

DECISION OF THE DIRECTOR

In the Matter of: *Business Practices and Consumer Protection Act, SBC 2004, c. 2 & Prepaid Purchase Cards Regulation*

Respondent: La Vie Jewellers [a sole proprietorship registered to Son Hoang]

Case Number: 30326

Adjudicator: Robert Penkala

Date of Decision: March 6, 2020

INTRODUCTION

Consumer Protection BC is responsible for the administration and enforcement of the *Business Practices and Consumer Protection Act*. In that capacity, it applies provisions of the Act and the *Prepaid Purchase Cards Regulation* concerning “prepaid purchase cards” (“PPCs”; colloquially known as gift cards or gift certificates). It is authorized to issue remedial orders where businesses (suppliers) violate the Act and Regulation as they relate to certain prohibitions and requirements governing PPCs.

La Vie Jewellers (respondent, or La Vie) is a sole proprietorship registered by Son Hoang and operating from a retail location (Tillicum Centre) in Victoria BC. On February 3rd, 2020 a Consumer Protection BC inspector issued a Report arising from a consumer complaint against La Vie concerning a dispute about redemption of a PPC. The complaint involves a dispute about a \$200 gift card the complainant wished to apply to services provided by La Vie. According to the Report, in November 2019 La Vie (Mr Hoang, specifically) refused to accept the gift card, which the complainant’s family had purchased for her in March 2018.

The Report asserts that La Vie’s failure to honour the gift card involves the supplier’s expiration of a PPC, in violation of the Act. I note also that after investigation and attempted resolution by the inspector, the complaint remains unresolved. For the reasons that follow, I conclude that La Vie has violated the Act’s prohibition against expiration of PPCs and order restitution to the complainant for the unredeemed value of the gift card.

OPPORTUNITY TO BE HEARD

On February 5th I sent a letter to La Vie by registered mail, notifying Mr Hoang of a hearing of the

Report's allegations. The letter was "returned to sender", Canada Post indicating it was not deliverable due to the recipient's refusal. I sent a second version of the hearing notice by registered mail to La Vie on February 12th. The second letter also came back "returned to sender", with Canada Post again noting the recipient's refusal. To provide additional context regarding notice to the respondent about Consumer Protection BC's investigation of the complaint and commencement of the hearing, I mention the following:

- according to the Report, on January 16th and on January 24th the inspector contacted Mr Hoang by phone and outlined the issues in the complaint;
- on both occasions Mr Hoang evidently "yelled" at the inspector and stated that the gift card had a three-month expiration before hanging up the phone;
- on both dates the inspector made "several" further unsuccessful attempts to contact Mr Hoang by phone;
- on February 5th the manager of inspections for Consumer Protection BC served a copy of the Report on Mr Hoang personally at the business location, stating to him that the Report concerned the disputed "gift certificate";
- Mr Hoang advised the manager that "he had already dealt with" the complainant [I have found the information about delivery of the Report in Consumer Protection BC's complaint database, entered by the manager of inspections].

From the above circumstances I infer that only due to his refusal to engage with Consumer Protection BC and his wilful avoidance of notice has Mr Hoang not received formal notice of the hearing (meant to outline his right to respond to the matter). In fact, he has had an opportunity to respond but failed to avail himself of it. Although it is unusual to proceed in a hearing without delivery of formal notice of the substance of the allegations and of procedural matters, in this case it is only the respondent's repeated avoidance of attempts to inform him that stands in the way of a conventional "opportunity to be heard". Therefore, I do not find it unfair to adjudicate the matter in the Report without La Vie's response in the hearing. I must, in any case, impartially scrutinize the allegation and evidence before reaching any final conclusions.

ALLEGATIONS

The Report raises the following allegation:

The respondent breached section 56.2 (1) of the Act when it sold a prepaid purchase card with an expiry date.

RELEVANT LEGISLATION

The provisions of the Act applicable to the allegation are reproduced below:

Section 56.1

[...] "prepaid purchase card" means a card, written certificate or other voucher or device with a monetary value that is issued or sold to a person in exchange for the future supply of goods or services to a consumer, and includes a gift card and gift certificate [...]

Section 56.2

- (1) Except as may be provided by the regulations [...] a supplier must not issue or sell a prepaid purchase card that has an expiry date.
- (2) A prepaid purchase card that is
 - (a) issued or sold with an expiry date in contravention of subsection (1) is redeemable as if it had no expiry date, and
 - (b) issued or sold without an expiry date is valid until fully redeemed or replaced.

In addition, the following exemptions respecting PPC expiration, found in the Regulation, apply:

Section 2

Section 56.2 (1) of the Act does not apply to any of the following:

- (a) a prepaid purchase card that is issued or sold for a specific good or service;
- (b) a prepaid purchase card that is issued or sold for a charitable purpose;
- (c) a prepaid purchase card that is issued or sold
 - (i) for a marketing, advertising or promotional purpose, and
 - (ii) to a person who
 - (A) provides nothing of value in exchange for the card, or
 - (B) purchased the card for an amount less than its full monetary value.

