

Online Shopping: Let the Consumer Beware

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Abstract

The outbreak of a pandemic Covid-19 makes the usual business dealings change to online business. The pandemic has led to a surge in e-commerce and digital transformation. Online business is a significant commercial innovation that utilises some of the most advanced technological advancements. Buying things online is becoming commonplace today as the variety and availability of products and services on the internet make consumers choose online shopping. Despite of some issues and flaws on the safety and security of online transaction such as 'scamming' or fraud, phishing and other online predators, online shopping being chosen because of its system makes dealings easier and convenient from the payment to delivering products or services to consumers. Therefore, this conceptual paper will look into several laws and legislations in order to protect consumers and get their rights through online shopping dealings. Apart from that, this paper will also highlight several cases within this context. The research methodology of this paper is doctrinal and secondary sources of information are relied upon, such as journal articles, case law, previous research and studies. This indicates that consumers must be aware of their online shopping transactions in order to be satisfied with the products or services received from the seller, as well as be alert to avoid being tracked online.

Keywords: Online shopping; Legislations; Rights

1. Introduction

Online shopping has been a growing trend in Malaysia due to the outbreak of the Covid-19 pandemic and the implementation of Movement Control Order (MCO). The Covid-19 pandemic has transformed usual business dealings into online business. As the world is now moving fast, this transformation is a significant commercial innovation that utilises the most advanced technology. The pandemic also has led to a surge in e-commerce and digital transformation. In addition, the widespread acceptance to online shopping trends instigates the consumers to purchase essential goods or services online.

Buying things on the internet is a convenient way of purchasing, comfortable and less expensive that allows the purchasers to have a wide range of things at their disposal. The purchasers may select the product of their choice wherever they are, whenever they want and have it delivered to their home in a reasonable period of time (Shrivastava, 2013; Udi and Sabri, 2016). All this can be done without having to go out to get the goods they need. Instead, they just have to press their fingertips on the keyboard of their phone or whatever type of gadget they have. Interesting to note that, it is becoming commonplace today as the variety and availability of products and services on the internet make consumers choose online shopping.

The term "online shopping" can be defined as the process through which consumers purchase products, goods, and services over the Internet. It denotes those online shops are

simply shops and stores that are accessible over the internet. While it may also have a physical store, an online shop is one that is put up on a website or other online platform that allows customers to explore and purchase things over the Internet (Makhtar and Asuhaimi, 2019). Buying and selling goods online enables the consumer to find and choose the products in the online catalogue and then conclude the payment process by credit card, debit card, or money transfer to the bank (Ishak, 2007). Online account-based e-payment services for instance, is easy because it will lead the consumer through the entire shopping session without the hassle of having to key in the credit card's details every time he shops online (Ishak, 2007).

There are various online platform used by the seller in order to promote the goods such as Facebook, Instagram, YouTube, blogs, TikTok, WhatsApp's, websites and others. Despite of some issues and flaws on the safety and security of online transaction such as 'scamming' or fraud, phishing and other online predators, online shopping being chosen because of its system makes dealings easier and convenient from the payment to delivering products or services to consumer.

However, along with the convenient way of purchasing and considerable deals on the internet, consumers must be cautious and careful in buying goods online so as not to be deceived and a worth for the value of the money they paid. For example, scammers regularly take advantage of the popularity of online shopping. In 2020, it was reported that average of RM100,000 a day to cyber scammers as they target the increasing number of people shopping online. In most cases, the scammers would ask shoppers to remit half the purchase price by telling them that they need only pay the balance upon delivery of the goods scammers but would give excuses for late delivery of good and finally become uncontactable. Only then would shoppers realise that they had been scammed. Facebook is the first choice of online scammers, with 2,319 cases reported this year involving a total of RM14,503,786, followed by Mudah.my (1,110 cases and RM3,668,437), Instagram (1,087 cases and RM5,466,886), WhatsApp (539 cases and RM5,685,916) and Shopee (224 cases and RM836,531)(Kong, 2020).

