

**IN THE MATTER OF
THE FAIR TRADING ACT**

THIS UNDERTAKING is made pursuant to Section 152 of the Fair Trading Act.

BY:

EXL Distributers of Alberta Inc.
15355 – 117 Avenue
in the City of Edmonton, in the Province of Alberta,

(hereinafter called the "**Supplier**")

TO:

The **DIRECTOR OF FAIR TRADING**,

(hereinafter called the "**Director**")

WHEREAS:

- (A) The Supplier is the holder of a direct selling business licence in Alberta authorized to sell vacuums.
- (B) In a letter of agreement dated March 29, 2001, the Supplier stated it understood the Alberta laws and rights of the consumer.
- (C) On or about October 19 and October 21, 2001 the Supplier failed to refund all money paid and return the trade-in or an amount equal to the trade-in to _____ within 15 days of cancellation of the contract; and failed to return the trade-in or an amount equal to the trade in to _____ within 15 days of the cancellation of the contract.
- (D) The Director is of the opinion that, between the period of June 12, 2001 and March 2002, the Supplier, in the ordinary course of its business, through its agents, employees, or representatives did commit several unfair practices against consumers. Those practices are noted as follows:
 - 1. On or about June 12, 2001 and September 25, 2001 did attempt to mislead and deceive _____ into purchasing new vacuum cleaners by implying that parts for their vacuum cleaners would no longer be available;
 - 2. On or about June 22, 2001 did attempt to mislead and deceive _____ and did exert undue pressure on her to enter into a contract that was ambiguous, in that the value of the trade-in was included in the discount and was not clearly stated;

3. On or about October 15, 2001 did attempt to mislead and deceive and did take advantage of her inability to understand the character and nature of the contract, and did exert undue pressure to influence her to purchase the vacuum cleaner when she was unlikely to receive any reasonable benefit from the purchase;
4. On or about November 6, 2001 did attempt to mislead and deceive into believing that she would receive a gift, and that the solicitation was for the purpose of delivering the gift when the solicitation was, in fact, to set up a meeting to demonstrate a vacuum cleaner. The Supplier did exert undue pressure to influence her to purchase the vacuum cleaner. No gift was provided at the time.
5. On or about November 22, 2001 did attempt to mislead and deceive by stating the purpose of the solicitation was to deliver a gift. The Supplier did take advantage of her inability to understand the character and nature of the contract and did exert undue pressure to influence her to purchase the vacuum cleaner when she was unlikely to receive any reasonable benefit from the purchase;
6. On or about December 5, 2001 did mislead and deceive into believing she had won the draw for the month, a \$150 gift and that she was under no obligation to buy, and then did exert undue pressure to influence her to purchase a vacuum cleaner. No gift was provided at the time;
7. On or about October 6, 2001 did mislead and deceive by falsely stating that she did not have cancellation rights that did in fact exist.

(E) The Director asserts that he has reason to believe that the acts or practices of the Supplier described in recital (C) and (D) constitute breaches of the Fair Trading Act, Sections 31(2) and 7 {6(2)(a), 6(2)(b), 6(2)(c), 6(3)(a); 6(4)(a); 6(4)(o) and 6(4)(q)}.

(F) The Director acknowledges that the Supplier has informed the Department that it has implemented measures to address the concerns of this Undertaking and has provided specific instruction to its officers, agents, employees, or representatives to ensure future compliance with the Section 31(2) and Section 6 provisions of the Fair Trading Act.

NOW THEREFORE THIS UNDERTAKING WITNESSES THAT:

1. The Supplier acknowledges that during the period from June 2001 to March 2002 that it failed to comply with the Fair Trading Act and undertakes to the Director that to the best of its ability, it will not engage in acts or practices similar to those described in recitals (C) and (D).
2. The Supplier will, to the best of its ability, ensure that all of its existing and new officers, partners, employees, representatives, agents and independent contractor representatives are forthwith acquainted with the requirements of the Fair Trading Act

especially Part 2 – Unfair and Negative Option Practices and Part 3 Cancellation of Direct Sales Contracts and the Direct Selling Business Licensing and Direct Sales Cancellation and Exemption Regulations.

3. It is understood that the Supplier:
 - a. has cancelled the contracts and returned the trade-in or issued refunds for the value of the trade-in or otherwise resolved the concerns of consumers
 - b. has provided gifts to
 - c. will implement a policy for phone solicitation personnel to adhere to strict guidelines;
 - d. is consulting with legal counsel and implementing changes to improve telemarketing scripts to ensure consumers are aware of the purpose of the solicitation;
 - e. will ensure contract cancellation requirements are met by specifically delegating this responsibility from existing staff, with firm time guidelines as per the Fair Trading Act as part of their mandate;
 - f. will include training with respect to the Fair Trading Act for new representatives, agents or employees and review the same with existing personnel;
 - g. is consulting with legal counsel and implementing changes to improve credit card application documentation to prevent misunderstandings.

4. The Supplier will give to the Director, payment in the favour of the Minister of Finance of Alberta, in the sum of \$1,500.00; an amount that represents a portion of the costs associated with investigating this matter. Such payment is to be made within 10 days from the date of this Undertaking.

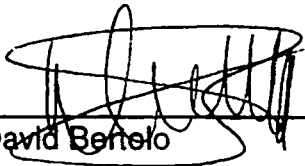
5. This Undertaking will be binding upon the Supplier and its successors and assigns unless:
 - a. terminated by the Director or varied with the consent of the Supplier;
 - b. varied by an Order of the Judge of the Court of Queen's Bench where the Judge is satisfied that the circumstances warrant varying the provisions of the Undertaking;
 - c. terminated by an Order of a Judge of the Court of Queen's Bench where the Judge is satisfied that the act or practice that the Supplier has undertaken to refrain from engaging in was not unfair; however, in any such case, the termination or variance does not invalidate anything done under this Undertaking prior to termination or variance.

- 6. The Supplier acknowledges that the Director may, upon breach by the Supplier of any term of the Undertaking, institute such proceedings and take such action under the Fair Trading Act as he may consider necessary.


IN WITNESS WHEREOF the Supplier, has on the 5th day of June, 2002 caused its common seal to be hereunto affixed and attested by the signatures of its proper officers duly authorized in that behalf.

EXL DISTRIBUTERS OF ALBERTA INC.

PER: Melissa Bodnar
Melissa Bodnar, Director

PER: 
David Berfelo

ACCEPTED by the Director of Fair Trading this 11th day of JUNE, 2002.


DIRECTOR OF FAIR TRADING