

BUSINESS ENVIRONMENT



Brand: Mehta Solutions

Product Code: case1143

Weight: 0.00kg

Price: Rs500

Short Description

BUSINESS ENVIRONMENT case study

Description

Case 5 : The sale of goods on the Internet

The sale of consumer goods on the Internet (particularly those between European member states) raises a number of legal issues. First, there is the issue of trust, without which the consumer will not buy; they will need assurance that the seller is genuine, and that they will get the goods that they believe they have ordered. Second, there is the issue of consumer rights with respect to the goods in question: what rights exist and do they vary across Europe? Last, the issue of enforcement: what happens should anything go wrong?

Information and trust

Europe recognises the problems of doing business across the Internet or telephone and it has attempted to address the main stumbling blocks via Directives. The Consumer Protection (Distance Selling) Regulations 2000 attempts to address the

issues of trust in cross-border consumer sales, which may take place over the Internet (or telephone). In short, the consumer needs to know quite a bit of information, which they may otherwise have easy access to if they were buying face to face. Regulation 7 requires inter alia for the seller to identify themselves and an address must be provided if the goods are to be paid for in advance. Moreover, a full description of the goods and the final price (inclusive of any taxes) must also be provided. The seller must also inform the buyer of the right of cancellation available under Regulations 10-12, where the buyer has a right to cancel the contract for seven days starting on the day after the consumer receives the goods or services. Failure to inform the consumer of this right automatically extends the period to three months. The cost of returning goods is to be borne by the buyer, and the seller is entitled to deduct the costs directly flowing from recovery as a restocking fee. All of this places a considerable obligation on the seller; however, such data should stem many misunderstandings and so greatly assist consumer faith and confidence in non-face-to-face sales.

Another concern for the consumer is fraud. The consumer who has paid by credit card will be protected by section 83 of the Consumer Credit Act 1974, under which a consumer/purchaser is not liable for the debt incurred, if it has been run up by a third party not acting as the agent of the buyer. The Distance Selling Regulations extend this to debit cards, and remove the ability of the card issuer to charge the consumer for the first £50 of loss (Regulation 21). Moreover, section 75 of the Consumer Credit Act 1974 also gives the consumer/buyer a like claim against the credit card company for any misrepresentation or breach of contract by the seller. This is extremely important in a distance selling transaction, where the seller may disappear.

What quality and what rights?

The next issue relates to the quality that may be expected from goods bought over the Internet. Clearly, if goods have been bought from abroad, the levels of quality required in other jurisdictions may vary. It is for this reason that Europe has attempted to standardise the issue of quality and consumer rights, with the Consumer Guarantees Directive (1999/44/EC), thus continuing the push to encourage cross-border consumer purchases. The implementing Sale and Supply of Goods to Consumer Regulations 2002 came into force in 2003, which not only lays down minimum quality standards, but also provides a series of consumer remedies which will be common across Europe.

The Regulations further amend the Sale of Goods Act 1979. The DTI, whose job it was to incorporate the Directive into domestic law (by way of delegated legislation) ensured that the pre-existing consumer rights were maintained, so as not to reduce

the overall level of protection available to consumers. The Directive requires goods to be of 'normal' quality, or fit for any purpose made known by the seller. This has been taken to be the same as our pre-existing 'reasonable quality' and 'fitness for purpose' obligations owed under sections 14(2) and 14(3) of the Sale of Goods Act 1979. Moreover, the pre-existing remedy of the short-term right to reject is also retained.

This right provides the buyer a short period of time to discover whether the goods are in conformity with the contract. In practice, it is usually a matter of weeks at most. After that time has elapsed, the consumer now has four new remedies that did not exist before, which are provided in two pairs. These are repair or replacement, or price reduction or rescission. The pre-existing law only gave the consumer a right to damages, which would rarely be exercised in practice. (However, the Small Claims Court would ensure a speedy and cheap means of redress for almost all claims brought.) Now there is a right to a repair or a replacement, so that the consumer is not left with an impractical action for damages over defective goods. The seller must also bear the cost of return of the goods for repair. So such costs must now be factored into any business sales plan. If neither of these remedies is suitable or actioned within a 'reasonable period of time' then the consumer may rely on the second pair of remedies. Price reduction permits the consumer to claim back a segment of the purchase price if the goods are still useable.

