

THE COMPETITION TRIBUNAL

IN THE MATTER of the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

AND IN THE MATTER of a Consent Agreement pursuant to section 74.12 of the *Competition Act* with respect to certain deceptive marketing practices of the Respondent under paragraphs 74.01(1)(a) and 74.01(1)(b) of the *Competition Act*.

BETWEEN:

THE COMMISSIONER OF COMPETITION

COMPETITION TRIBUNAL TRIBUNAL DE LA CONCURRENCE REGISTERED / ENREGISTRÉ FILED / PRODUIT CT-2013-004 August 2, 2013 Jos LaRose for / pour REGISTRAR / REGISTRAIRE	
OTTAWA, ONT	# 1

Applicant

-and-

HYUNDAI AUTO CANADA CORP.

Respondent

CONSENT AGREEMENT

WHEREAS the Commissioner of Competition is responsible for the administration and enforcement of the *Competition Act*;

AND WHEREAS the Respondent is an indirect subsidiary of Hyundai Motor Company of Korea, a Korean company responsible for the global distribution of Hyundai motor vehicles;

AND WHEREAS the Respondent markets, distributes and sells Hyundai motor vehicles in Canada;

AND WHEREAS since at least the launch of its 2011 marketing campaign, the Respondent promoted the Affected Vehicles to the public by making representations regarding the fuel consumption of the Affected Vehicles (the “Representations”);

AND WHEREAS the Respondent based the Representations entirely on testing conducted by Hyundai Motor Company at its testing facility in Korea;

AND WHEREAS the Respondent acknowledges that it remains responsible for any representations it makes in Canada for the purpose of promoting the supply or use of a

product or for the purpose of promoting any business interest, regardless of any involvement by a foreign entity;

AND WHEREAS the Respondent made the Representations to the public through brochures, television and newspaper advertisements, its website, and labels on the Affected Vehicles;

AND WHEREAS on November 2, 2012, the Respondent took it upon itself to advise the Commissioner that there had been procedural errors at the testing facility in Korea, such that the Representations incorrectly represented the fuel consumption ratings of the Affected Vehicles;

AND WHEREAS on November 2, 2012, the Respondent took it upon itself to issue a joint press release with Kia Canada Inc., notifying Canadians, including Affected Customers, of the incorrect fuel consumption ratings;

AND WHEREAS in the press release, the Respondent announced a comprehensive Restitution Program for Affected Customers, to reimburse the additional fuel costs to consumers associated with the difference in fuel consumption ratings;

AND WHEREAS the Restitution Program specifically provides for:

- (a) compensating Affected Customers for the cost associated with the difference between the Product's advertised and corrected fuel consumption ratings for the entire period the Product is or was owned, calculated according to the average fuel price in the Affected Customer's geographic area and the actual number of kilometres driven by the Affected Customer since the purchase of the Product;
- (b) payment of an additional amount equal to fifteen (15) percent of the amount in paragraph (a) as an acknowledgment of the inconvenience caused to Affected Customers; and
- (c) issuing the compensation in the form of personalized prepaid credit cards that shall be issued each time an Affected Customer makes a request for as long as an Affected Customer owns the Affected Vehicle.

AND WHEREAS the Respondent advised the Commissioner that Affected Customers would be eligible to register for the Restitution Program for a period of one year commencing November 2, 2012;

AND WHEREAS the Respondent advised the Commissioner that the Respondent has removed all of the Representations from the Canadian marketplace, and has audited all of its dealers to ensure that the Representations are no longer being made to the public through its dealer network;

AND WHEREAS the Respondent advised the Commissioner that, as part of its Restitution Program, the Respondent made and is continuing to make, extensive efforts to notify Affected Customers to ensure the greatest amount of participation in its Restitution Program by:

