

1998

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Recommended Citation

(1998) "'Hey big spender': Consumers and the law," *The National Legal Eagle*: Vol. 4: Iss. 1, Article 2.
Available at: <http://epublications.bond.edu.au/nle/vol4/iss1/2>

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'Hey Big Spender'

Consumers and the Law

Shop 'til you drop'

For many people this is not just a catchy sales slogan but a lifestyle.

First of all there are many events on the calendar which a lot of people draw red rings around to remind them to go shopping for the occasion. For example, there is Christmas and other religious holidays, Valentine's Day, Easter, Mother's Day, Father's Day, birthdays and so on.

Then there are a lot of other reasons why people shop and buy things. These range from needs to wants – from 'everyone else has it' to 'couldn't resist buying it'.

Unfortunately however, a lot of consumers do not know their legal rights and obligations and then the slogan, 'shop 'til you drop', can become not just a saying, but a frightening reality.

Discussion Questions

The idea that 'to buy is a sign of being alive' has been firmly entrenched in the minds of many people.

1. To what extent do you think advertising is responsible for this?
2. What different forms of advertising are you aware of?
3. What form would you say has the most impact on people?

Knock, knock who's there??

Not very long ago, cold call door to door sales were a very common form of advertising and selling. They still exist, but are not so common today. People would constantly knock on doors trying to sell vacuum cleaners and other household gadgets, cosmetics, encyclopedias and just about anything else consumable.

Often the door to door sales people were very persistent and persuasive, so much so that many people found themselves buying things they did not need or did not want or could not afford.

In the case of Frank

In 1966 Frank lived alone as his wife had died. He had one daughter and three grandchildren. Frank was a pensioner and had very little money to survive on.

A young man selling encyclopedias kept knocking on Frank's door. He kept telling Frank that he should buy a set of encyclopedias because it was a vital investment for his grandchildren and without them they would suffer educationally.

Frank was flustered by this salesman continually banging on his door and talking at him. In a moment of feeling vulnerable to the sales pitch, and as a way of getting rid of the man, Frank signed an agreement to buy the encyclopedias.

The set soon arrived at Frank's house, along with the bill. Frank did not have enough money to pay even the first instalment for them.

He immediately contacted the company the young man

worked for and said he did not want them and that he did not have the money to pay for them. He asked the company to come and pick them up and not hold him liable to pay for them.

Discussion Questions

1. Do you think that the signed agreement was a legally enforceable contract under which Frank owed the company the money for the encyclopedias?
2. If you consider that it is, why is this so? If you consider that it is not, why isn't it?

The knock that isn't a knock

Door to door sales have changed a lot since the days when a knock on the door was often from someone standing there with a big smile, lots of sales jargon and the latest range of vacuum cleaners, or the newest edition of encyclopedias, to sell.

Many different sales tactics are used now to get a 'foot' in a person's front door or invade them at their places of work. Not all of them are 'shonky' but quite a few are. For example:

- an advertisement, telephone call or brochure in your letter box offering a 'free gift', information or obligation free quote which ends up with a salesperson appearing on your doorstep pressuring you to buy something;
- someone pretends to be a researcher conducting a survey but has a sales pitch they pressure you with.

The Door to Door Sales Act 1967

To protect consumers against the unscrupulous methods of some door to door sales people, the *Door to Door Sales Act NSW 1967* (the Act) was enacted. This Act regulates credit purchase agreements made in your home or place of work. It does not apply to cash sales.

Section 4 of the Act states that a 'cooling off' period of ten days must exist.

This means that purchasers have the right to change their mind about buying the product *within* ten days as long as they let the seller know within that time. By doing so, they are not liable for the price of the product but have the obligation to return it in the same condition as when it was delivered.

The Act applies when you have:

- had no previous contact with the seller
- requested a visit for information or brochures
- agreed to a salesperson's visit after being contacted by telephone or you responded to promotional material offering benefits (e.g. prizes, no obligation free quote etc).

Discussion Questions

1. The Act covers credit, not cash, purchases only. Why do you think this is so?

2. Section 6 of the Act states that the Act is not applicable if the agreement or offer "was made as the result of an unsolicited request made by the purchaser".

How does this change the legal rights and obligations of the purchaser?

Can you give an example of this?

The heavy knock

People have the legal right not to be subjected to high pressure selling tactics in their own home or place of work. It is illegal for salespeople to use physical force, undue harassment or coercion to sell a product.

People also have the right to ask;

- the name of the company the seller represents;
- who they are and what they are selling;
- how much the product costs;
- for time to think about the offer;
- for a business card or other means of identification;
- the seller to leave your property.

Salespeople have a legal obligation not to:

- refuse to leave your property when asked;
- push you into signing a contract just to get rid of them;
- play on your emotions such as insisting your children will suffer if you do not buy the product;
- fail to disclose the total cost of goods and services;
- use surprises, for example, produce a document for immediate signing;
- mislead you about the product, the terms of the contract or the cooling off period.

Not a knock, but a ring

You just sit down at dinner time and the telephone rings. Thinking it might be the love of your life or someone equally important to talk to, you race from the table, deserting your lovingly prepared tofu and vegies, to answer the phone. At the other end you hear a very jovial voice launch into a well-rehearsed sales pitch for some product.

Thoughts quickly race through your mind like 'dam' or 'I'm just a sitting duck for these people', or 'my tofu is getting cold'. But, the person on the other end is really pushing their product, talking like heck, and it is hard to get away.

This sales technique is called Direct Marketing and if you actually buy the product this then is called Direct Market Shopping.