EVIDENCE OF THE INSPECTOR

- BC Registry Services' summary for La Vie Jewellers discloses the owner of the sole proprietorship as Son Hoang
- the complainant, KL [privacy redaction], filed a statement with Consumer Protection BC in December 2019 in which she states that her husband purchased a \$200 "gift card" for La Vie in March 2018
- the complainant says she took rings to La Vie for resizing "only to be told they wouldn't accept gift cards past three months."
- the complainant later went back to the store with part of the Act printed and highlighted to demonstrate to the owner "laws [...] preventing him from expiring gift cards
- the owner insisted La Vie's gift cards "are only good for three months"
- the complainant seeks a refund of the cost for the ring resizing, to which she had intended to apply the \$200 gift card
- the complainant provided copies of the \$200 gift card dated March 23, 2018 and her payment receipt dated November 17, 2019 for the ring resizing in the amount of \$189.30
- the inspector sent a letter to La Vie in December 2019 explaining the nature of the complaint and requesting Mr Hoang to reply to the notice of complaint by January 8th
- the inspector's letter was tracked by Canada Post, and was received and signed for by La Vie on December 30th

EVIDENCE OF THE RESPONDENT

La Vie has not submitted evidence or written submissions in the hearing.

ANALYSIS

The Report characterizes the gift card at issue as a PPC. In considering the Act's definition of a PPC, I concur that the gift card is in this case "a card, written certificate or other voucher [...] with a monetary value that is issued or sold to a person in exchange for the future supply of goods or services to a consumer". As such, La Vie was prohibited from issuing the gift card (PPC) with an expiry date. Further, the exemptions to the prohibition against expiration stated in section 2 of the Regulation do not apply. That is, nothing suggests that the PPC was sold for a specific good or service, or for a charitable, marketing, or promotional purpose. The gift card appears to have been sold only in order to provide equivalent cash credit for future purchases of any goods or services offered generally by La Vie.

Section 56.2 of the Act prohibits sale and issuance of PPCs "having" expiration dates. It is not evident that the complainant's PPC "had" an expiration date in the sense of a printed disclosure of the date on the card. However, the evidence points to an unwritten policy later stated by La Vie to the effect that the card had expired three months after its purchase. In the latter sense the PPC can be said to have been issued, or fairly be presumed to have been issued, *with* an expiration date.

In addition, the effect of section 56.2 (2) of the Act is that any (non-exempt) PPC to which the prohibition against expiration applies cannot be expired whether it (impermissibly) states an expiration date or fails to state such a date. Section 56.2 (2) deems such cards to be valid, without limit, *until fully redeemed or replaced*. In this matter, the PPC therefore represents a value of \$200, or a lesser amount based on partial redemption, until the entire value is redeemed, essentially for as long as La Vie remains a supplier of goods and services.

I find that Mr Hoang's statement to the complainant in December 2019 that the PPC had expired three months after purchase demonstrates his intention to deem the card as *having* an expiration date. La Vie's conduct after issuance of the PPC proves on a balance of probability that despite not having put an expiration date on the PPC or disclosing the expiration date to the purchaser in another way, the PPC was in fact subject to expiration. Alternatively, if La Vie issued the PPC in March 2018 without a view to expiring it in three months, under sub-section (2) the card remains valid. Although the Report makes no specific allegation of a section 56.2 (2) breach, I find that only a technical matter. Had I not found a violation of section 56.2 (1) I would apply section 56.2 (2), because to do otherwise is inconsistent with the statutory scheme. Quite simply, Mr Hoang had no justification under the Act's PPC provisions for asserting La Vie's three month expiration policy so as to deny the complainant redemption of the gift card in December 2019.

CONCLUSION

For the reasons given above, I have concluded that La Vie violated section 56.2 (1) of the Act, as alleged in the Report. Section 155 of the Act authorizes me to order La Vie (i.e., Mr Hoang personally) to comply with the Act and to reimburse money received from the complainant's husband for the

unredeemed PPC at issue. I am also authorized to order La Vie to pay inspection costs related to the complaint investigation.

In the present circumstances, the money paid by the complainant's husband to La Vie for the value of the PPC was for the purpose of a gift to her. Her possession of the PPC and inability to redeem effectively deprived her of the value of the gift. As the recipient of the PPC, she is essentially in the shoes of the original purchaser. Due to the nature of the dispute I find that an order of restitution to the complainant is appropriate, though not the purchaser. (Given the context of the complaint, in particular Mr Hoang's conduct, I do not consider it sensible to now order La Vie to accept the complainant's redemption of the PPC.) The order, attached to this decision, stipulates:

- La Vie (Mr Hoang) is to reimburse KL [redacted] \$200 for the unredeemed, improperly expired PPC within 15 days of the date of service of the order;
- La Vie is to cease expiring any PPCs previously issued and not fully redeemed and to cease issuing such cards subject to expiration before full redemption; and
- La Vie must pay Consumer Protection BC's inspection costs in the amount of \$800.

Considered on March 6, 2020 in Burnaby, BC

original signed

Robert Penkala
Manager, Enforcement Hearings

Method of Service: registered mail