- (a) contacting the Affected Customers via regular mail and e-mail to notify them of the Restitution Program;
- (b) creating a dedicated program website (www.hyundaifuelconsumption.ca) to provide notice and information to Affected Customers for the Restitution Program;
- (c) adding a prominent “slider” link entitled “Hyundai Fuel Reimbursement Program” on its main web page (www.hyundaicanada.com) providing notice and access to its Restitution Program website;
- (d) creating a designated toll-free number to allow Affected Customers the opportunity to speak with representatives of the Respondent on issues pertaining to the Restitution Program, and by increasing the number of representatives available to take calls;
- (e) undertaking to send follow-up letters and e-mails to all unregistered and reasonably ascertainable Affected Customers on at least a quarterly basis until the expiration of the Enrolment Period; and
- (f) purchasing internet search engine advertising to generate traffic to the Respondent’s web pages as described in (b) and (c).

AND WHEREAS the Commissioner has examined the matter and concluded that the Representations were false or misleading in a material respect, contrary to paragraph 74.01(1)(a) of the Act;

AND WHEREAS the Commissioner has also concluded that the Representations were performance claims that were made to the public and not based on adequate and proper testing, contrary to paragraph 74.01(1)(b) of the Act;

AND WHEREAS the Respondent has advised the Commissioner that it was unaware that the Representations were false or misleading, and not based on adequate and proper testing at the time they were made;

AND WHEREAS in light of the Respondent’s press release and notification to the Affected Customers, the Commissioner has elected not to require additional public notice in this matter;

AND WHEREAS in light of the Restitution Program, the Commissioner has elected not to require additional restitution in this matter;

AND WHEREAS in light of the Respondent's disclosure to the Commissioner of the reviewable conduct, as well as the scope of the Restitution Program, including the additional fifteen (15) percent payment referred to above, the Commissioner has elected not to require the payment of an administrative monetary penalty;

AND WHEREAS for the purposes only of the Agreement, including execution, registration, enforcement, variation or rescission, the Respondent does not contest the Commissioner's conclusions, but does not accept the Commissioner's allegations and nothing in the Agreement shall be taken as an admission or acceptance by the Respondent thereof nor shall it derogate from any rights or defences of the Respondent against third parties;

AND WHEREAS the Parties are satisfied that this matter can be resolved with the registration of the Agreement that, upon registration, shall have the same force and effect as an order of the Competition Tribunal;

AND WHEREAS it is understood by the Parties that the Agreement has been reached based on the information provided and representations made by the Respondent, and the Commissioner has relied on the information and representations believing them to be truthful, accurate and complete as at the time of execution;

NOW THEREFORE in order to resolve the Commissioner's concerns, the Parties hereby agree as follows:

I. INTERPRETATION

1. For the purpose of the Agreement, the following definitions shall apply:
 - (a) "**Acknowledgement**" means the document attached hereto as Schedule "A", which provides a summary of the Respondent's obligations under the Agreement and requires all current and future Respondent Personnel to acknowledge that they have understood the Respondent's obligation to comply with paragraphs 74.01(1)(a) and (b) of the *Act*;
 - (b) "**Act**" means the *Competition Act*, R.S.C. 1985, c. C-34, as amended;
 - (c) "**Affected Customers**" means current or past Hyundai motor vehicle owners who purchased an Affected Vehicle prior to November 3, 2012;
 - (d) "**Affected Vehicles**" means motor vehicles that are marketed, distributed and sold by Hyundai in Canada and include 38 trim levels within the following vehicle models: the 2012-2013 Accent, the 2011-2013 Elantra, the 2013

Elantra GT, the 2013 Elantra Coupe, the 2012-2013 Veloster, 2012-2013 Genesis, 2012-2013 Tucson, 2013 Santa Fe and 2011-2012 Sonata Hybrid;

