

Franchising - Canada

Exclusivity provisions in dealership relationships

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The recent decision in *Automobile Cordiale Ltée v Daimler Chrysler Canada Inc* has shed some light on the application of the obligation of good faith and loyalty in respect of exclusivity provisions in dealership relationships. In this case the Superior Court of Quebec concluded that the supplier's failure to assist its dealer in protecting its exclusive territory against unfair competition from other dealers of the supplier was a breach of the supplier's duty of good faith and loyalty towards its dealer.

In this decision, Automobile Cordiale Ltd, a car dealership operating under the Jeep banner, instituted proceedings against its supplier, DaimlerChrysler Canada Inc, for damages resulting from DaimlerChrysler's conduct in tolerating three non-Jeep dealerships selling and servicing Jeep vehicles in its dealer's exclusive territory.

The Superior Court likened the dealership relationship to a franchise and cited extracts of the Quebec Court of Appeal's decision in the franchise case *Provigo Distribution v Supermarché ARG Inc* to determine that the dealership agreement included unwritten obligations that flowed from the nature of the contract, equity, usage or applicable laws. Despite the absence of any express provisions requiring DaimlerChrysler to prevent direct or indirect competition among its dealers, the court held that DaimlerChrysler had an implicit obligation to collaborate with its dealer or furnish the necessary tools with which to enforce the brand exclusivity that it had granted to its dealer. Accordingly, despite DaimlerChrysler's occasional letters and oral warnings to the three non-Jeep dealerships to cease competing with the dealer for Jeep vehicle sales and services in the dealer's territory, the Superior Court concluded that DaimlerChrysler was aware of the unauthorized sales and maintenance and had intentionally allowed the unauthorized dealerships to compete unfairly with its dealer. It appeared that the supplier's conduct was likely attributable to the fact that its dealer had declined to accept several offers to regroup its various brands under a single banner or relinquish its Jeep-only dealership, despite significant pressure from DaimlerChrysler.

The court held that DaimlerChrysler had breached its duty of loyalty and good faith towards its dealer by deliberately failing to take coercive measures to prevent the three non-Jeep dealerships from selling and servicing a significant number of Jeep vehicles in the dealer's exclusive territory. The court allowed the dealer's claim for damages in part, but rejected the dealer's claim for exemplary damages, indicating that deprivation of sales did not merit attribution of exemplary or punitive damages. The decision is currently under appeal.

Interestingly, in the Ontario decision of *Agribands Purina Canada Inc v Kasamekas*, rendered several days before *Automobile Cordiale*, the Superior Court of Justice interpreted the grant of a 'primary market area' in a dealership agreement as a grant of exclusivity in favour of the dealer. In addition, the Superior Court of Justice reprimanded the supplier for having deliberately undermined the dealer's exclusivity and also held the supplier liable for damages.

In light of the foregoing, it is important that a franchise agreement clearly stipulate, in no uncertain terms, whether exclusivity has been granted and each party's rights and obligations within an exclusive market, so as to create no doubt as to whether the franchisor intended to grant exclusivity. The courts in Canada seem quite willing to resolve any such doubt in favour of franchisees. Furthermore, if exclusive territorial rights are granted, the franchisor will have an implicit obligation to assist the franchisee in protecting its exclusive territory against unfair competition. Evidence of bad faith or deliberate conduct on the part of a franchisor to undermine the franchisee's exclusivity will lead to damages.

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