It is effectively a discount for defective goods. Rescission permits the consumer to reject the goods, but does not get a full refund, as they would under the short-term right to reject. Here money is knocked off for 'beneficial use'. This is akin to the pre-existing treatment for breaches of durability, where goods have not lasted as long as goods of that type ought reasonably be expected to last. The level of compensation would take account of the use that the consumer has (if any) been able to put the goods to and a deduction made off the return of the purchase price. However, the issue that must be addressed is as to the length of time that goods may be expected to last. A supplier may state the length of the guarantee period, so a £500 television set guaranteed for one year would have a life expectancy of one year. On the other hand, a consumer may expect a television set to last ten years. Clearly, if the set went wrong after six months, the consumer would only get £250 back if the retailer's figure was used, but would receive £475 if their own figure was used. It remains to be seen how this provision will work in practice.

One problem with distance sales has been that of liability for goods which arrive damaged. The pre-existing domestic law stated that risk would pass to the buyer once the goods were handed over to a third-party carrier. This had the major problem in practice of who would actually be liable for the damage. Carriers would blame the supplier and vice versa. The consumer would be able to sue for the loss, if they were able to determine which party was responsible. In practice, consumers

usually went uncompensated and such a worry has put many consumers off buying goods over the Internet. The Sale and Supply of Goods to Consumer Regulations also modify the transfer of risk, so that now the risk remains with the seller until actual delivery. This will clearly lead to a slight increase in the supply of goods to consumers, with the goods usually now being sent by insured delivery. However, this will avoid the problem of who is actually liable and should help to boost confidence.

Enforcement

Enforcement for domestic sales is relatively straightforward. Small-scale consumer claims can be dealt with expeditiously and cheaply under the Small Claims Court. Here claims under £5000 for contract-based claims are brought in a special court intended to keep costs down by keeping the lawyers' out of the court room, as a victorious party cannot claim for their lawyers' expenses. The judge will conduct the case in a more 'informal' manner, and will seek to discover the legal issues by questioning both parties, so no formal knowledge of the law is required. The total cost of such a case, even if it is lost, is the cost of issuing the proceedings (approximately 10 per cent of the value claimed) and the other side's 'reasonable expenses'. Expenses must be kept down, and a judge will not award value which has been deliberately run up, such first-class rail travel and stays in five star hotels. Residents of Northampton have hosted a trial of an online claims procedure, so that claims may now be made via the Internet. (www.courtservice.gov.uk outlines the procedure for MCOL, or Money Claims Online.) Cases will normally be held in the defendant's court, unless the complainant is a consumer and the defendant a business.

Enforcement is the weak point in the European legislation, for there is, as yet, no European-wide Small Claims Court dealing with transnational European transactions. The consumer is thus forced to contemplate expensive civil action abroad in a foreign language, perhaps where no such small claims system exists – a pointless measure for all but the most expensive of consumer purchases. The only redress lies in EEJ-Net, the European Extra-Judicial Network, which puts the complainant in touch with any applicable professional or trade body in the supplier's home member state. It does require the existence of such a body, which is unlikely if the transaction is for electrical goods, which is one of the most popular types of Internet purchase. Therefore, until Europe provides a Euro Small Claims Court, the consumer cross-border buyer may have many rights, but no effective means of enforcement. Until then it would appear that section 75 of the Consumer Credit Act 1974, which gives the buyer the same remedies against their credit card company as against the seller, is the only effective means of redress.

Case study questions

1. **Consider the checklist of data which a distance seller must provide to a consumer**

Is this putting too heavy a burden on sellers?

2. **Is a consumer distance buyer any better off after the European legislation?**

3. **Are there any remaining issues that must be tackled to increase European cross-**

border consumer trade?

Details

1. **Case study solved answers**

2. **pdf/word**

3. **Fully Solved with answers**