based on not only legal warranty but also the failure to mention an important fact in a representation made to a consumer.

Advertising regarding autonomous vehicles will be an interesting issue within the next few years.

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Before launching an advertising campaign for this type of vehicle, section 220 a) of the CPA will have to be considered.

This provision prohibits a manufacturer from falsely, by any means whatsoever, ascribing certain special advantages to goods or services in advertising. Additionally, because of the novelty effect of these vehicles, merchants will have to be very careful not to fail to mention an important fact regarding their use.[22]

Prices

The CPA contains strict rules regarding price posting and labelling. It provides that no merchant may claim fees from a consumer unless the amount thereof is clearly indicated in the contract.[23] This includes credit contracts and leasing contracts. As a corollary to the provisions regarding the display of price, the CPA states that merchants may not charge a higher price for goods or services than advertised.[24] The courts have been relatively strict in applying these provisions, leaving little room for error in prices and ruling that an error in price is not an excuse.[25] Merchants must be very diligent in advertising or disclosing prices and fees, as several class action proceedings in Québec have been based on the failure to disclose fees or other charges in contracts.[26]

Conclusion

Manufacturers and dealers in the automotive industry must pay particular attention to the provisions of the CPA. If the manufacturer or dealer fails to fulfil an obligation imposed on him by the CPA, the consumer may demand, without prejudice to other remedies, the specific performance of the obligation (for instance, the repair of the product, the replacement of defective parts or to carry out maintenance work), that his obligations be reduced or that the contract be rescinded, set aside or annulled. The consumer may also claim punitive damages.[27] Furthermore, the CPA contains penal provisions which could vary to a fine of $2,000 to $100,000.[28] The range of legal issues facing players in the automotive industry is growing exponentially and showing no sign of slowing down. Indeed, a substantial number of cases and class actions have been instituted against businesses involved in this sector notably for product liability and prohibited business practices. The best way to prevent such claims is to take preventive action to avoid non–compliance with the CPA.

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1. *Consumer Protection Act,* P-40.1.
2. Sections 53 & 54 CPA.
3. Section 37 CPA.
4. Section 38 CPA.
5. The CPA also provides a warranty for the availability of parts and repair services: Section 39 CPA.
6. Division III, Sections 66-150 CPA.
7. Sections 243, 244 & 247 CPA.
8. For example: *Dion v. Compagnie de services de financement automobile Primus Canada*, 2015 QCCA 333; *Pilon v. Mazda Canada inc*., 2013 QCCS 748; *Thibert v. Hyundai Motor America*, 2013 QCCS 744, *Bourgeois v. Ford du Canada ltée*, 2013 QCCS 745; *Contat v. General Motors du Canada ltée*, 2009 QCCA 1699.
9. National Assembly, Bill 134.
10. Section 103.1 suggested by Section 19 of Bill 134.
11. Title II, Sections 215-253 CPA.
12. Section 219 CPA
13. Sections 220 & 221 CPA.

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14. Section 242 CPA
15. Sections 231 & 232 CPA.
16. Section 229 CPA.
17. Section 224 c) CPA.
18. Section 228 CPA.
19. Section 218-219 CPA; See also *Richard c. Time Inc.* 2012 CSC 8.
20. Section 253 CPA
21. *Richard c. Time Inc. et at* 2012 CSC 8, par. 124.
22. Section 228 CPA
23. Section 12 CPA.
24. Section 224 c) CPA
25. See *Boutin v. 9151-8100 Québec inc. (St-Basile Toyota)*, 2016 QCCQ 5282; *Ouellet v. Charest Expert inc*., 2010 QCCQ 11313; *Vermeulen v. Marine Nor Sport inc.*, 2015 QCCQ 926; *Comtois v. Vacances Sunwing inc*., 2015 QCCQ 2684.
26. *Bank of Montreal v. Marcotte*, [2014] 2 SCR 725, 2014 SCC 55 (CanLII)*; Dion v. Compagnie de services de financement automobile Primus Canada*, 2015 QCCA 333; *Pilon v. Mazda Canada inc.*, 2013 QCCS 748; *Thibert v. Hyundai Motor America*, 2013 QCCS 744*; Bourgeois V. Ford du Canada ltée*, 2013 QCCS 745; *Contat v. General Motors du Canada ltée*, 2009 QCCA 1699.
27. Section 272 CPA.
28. Articles 277, 278 CPA.

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