- (e) **“Agreement”** means this Consent Agreement entered into by the Parties pursuant to section 74.12 of the Act;
- (f) **“Applicant”** means the Commissioner;
- (g) **“Commissioner”** means the Commissioner of Competition appointed pursuant to section 7 of the Act, and his or her authorized representatives;
- (h) **“Enrolment Period”** means the time period for which Affected Customers are entitled to register for the Restitution Program and is for the duration of one year commencing on November 2, 2012 and ending on November 1, 2013;
- (i) **“Hyundai”** means Hyundai Auto Canada Corp., incorporated federally in Canada on November 20, 2006, including any present or future subsidiary corporation of Hyundai Auto Canada Corp., within the meaning of subsection 2(3) of the Act;
- (j) **“Parties”** means the Commissioner and Hyundai;
- (k) **“Person”** means any individual, corporation, partnership, firm, association, trust, unincorporated organization or other entity;
- (l) **“Product”** means one or more motor vehicles from within the category of Affected Vehicles;
- (m) **“Related Person”** means any Person controlled within the meaning of the Act directly or indirectly by the Respondent, including any subsidiary corporation;
- (n) **“Respondent”** means Hyundai Auto Canada Corp.;
- (o) **“Respondent Personnel”** means the President & CEO of the Respondent, and all current and future Vice Presidents, Directors, National Managers and Managers of advertising and/or marketing, and any similar positions which may be established by the Respondent during the term of the Agreement;
- (p) **“Restitution Program”** means a program launched by Hyundai on November 2, 2012, to offer compensation to Affected Customers for the difference between the advertised and corrected fuel consumption ratings of a Product; and
- (q) **“Tribunal”** means the Competition Tribunal.

II. COMPLIANCE WITH THE DECEPTIVE MARKETING PRACTICES PROVISIONS OF THE COMPETITION ACT

2. The Respondent, the Respondent Personnel and Related Persons shall comply with the deceptive marketing practices provisions of the Act, as set out in Part VII.1 of the Act.

III. RESTITUTION

3. The Respondent shall fulfill the commitments of its Restitution Program as described in the recitals of the Agreement.

IV. COMPLIANCE REPORTING AND MONITORING

4. The Respondent shall appoint Compliance Officer(s) responsible for the implementation of paragraphs 2 and 3 of the Agreement, including establishing appropriate practices and procedures to have marketing materials reviewed to ensure compliance with the Act.
5. The Respondent shall present to the Commissioner:
 - (a) twenty-one (21) days after the execution of the Agreement, a written confirmation that all of the Respondent Personnel have received a copy of the Acknowledgement as required by paragraph 6;
 - (b) thirty-five (35) days after the execution of the Agreement, the signed and dated Acknowledgements required by paragraph 6;
 - (c) by August 30, 2013, a written confirmation that follow-up letters and e-mails have been sent to all unregistered and reasonably ascertainable Affected Customers; and
 - (d) by December 1, 2013, a summary report reflecting:
 - (i) the total number of Affected Customers eligible for the Reimbursement Program;
 - (ii) the number of credit cards issued to the Affected Customers in (i);
 - (iii) the total amount of restitution paid by the Respondent; and

(iv) the number of applications by Affected Customers that were rejected with explanations thereof.

(e) thirty (30) days following receipt of a written request from the Commissioner, such information in such form as the Commissioner requests for the purposes of monitoring compliance with the Agreement.

V. GENERAL

6. The Respondent shall provide a copy of the Acknowledgement to all Respondent Personnel within fourteen (14) days after the execution date of the Agreement, and all future Respondent Personnel appointed during the term of the Agreement within fourteen (14) days after his or her appointment.
7. Within fourteen (14) days after providing a copy of the Acknowledgement to any Respondent Personnel, the Respondent shall secure from each Respondent Personnel a signed and dated Acknowledgement.
8. Notices, reports and other communications required or permitted pursuant to any of the terms of the Agreement shall be in writing and shall be considered to be given if dispatched by personal delivery, registered mail or facsimile transmission to the Parties at the following addresses:

(a) The Commissioner

Commissioner of Competition
Competition Bureau
Place du Portage, Phase 1
50 Victoria Street, 21st Floor
Gatineau QC K1A 0C9

