

Online Shopping: Your Rights as a Consumer



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Internet explosion has created a borderless virtual market and enabled the world's biggest shopping mall to be brought to our very own house. As a result, shopping online has become a trend and manifestation of modern consumer life style in recent years. Online shopping is very appealing for many reasons. Not only it saves energy, time and fuel, it also allows consumers to search for better quality and cheaper products from variety of choices both local and international products. Most importantly it is available 24/7 throughout the year. Thus consumers can buy anything, at any time and from any part of the world at their own comfort zone as long as there is internet connection.

Despite the advantages, many consumers are not aware of the potential hazards of online shopping. The nature of online shopping makes it difficult for consumers to exercise care in making purchases. They do not have the opportunity of examining the goods and of knowing the trader. They also lack the opportunity to ask questions about goods offered. There are issues of product quality and delivery, security of payment, data protection and unfair contract terms. Consumers can also be easily exposed to scams, fraud and other trade malpractices due to a paperless and distance nature of online transaction. Obviously online shoppers are more vulnerable compared to traditional buyers.

As such there has been increased in a number of complaints related to online shopping. The National Consumer Complaints Centre (NCCC) received 7,641 complaints on online shopping in 2014 compared to only 5,763 in 2013 (Annual Report, 2014). It came out on top in the list of complaints filed with the NCCC last year. The highest complaint was on product delivery (51.8%) and followed by refunds issues (19.1%), product quality (8.1%) and scam (7.0%). Therefore consumers really need to take extra precaution before participating in any online transactions. They should at least be equipped with basic knowledge of their rights as online shoppers. This piece provides a brief description of the legal protection accorded under Malaysian law to online consumers often known as e-consumers.

1. Right to information

E-consumers rely totally on the information given on the webpage. Thus sufficient and correct information is crucial to avoid any consumers' problems which originated from lack of information and awareness of products and suppliers. Under the Consumer Protection (Electronic Trade Transactions) Regulations 2012, consumers are entitled to be provided with certain information. These include;

- The name of person or company
- The registration number of the business or company
- The email address and telephone number, or address of the person who operates a business
- A description of the main characteristics of the goods or services
- Full price of the goods or services including transportation costs, taxes and any other cost.
- The method of payment
- The terms and conditions
- The estimated time of delivery of the goods or services to the buyer.

Failure to provide the information is an offence under the Regulation. In addition, e-traders who supply false or misleading information on their webpage commits an offence under Part II of the Consumer Protection Act 1999 (CPA) and Trade Description Act 2011.

2. Right to quality goods

The CPA imposes mandatory guarantees with regard to the quality and suitability of the goods which apply to

both offline and online sale. It is thus the right of consumers to be supplied with the goods which are acceptable quality, fit for the intended purposes and similar to the description.

There is also a guarantee as to the availability of spare part and repair facilities for the goods. For a brand new and expensive good, acceptable quality means the good is fit for its purpose, free from minor defects, acceptable in appearance and finish, safe and last a reasonable length of time (durable). For second hand, old stock or cheaper goods which are not in perfect condition, it is the duty of the e-traders to draw the consumer's attention to the defect in the goods. In cases of unsafe product which caused injury or loss to consumers due to a defect in the product, the victims are protected by the scheme of strict liability under Part X of the CPA.

3. Right to fair terms and conditions

There is no specific law in Malaysia prescribing the terms to be included in the online sale contract. However Part IIIA of the CPA protects consumers against unfair terms in a standard form contract or any other form of contracts. The term and condition in a contract is deemed to be unfair if it causes a significant imbalance in the rights and obligations of the parties arising under the contract to the detriment of the consumer. E-consumers can challenge the validity of the terms and conditions of online contracts for being either procedurally or substantively unfair or both. So far, the Tribunal for Consumer Claims (TCC) has declared that any non-refundable term incorporated into any contract to be unfair term and thus it has no legal effect.

4. Right to cancel

If the price of the goods is RM300 and above and purchased from a direct selling company, there must be the provision on '10 days cooling-off period' in the contract of sale (Direct Sales and Anti-Pyramid Scheme Act 1993). During this time, the purchaser has the right to cancel the contract without any reason by giving the written notice

to the vendor. The right to reject the goods is also provided under the CPA in cases of substantial failure or major defect. For a minor problem, consumers can only ask for repair or replacement. Consumers can also cancel the contract in cases of wrong goods delivered or no delivery or late delivery.

5. Right to refund

When consumers cancel the sale contract for any of the reasons above, they are entitled to get full refund of the purchase price. Most well established online traders such as Zalora, Amazon, e-bay etc state clearly their return and refund policy. Consumers must consider whether there is the statement of refund policy in choosing online shop.

6. Right to privacy

Online shoppers are usually required to provide their personal information to e-traders. The Personal Data Protection Act 2010 provides protection to the individual personal data from being processed or disclosed without the person's consent. The Act also imposes

on a data user to take practical steps to protect the personal data from loss, misuse, modification, unauthorised or accidental access or disclosure, alteration or destruction. Any infringement of the individual personal data rights under the Act is an offence.

Conclusion

E-consumers who are dissatisfied with online dealings can file their claims in the TCC which was set up to provide speedy, inexpensive and informal redress of consumers' grievances. However, the TCC has no extra-territorial jurisdiction and thus its power is confined within Malaysia only. E-consumers who buy goods from e-traders operating outside Malaysia may have difficulty in enforcing their rights. Above all, be a smart e-consumer by choosing secure sites and reputable e-traders that comply with legal requirements and respect the rights of consumers. Read and think carefully before you click!