Therefore, the consumers must exercise due diligence while purchasing online as well as be alert to avoid being tracked online. Hence it is significant to know that there are laws and legislations enacted by Parliament to protect the consumers and get their rights through online shopping dealings (Lee and Detta, 2011). By adopting the doctrinal methodology, secondary sources of information from journal articles and cases law are used for this study. This study aims to show that consumers should beware of their rights and legal protection through transactions that they make online. This conceptual paper will discuss the legal protection for consumers with reference to the provisions afforded by the Sale of Goods Act 1957 (hereinafter referred to as SOGA 1957), Consumer Protection Act 1999 (hereinafter referred to as CPA 1999) and Consumer Protection (Internet Trade Transaction) Regulations 2012(hereinafter referred to as Regulations 2012).

2. Regulations Governing Online Shopping in Malaysia

In usual business dealings, consumers are obligated to fulfil requirements based on contract bargaining. The same applies to online shopping, whereas consumers actually agree with the contractual relations by purchasing goods from websites or online sellers. Some laws go into effect to regulate online shopping transactions, including the Sales of Goods Act 1957, the

Consumer Protection Act 1999, and the Consumer Protection (Internet Trade Transaction) Regulations 2012.

Sale of Goods Act 1957

The goods shall correspond with description

The contract of sale of goods in Malaysia is governed by Sale of Goods Act 1957. The Act was enacted to protect the consumer by making sure that they were safeguarded in terms of price, quality of the goods, unfair terms, and conditions, etc. (Nor and Amin, 2016). One of the essential conditions that is applicable to online shopping is implied condition that the goods must correspond with the description. This is provided in section 15 of the SOGA 1957 as follows:

“Where there is a contract for the sale of goods by description there is an implied condition that the goods shall correspond with the description;”

By virtue of the above section, it clearly indicates that a sale of goods by description occurs where the consumer selects the goods merely on the basis of the description of the goods. The consumer cannot inspect the goods before purchasing them. They just read the seller's description, which may be found on websites or on the seller's social media platform. Thus, it shows the buyer has not seen the goods but is relying on the description alone (Lee and Detta, 2013). The question that arises is whether there is any remedy available to the purchaser if the seller breaches this implied condition that the goods do not correspond with the description? For example, the purchaser received the goods totally different in terms of colour, quantity or design. Are they protected by the law?

Generally, in the usual contract of sales, the goods shall correspond with the description. In common law case of *Varley v. Whipp* [1900] 1 QB 513, the buyer purchased second-hand reaping machine without ever having seen it. The seller had described it as new the previous year and used to cut only for 50 or 60 acres. In fact, the machine was very old. The court held that there was a sale by description, and since the machine did not correspond to its description, the seller was in breach. The case illustrates that the seller breaches the implied condition that the goods shall correspond with the description. The buyer is entitled to reject the goods and rescind the contract. Therefore, it is important on the part of the seller to ensure the goods delivered correspond with the descriptions, failure of which will put the seller in breach of a contract of sale.

The case precisely and clearly demonstrates the protection given to buyers and consumers. They are entitled to rescind the contract of sale of goods as well as claim damages if the seller delivers goods that do not correspond with the description (Trakic et al., 2014). Therefore, the same rules apply to online shopping where the contractual obligations are concluded even if the consumers purchase goods online.

Caveat Emptor: Let the Buyer Beware

The Latin term “caveat emptor” translates as “let the buyer beware” means a buyer must exercise care when he makes purchases. If he does not, he must bear the consequence. This term refers to the principle of the law of implied condition as to fitness for a particular purpose. The term relates to the contract law principle that imposes the responsibility of due diligence on a buyer in making purchases. A buyer is responsible for exercising due

diligence before purchasing any goods or products to make sure that the goods or products have no defects and meet his or her needs. If the buyer does not take the necessary actions, he or she may be prevented from claiming damages. Thus, the purchaser is accountable for ensuring that the goods received are fit and have the quality required by him, or in other words, the purchased goods are fit for the particular purpose (Adnan et al., 2021).