Attention: Deputy Commissioner of Competition (Fair Business Practices)

Telephone: 819-997-1231
Facsimile: 819-953-4792

With a copy to:

Executive Director, Competition Bureau Legal Services
Department of Justice
Place du Portage, Phase 1
50 Victoria Street, 22nd Floor
Gatineau QC K1A 0C9

Telephone: 819-953-3884

Facsimile: 819-953-9267

(b) The Respondent

Hyundai Auto Canada Corp.
75 Frontenac Drive
Markham, Ontario
L3R 6H2

Attention: Mr. Steve Kelleher
President & CEO

Telephone: 905-477-0202
Facsimile: 905-477-9264

With a copy to:

Bennett Jones LLP
1 First Canadian Place, Suite 3400
P.O. Box 130
Toronto, Ontario
M5X 1A4

Attention: Mr. Randal Hughes

Telephone: 416-777-7471
Facsimile: 416-863-1716

9. The Agreement may be executed in two or more counterparts, each of which shall be an original instrument, and all of which taken together shall constitute one and the same instrument. In the event of any discrepancy between the English and the French versions of the Agreement, the English version shall prevail.
10. The computation of time periods contemplated by the Agreement shall be in accordance with the *Interpretation Act*, R.S.C. 1985, c. 1-21. For the purpose of the Agreement, the definition of "holiday" in the *Interpretation Act* shall include Saturday. For purposes of determining time periods, the date of the Agreement is the last date on which it is executed by a Party.
11. The Parties consent to the immediate registration of the Agreement with the Tribunal.
12. Unless otherwise specified, the Agreement shall be binding upon the Respondent and all Related Persons as defined herein for a period of ten (10) years following the date of registration of the Agreement.

13. In the event of a dispute as to the interpretation or application of the Agreement, any of the Parties shall be at liberty to apply to the Tribunal for an order or directions. The Parties agree that the Tribunal has jurisdiction to make such order as is required to give effect to the Agreement.

DATED at Toronto, in the Province of Ontario, this 26 day of July, 2013.

For: Hyundai Auto Canada Corp.

[Original signed by Steve Kelleher]
Steve Kelleher
President & CEO
I have authority to bind the corporation.

DATED at Gatineau, in the Province of Québec, this 15 day of July, 2013.

Commissioner of Competition

[Original signed by Kelley McKinnon]
Per: Kelley McKinnon
Acting Commissioner of Competition

SCHEDULE "A"

ACKNOWLEDGEMENT

The undersigned acknowledges the following:

1. Hyundai Auto Canada Corp. ("HACC") entered into a Consent Agreement with the Commissioner of Competition on July ____, 2013 with respect to fuel consumption ratings that had been incorrectly represented in marketing and advertising materials for certain Hyundai vehicles sold in Canada.
2. HACC has agreed that it shall comply with the deceptive marketing practices provisions of the *Competition Act*, R.S.C. 1985, c. C-34, as amended, as set out in Part VII.1 of the *Act*, and that it shall fulfill the commitments of its Restitution Program and appoint Compliance Officer(s) to establish appropriate practices and procedures to ensure compliance with the *Act*.
3. The undersigned is or will be materially involved in the formulation and/or implementation of advertising and/or marketing policies of HACC.
4. The undersigned understands HACC's obligation to comply with paragraphs 74.01(1)(a) and (b) of the *Act*, which state as follows:

74.01(1) A person engages in reviewable conduct who, for the purpose of promoting, directly or indirectly, the supply or use of a product or for the purpose of promoting, directly or indirectly, any business interest, by any means whatever,

(a) makes a representation to the public that is false or misleading in a material respect; [or]

(b) makes a representation to the public in the form of a statement, warranty or guarantee of the performance, efficacy or length of life of a product that is not based on an adequate and proper test thereof, the proof of which lies on the person making the representation ...

5. The undersigned states that he or she has read and understood this Acknowledgement.

Signature: _____

Name: _____

Title: _____

Date: _____