

## e-Consumer Rights in Online Shopping of Goods: A Malaysian Legal Perspectives

Roshazlizawati Mohd Nor<sup>1\*</sup>, Nor Zafir Md Salleh<sup>2</sup>, Siti Zaleha Omain<sup>3</sup>, Ruzita Selamat<sup>4</sup>

<sup>1,2,3,4</sup>Department of Business Administration, Azman Hashim International Business School, Universiti Teknologi Malaysia, 81300 Johor Bahru

\* Corresponding author: roshazlizawati@utm.my

### Abstract

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. Online shopping can save energy, time, fuel and it opens 24/7 throughout the years. Despite the advantages, many consumers are not aware of their potential hazards of online shopping. E-consumers are exposed to buy bad quality of goods, the goods may not be delivered, unfair contract terms, misleading information about the goods offered, data protection and security of payment. Beside of that, e-consumers also can be a victim of scam, fraud and other malpractices due to paperless and distance nature of online transaction. Adopting the method of content analysis, this paper will discuss on the rights of e-consumer in online shopping of goods from Malaysian legal perspectives. Therefore, in order to discuss relevant rights of online consumers, we have to canvassed several Malaysian related e-commerce legislations focusing on the protection for e-consumers namely the Consumer Protection Act 1999, the Direct Sales and Anti-Pyramid Scheme Act 1993, The Trade Description Act 2011, the Personal Data Protection Act 2010 and the Sale of Goods Act 1957.

**Keywords:** online shopping, e-consumer, e-consumer rights, Malaysia

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### Introduction

The rapid growth in e-commerce witnesses the emergence of a group of consumers known as e-consumers. This group of consumers is increasing in number over the years as online shopping become a trend and a manifestation of the modern life style. Online shopping is very appealing for many reasons. Not only it saves energy, time and fuel, it also allows consumers to search for a better quality and cheaper products from variety of choices both local and international products. Most importantly it is available 24/7 throughout the years. 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 their potential hazards of online shopping. The nature of online shopping makes it difficult for consumers to exercise care in making purchases [1]. Unlike traditional method, online shopping does not involve face-to-face communication, and in most cases contracts of sale are not made on paper. It is a distance transaction which provides no opportunity for consumers to examine the good and to know the suppliers and their business places. E-consumers are easily exposed to buy bad quality of goods or fake goods, goods never arrived, unfair contract terms, misleading information about the goods offered, data protection and security of payment. Beside of that, e-consumers also can be a victim of scam, fraud and other trade malpractices. Obviously online shoppers are more vulnerable compared to brick and mortar shoppers.

There has been increased in a number of complaints pertaining to online shopping as such the National Consumer Complaints Centre (NCCC) received 7371 complaints on online shopping in 2016 compared to only 5763 in 2013 [2]. Based on the NCCC Annual

Report, e-commerce is the top sector with the most complaints received by NCCC for 2016 as well as for the three previous consecutive years. It is reported that the problems faced by e-consumers are not getting the products ordered. Goods that have been ordered and paid for often fail to reach the consumer. The biggest problem while buying things online is that the e-consumers have no guarantee of product's quality. Reviews are not always reliable and fraudulent sellers who intentionally mislead consumers to increase sales are the prime reasons for faulty or sub-par products being sold online. 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 paper provides a brief description of the rights accorded under various Malaysian related e-commerce law in order to protect and preserve the consumers interest.

### Rights of E-consumers

This paper will canvassed several Malaysian related e-commerce legislations focusing on the rights for e-consumers namely the Consumer Protection Act 1999, the Direct Sales and Anti-Pyramid Scheme Act 1993, The Trade Description Act 2011, the Personal Data Protection Act 2010 and the Sale of Goods Act 1957.

### 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' problem which originated from lack of information and awareness of products and suppliers. The e-consumer is protected when it comes to the disclosure of information under the regulation namely Consumer Protection (Electronic Trade Transactions) Regulations

2012 which came into operation on 1 July 2013. Section 3(1) of the said regulation states that any person who operates a business for the supply of goods or services through a website or in an online marketplace shall disclose on the website where the business is conducted. The information specified as per Schedule (Regulation 3) Disclosure of Information of the Consumer Protection (Electronic Trade Transactions) Regulations 2012, CPA 1999 [3] include:

1. The name of the person who operates a business for the purpose of supplying goods or services through a website or in an online marketplace, or the name of the business, or the name of the company,
2. The registration number of the business or company, if applicable,
3. The email address and telephone number, or the address of the person who operates a business for the purpose of supplying goods or services through a website or in an online marketplace,
4. A description of the main characteristics of the goods or services,
5. The full price of the goods or services including transportation costs, taxes and any other costs,
6. The method of payment,
7. The terms and conditions,
8. The estimated time of delivery of the goods or services