This rule is stated clearly in section 16(1) of the SOGA 1957, which explicitly indicates that it is for the buyer to satisfy himself as to the quality of the goods purchased. The seller would not be liable if the goods are not fit or have no quality as required by the buyer. The provision emphasises the importance of the buyer's obligation to take precautions, to safeguard their rights. However, the seller would be liable if the goods are not fit or have no quality as required by the buyer, subject to a few conditions as mentioned in Section 16 (1) (a) and (b) of the SOGA 1957;

- (i) The buyer must disclose the particular purpose for which the goods are purchased.
- (ii) The buyer must rely on the seller's skill and judgement before purchasing the goods.
- (iii) The goods bought by the buyer must be the kind that it is in the course of the seller's business to supply.
- (iv) The buyer bought the goods for its purpose, not for its patent or trade name

This is illustrated in the case *Griffiths v Peter Conway Ltd* [1939] 1 All ER 685 where the court held that a woman with an unusually sensitive skin who bought a tweed coat, without disclosing her sensitivity to the seller, did not succeed under this section because the coat would not harm a normal person. Besides, another exception to this common law rule is provided in section 16(1) (b) of the SOGA 1957 as an implied condition as to merchantable quality. Under this implied condition, the goods must have a merchantable quality, which means the goods sold must be fit for the particular use to which they were sold. If the goods are defective for their purpose, then they are not merchantable.

On that account, it demonstrates that the term "let the buyer beware" applies when the customer could check and inspect the goods. The opportunity to check and examine the goods can only be done in ordinary business dealings where the consumer is face to-face with the seller. What if the contract for the sale of goods is concluded through an online platform? Moreover, the term also does not imply any obligation on the seller to point out defects in the goods to be sold (Rahman, 2018).

Although consumers cannot examine the goods or products before purchasing them in an online transaction, which puts them at a disadvantage compared to the sellers, as they can only rely on the information the sellers supply via the online platform (Trakic et al., 2014), subject to a few conditions, their rights are protected if they are able to prove the goods are not suitable for the buyer's particular purpose or the goods are not merchantable. The SOGA 1957 provides this implied term for contracts of sale of goods in order to protect the contracting parties from being manipulated by each other, which in reality, the sellers are dominating the sale of goods (Amin and Mohd, 2013).

Consumer Protection Act 2009

The Consumer Protection Act regulates trade transactions, including online transactions, for all goods and services provided for household purposes. The CPA is the law governing the

supply of goods and services either offline or online and applies to all consumers regardless of the nature or method of their transactions.

According to Section 9, misleading conduct is prohibited if the conduct in relation to goods is misleading or deceptive or likely to mislead or deceive the public as to the nature, manufacturing process, characteristics, suitability for a purpose, availability, or quantity, of the goods or services. False or misleading representations are also prohibited based on Section 10. No person shall make a false or misleading representation towards (a) the goods are of a particular kind, standard, quality, grade, quantity, composition, style or model, (b) the goods have had a particular history or particular previous use, (c) the services are of a particular kind, standard, quality or quantity, (d) the services are supplied by any particular person or by any person of a particular trade, qualification or skill, (e) a particular person has agreed to acquire the goods or services, (f) the goods are new or reconditioned; (g) the goods were manufactured, produced, processed or reconditioned at a particular time; (h) the goods or services have any sponsorship, approval, endorsement, performance characteristics, accessories, uses or benefits, (i) the person has any sponsorship, approval, endorsement or affiliation; (j) concerns the need for any goods or services, (k) concerns the existence, exclusion or effect of any condition, guarantee, right or remedy; or (l) concerns the place of origin of the goods. The "quantity" refers in this section includes length, width, height, area, volume, capacity, weight, and number

The most important part when consumers deal with the online shopping is the price. According to Section 12 (1), seller must take reasonable steps to prevent the consumer from relying on the indication of misleading statement as to price at which any goods or services are available. Misleading as to a price or a method of determining a price happens to what is conveyed by the indication, or what the consumer may reasonably be expected to infer from the indication or any omission from includes (a) that the price or method is not what in fact it is or (b) that the applicability of the price or method does not depend on facts or circumstances on which it does in fact depend or (c) that the price covers or the method takes into account matters in respect of which an additional charge is in fact made. It also can be occurs if consumers who in fact has no such expectation, expect (i) the price to be increased or reduced, whether or not at a particular time or by a particular amount, (ii) the price, or the price as increased or reduced, as the case may be, to be maintained, whether or not for a particular period, (iii) the method to be altered, whether or not at a particular time or in a particular respect or (iv) the method or the method as altered, as the case may be, to remain unaltered, whether or not for a particular period, (e) that the facts or circumstances by reference to which the consumer may reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what they in fact are.

