

Publisher's Note

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Young & Fraser

Canadian Advertising & Marketing Law

This publication provides an in-depth examination of both the federal and provincial laws affecting advertising, packaging, pricing, promotion and distribution. Clear, detailed commentary is presented on such issues as labelling requirements, total price disclosure, advertising content restrictions and permitted promotions and contests. Specific products that are specially regulated receive individual attention including food and drugs, cosmetics, liquor and tobacco products and hazardous products.

This release features updates to the *Competition Act*, R.S.C. 1985, c. C-34 — Amended by S.C. 2018, c. 8, ss. 109-124 in Chapter 21 (Advertising, Marketing and Promotions). This release also includes the addition of the Advertising Standards Canada — Influencer Marketing Steering Committee Disclosure Guidelines, April 19, 2018 to Chapter 21 (Advertising, Marketing and Promotions - Guidelines). This release also includes updates to the *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 — Amended by 2017, c. 10, s. 61 (Sched. 2, item 2) in Chapter 31 (British Columbia — Consumer Protection/ Consumer Credit/Direct Marketing/Trade Practices). This release also features the addition of case law annotations under the *Business Practices and Consumer Protection Act* — Parts 1 (Definitions and Application) and 2

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(Unfair Practices) in Chapter 31 (British Columbia — Consumer Protection/Consumer Credit/Direct Marketing/Trade Practices).

Highlights

- ***Business Practices and Consumer Protection Act* — Case Law §2 — Application of this Act before the summary for *Bain v. Empire Life Insurance Co.*** — The plaintiff Summit sought judgment against the defendants pursuant to a commercial lease of a computer server to the defendants. The defendants agreed to make 36 monthly payments of \$556.10 inclusive of applicable taxes with an initial payment of \$622.83. Section 2(1) of the *Business Practices and Consumer Protection Act* states that only Parts 6 and 7 of the *Act* apply regardless of whether they involve a consumer. Part 6 defines limits on credit reporting while Part 7 relates to debt collection and, specifically, prohibited debt collection practices. The other Parts do not apply because this case did not involve a consumer transaction. The plaintiff does not finance consumer loans. Further, the Lease states that: “Customer shall only use the Equipment in connection with its business or in the carrying on of an enterprise and only for commercial, industrial, professional or handicraft purposes and shall not use the Equipment for any personal, family, household or farming purposes”. As a result, neither Part 6 nor Part 7 of the *Act* were applicable: *Summit Leasing Corp. v. Virtual Softnet Canada Inc.*, 2012 CarswellBC 3821, 2012 BCSC 1858, [2013] B.C.W.L.D. 697, [2013] B.C.W.L.D. 702, [2013] B.C.W.L.D. 735, 223 A.C.W.S. (3d) 525 (B.C.S.C.) [In Chambers]
- ***Business Practices and Consumer Protection Act* — Case Law §4 — Deceptive Acts or Practices** — The plaintiffs alleged that it was a deceptive act for the defendants to fail to state, or to state in ambiguous ways, the burn hazard their fireplaces posed. The non-disclosure of a material fact can ground a cause of action under s. 4(3)(b)(vi). However, the defendants submitted that the claim was bound to fail because the plaintiffs failed to plead material facts relating to reliance on the deceptive act or practice. They submitted that reliance is required to establish a breach of s. 4. In *Seidel v. Telus Communications Inc.*, 2016 BCSC 114 (B.C. S.C.), Justice Masuhara J. found that the reliance was not a required element to show a breach of ss. 4 and 5. As the representation here was in the nature of a failure to warn, there would be no need for an individual inquiry as to the deceptive nature of the representation where it is alleged that the product was dangerous and should not be used without an effective

barrier. It was not necessary for the plaintiffs to have pleaded reliance to establish a breach of ss. 4 and 5: *Cantlie v. Canadian Heating Products Inc.*, 2017 CarswellBC 459, 2017 BCSC 286, [2017] B.C.W.L.D. 1852, [2017] B.C.W.L.D. 1853, 276 A.C.W.S. (3d) 782 (B.C.S.C.).