It is further stated in subsection 2 of the same section that any person who contravenes subregulation (1) commits an offence. Meanwhile, in subsection 3 of the said Regulation also, any person who discloses or provides any information as specified in the Schedule that they know or have reason to believe is false or misleading commits an offence. This regulation is introduced to raise the confidence of consumers in carrying out electronic transactions through any online platform including social media such as Facebook, personal blogs, Twitter, Instagram and so forth; the regulation also helps to further development electronic trade in the country. In addition to that, with the detailed information on the e-traders, there is no longer any difficulty in contacting the e-trader when e-consumers encounter problems with the goods they have purchased. Moreover, when it is an obligation for e-traders to inform e-consumers the estimated time of the delivery of goods, it will help e-consumers to prepare an action in case the goods are not delivered.

In addition, it is also considered as an offence for e-traders who supply false or misleading information on their webpage as under Trade Description Act 2011[4]. Advertisements on the Internet are usually posted on sellers' own website or on other websites with the same purpose to entice consumers to purchase the goods advertised[5]. Therefore, the Act protects the consumers from any false description in an advertisement for goods which are already in existence as well as for goods of the same class, which are yet to be manufactured or produced. It is an offence under section 5 of the TDA for any person to use, supply or offer any goods which have been falsely described. It is also an offence for any person who contravenes Part III of this Act; Part III relates to any conduct, representation, statements or practices which are capable of misleading people. Notably the TDA is a statute of criminal application. In other words, the Act provides mechanism of enforcement by authorities to ensure that no party resorts to false trade description nor false or misleading statements on any goods manufactured, supplied or sold. It carries penal sanction whereby offenders will be either imprisoned or fined or both for any offence committed under the Act. The Act does not provide any civil remedy or cause of action. An aggrieved consumer cannot institute any civil action against the villain for the purpose of obtaining a remedy or compensation. For false or misleading statements made through advertisements, the presumption of liability is on the person who, directly or indirectly, offers to supply goods or services or the person on whose behalf the advertisement is made as per section 19 of the Act. It means that for any false description of goods placed in advertisements, action can be instituted against the manufacturer or seller of the goods.

### **Right to quality of 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. The implied condition relates to a sale by description provided for in section 15 of the Sale of Goods Act 1957[6]. The section implies that goods delivered shall conform exactly to the description. This section is especially crucial since e-consumers rely on the description provided by the retailer on the website and thus all online sales can be categorized as sales by description. However, section 62 of the SOGA allows the implied conditions in a sale of goods contract to be excluded by express terms. Thus the statement that 'the goods sold in this website are not returnable or exchangeable' will bind e-consumers. This kind of clause may operate extremely harshly against the e-consumers because they cannot claim any rights in cases of unsatisfactory quality or defective goods[7].

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 the purpose, free from minor defects, acceptable in appearance and finish, safe and last a reasonable length of time or durable. For second hand, old stock or cheaper goods which are not in perfect condition, it is the duty of e-traders to draw the consumer's attention to the defect in the goods. In case 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. The liability may be imposed by the existence of a defect alone. However, to succeed in a product liability claim, the plaintiff has to prove that the product was defective and the injury was caused by the defect[8]. Sometimes this may not be easy for consumers especially in cases which involve complicated or sophisticated products such as drugs.

### **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[9]. E-consumers can challenge the validity of the terms and conditions of online contracts for being either procedurally or substantively unfair or both. A procedural unfairness looks at the process of making a contract, whereas substantive unfairness concerns the outcome of the process, i.e. the content or substance of the contract. The law on unfair contract certainly enhances the rights of the consumer and if it is strictly implemented, it can be considered to some extent as putting an end to unfair terms in consumer contracts in Malaysia. So far, the Tribunal 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[10].

### **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 as per Direct Sales and Anti-Pyramid Scheme Act 1993[11]. 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.

### **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, Lazada etc state clearly their return and refund policy. Therefore, wise



consumers must consider whether there is the statement of refund policy in choosing online shop[12].

### Right to privacy

Online shoppers are usually required to provide their personal information to e-traders. Nowadays, consumers data are exposed to 'big data system' or like a cloud storage when they share their information online, where all details of consumers are keep, stored and distributed to other party who has the interest to manipulate the data. Thus, the Personal Data Protection Act 2010[13] 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 Tribunal Consumer Claims 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. Do read and think carefully before click any button.

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