Another factor that entices customers to shop online is the availability of free gifts or free items. According to Section 14 CPA, it is up to the seller to impose certain conditions on the offer of a gift, prize, or other free item, but the seller must clearly describe the condition and place the description of the condition near the expression "free" or "free offer". This liability is imposed on a person or on behalf of the person who directly or indirectly claims to supply the goods or services to the person or to both of them for any conduct or representation towards goods or services that have been advertised. The provision clearly stated that the seller must give a clear representation of goods or services to the consumer, especially when they purchase it online.

Other than that, consumers are also eager to buy online from the 'limited' item offers made by seller. The claim that goods are limited in general shall not be offered according

to Section 15(1) of CPA unless the production of the goods are restricted due a pre-determined maximum quantity or the actual quantity ordered or subscribed to within a specified and reasonably short period of time. The requirements are the maximum quantity of goods must be stated by seller if the claim that goods are limited by specific time period or dates for which the goods are offered for sale.

In terms of product liability, Section 68 of CPA stated that the producer or the person who imported the products will be responsible for the damage either wholly or partly caused by a defect in the product. Defective product that is enables product liability will depends on the safety of the product which such as a person is generally entitled to expect according to Section 67 of CPA. The safety of the products includes safety with respect to products comprised therein, safety in the context of risk of damage to property and safety in the context of risk of death or personal injury. Several considerations must be determine on a person to be generally entitled to expect in relation to a product such as the manner in which, and the purposes for which, the product has been marketed, the get-up of the product, the use of any mark in relation to the product and etc. In short, online seller must be responsible for the defective products if it does not fit the safety criteria as provided by this provision.

Consumer Protection (Internet Trade Transaction) Regulations 2012

The Consumer Protection (Internet Trade Transaction) Regulations 2012, which went into effect on July 20, 2013, provide consumers with protection when purchasing goods from an online marketplace. Marketplace was defined by Regulation 2 as a website where goods and services are marketed by third parties for the purpose of trade. If any business is operated through a website or in an online marketplace, the specific information is available on the website where the business is conducted. The following diagrams list the specified information that is to be disclosed to consumers:

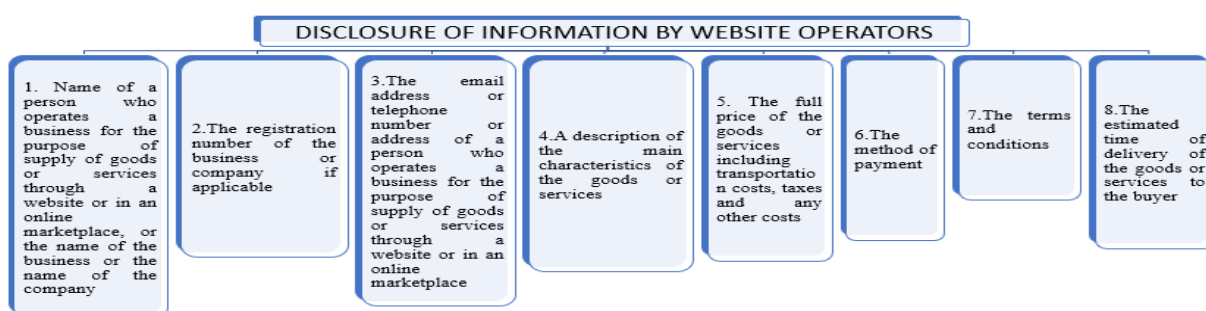


Figure 1: Requirements of disclosure of information

According to Regulation 5 of Regulations 2012, the online seller that supply goods and services through online website and marketplace must ensure that they provide appropriate means to consumers to rectify any error prior to confirmation order and shall acknowledge receipt of the order to the buyer without undue delay. Based on Regulation 5 of Regulation 2012, it is also a duty of the seller to take reasonable steps to maintain the record of the consumers in regard to names, address and telephone numbers for a period of two years because the failure on maintaining record keeping will amount the offence

according to this regulation.

3. Legal Issues and Protection for Online Shoppers

Several legal issues arise for online shopping such as misleading advertising, whereas consumers will rely on information that is false, misleading, or deceptive as provided by online seller for their products and services. It is not similar situation as consumers go to purchase at the grocery or mall, in which they can examine carefully on the products before they made payment. If the important information such as false impression about the quality of product in terms of safety and ingredient has not been disclose, will creates indication to the consumer that the product is safely to be used or consumed. The other forms of advertising that has being used for marketing is bait advertising. Specifically, according to Section 13 of the CPA, bait advertising is not allowed. It happens when a product is advertised at a much lower price, an act carried out by the seller, with the motive to entice consumers to purchase their products with hidden intentions to further convince them into buying more expensive products by criticizing the initial product being not as good (Goo et al., 2021). Consumers will be offered for a low price of the products and when they purchase, the offer turns to be more expensive.

In relation to contracts of sale of goods, the SOGA 1957 has provided legal protection for the consumer. For instance, under section 15, if the consumer purchases goods by description, the seller then must ensure the goods delivered are the same as the given description. The inadequacy of information given by the online seller enables consumers to lodge report as it was prohibited by Section 9 of CPA for any misleading conduct made by online seller. This is also a duty of online seller to disclose the important information about their business and products. In addition, it is the consumer's responsibility to exercise caution and care when entering sales of goods contracts as stated in section 16 of the Act. No liability on the seller's part if the goods are not fit or have no quality as required by the buyer.

Other than that, online shoppers or consumers also deal with unidentified sellers in the sense that consumers normally purchase products either from the seller's website or easily buy them from a marketplace such as Shopee or Lazada, in which consumers do not really know who the actual seller behind the transaction is. Therefore, this may cause difficulties for consumers in such a case for the defective products if there is no medium for consumers to use provided by the online seller if they want to make a complaint about the damage. However, if consumers cannot make a complaint directly to the online seller, they may take legal action if any advertisement or conduct of the online seller is an offence according to the law.

One of the cases that is related to online shopping is when certain products have been distributed without the authorisation of the owner of the products or an online seller selling the counterfeit products. In the case of *Organo Gold Holdings Ltd & Ors V Infigrams Sdn Bhd & Anor* [2019] 11 MLJ 172, the defendant sold "Gourmet Coffees", which belonged to the plaintiff as the original distributor, on their website. It was concluded by the court that the defendant was offering to sell imitation or counterfeit products online that would deceive or confuse the prospective customers because they bore the trademarks, particularly in packaging boxes and sachet packets with the same design and in the same colours as the

plaintiff's product. In addition, the defendants' online sale product catalogues displayed on the websites are unmistakably pictures of Gourmet Coffees emblazoned with the trademarks. It was found that the defendants, purely for profit, blatantly took advantage of the goodwill established by the first and third plaintiffs through their act of online offering to sell on the websites and, accordingly, having sold imitation or counterfeit Gourmet Coffees. In a case like this, consumers may not be able to distinguish between the original products and the imitation products if they bear the same label, trademark, and descriptions. Therefore, it is for consumers to be careful and get a clear explanation before they decide to buy products online.

4. Conclusion

Online shopping is increasingly becoming a consumer choice due to its convenience as all transactions are done virtually. In striking balance between the rights of the consumer and online seller, both parties must ensure that the necessary steps were taken in ensuring that both rights are contrived. It is significant to note that even though online shopping offers a convenient way of purchasing goods or products, it is more for the consumer to be aware of their right to make sure they are protected. Therefore, the existing law should be comprehensive to give better protection to Malaysian consumers and should also extend to virtual transactions.

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