There are advantages to this kind of shopping such as its convenience and it can offer an unusual selection of goods. However, many people have complained about this form of 'door knocking'. The most common complaints are:

- invasion of privacy;
- long delays in receiving goods bought;
- getting the 'run around' when lodging a complaint about goods bought;
- no opportunity to inspect the goods before buying;
- you receive junk mail because this company passed on your name and address to other companies; or that
- companies hide behind anonymous post office box numbers.

Research Questions

1. Can the laws on privacy say be invoked against a company in the above 'Not A Knock' But A Ring' situation?
2. What can you do about long delays in receiving the goods you have paid for?

3. Do you have any legal rights regarding a company passing on your name and address to other companies?

Telly knocking

Far more common now is tele-shopping. Instead of someone knocking on your door, someone appears on your television screen in your house offering incredible products for incredible prices.

Usually goods are described in great detail so you do get a good idea of what you are buying and often (but not always) these goods have an unconditional refund within a certain time, (generally 30 days).

Discussion Questions

1. What might be the main problem/s that consumers face with this type of advertising?
2. What might be the main problem/s that consumers face with this type of shopping?
3. Does the Door to Door Sales Act cover this kind of shopping?

Assignment

The Australian Direct Marketing Association (ADMA) is a self-regulatory body that governs the way its members do business and has produced a voluntary set of guidelines called the 'Standards of Practice'.

1. Consider the advantages and disadvantages of a self-regulatory body.
2. Give examples of other self-regulatory bodies you are aware of.
3. Outline the sorts of things which you think should be included in a 'Standard of Practice'.
4. Consider whether self regulation means that the laws regarding consumer goods and services do not apply to the members of the self-regulatory body.

Computer knocking

Skimming your e-mail message bank and finding advertisements placed there is another form of direct marketing. Shopping by e-mail has really taken off lately. It means that simply by pressing a few keys, you can send your credit card number to buy something and never have to leave your keyboard.



Discussion Questions

1. *Would internet advertising fall into the category of direct marketing? Give reasons for your answer.*
2. *What security problems can arise with computer shopping?*
3. *Are there any laws specific to computer shopping?*

Pounding the pavement

Many people brave the crowds to go shopping at shopping centers to buy goods or services they want. This is the most traditional and most common form of shopping.

Just like any of the other forms of shopping, it is important for consumers to be aware of their legal rights and obligations.

He shopped 'til he dropped

In the case of Bruce

Bruce wasn't very good at remembering dates so he put a red ring around the 25th December on his 1997 calendar to remind him that he had to do an awesome amount of shopping before that time.

Two weeks before Christmas Bruce was sitting on the couch in his lounge room stressing about all the presents he had to buy and gearing himself into shopping mode

Gift # 1

The door bell rang. He opened the door and there was a fellow who said "Hi, I'm from Astro Communications" and then went on about how Bruce should subscribe to Astro's cable TV connection.

Bruce got excited by the sales pitch and thought that it wasn't a bad idea to begin his Christmas shopping by getting something for himself. He signed an agreement and looked forward to watching Astro Cable movies over the holidays.

The salesman left no written documentation with Bruce.

Gift # 2

Back on the couch, Bruce heard the phone ring. When he answered it was a lady offering a 'free gift' of cosmetics and she insisted she come and see him.

Bruce thought this a good chance to get a 'freebie' gift for his sister Kylie and so agreed to see her within the hour.

When the lady arrived she gave a pushy sales talk about a whole range of cosmetics and it was clear to Bruce that the only way he would get anything for free was to buy a range of cosmetics from her first and then the 'freebie' was a cake of soap.

He was not interested and asked her to leave but she refused to go.

It was obvious to Bruce that the only way he was going to get rid of her was to buy the cosmetics.

Flustered by the sales lady, Bruce had forgotten that his sister Kylie only used natural products. After she left he realised that the cosmetics he had bought were not natural and he could not give them to Kylie.

Gift # 3

Feeling down, Bruce went back to the couch and turned on the T.V. and an ad came on for a '3 in 1' exercise machine with same day delivery.

He decided that it was the very thing for his father, Bob. He rang the number, gave his credit card details and within hours the exercise machine was delivered.

When Bruce unpacked it, he discovered the '3 in 1' exer-

cise machine was not what was advertised. It did just one kind of exercise.

Gift # 4

Bruce decided to check his e-mail messages before trotting off to the shopping mall.

Among his messages was an ad for 'evergreen grass fit for all climates' with same day delivery. Bruce decided this was a good gift for his mum, Mary, as she was a keen gardener and had trouble growing grass at her seaside home.

He e-mailed off his order and within hours the grass seed was delivered.

When he opened the package there was a statement on the bag that the seeds were only suitable for the Antarctic.

Gift # 5

While on the computer, Bruce had decided to surf the internet for rugs because his Aunt Betty collected them so he thought it would be the ideal gift for her. He found a Mexican company selling 'indigenous rugs', and, with same day delivery.

He made an order, gave and true to their word, the box with the rug arrived on his doorstep that day.

When Bruce looked closely, Aunt Betty's rug had a label saying 'made in China's so it wasn't an 'indigenous Mexican' rug at all!

Gift # 6

Bruce finally set out the door to his local shopping mall with an ad in his hand from the local paper about 'Fab X T.V.'s' selling at a ridiculously low price at the T.V. Bazaar.

He decided to really impress his girlfriend, Melissa, this year by buying her a T.V.

At T.V. Bazaar Bruce was told that the set advertised was no longer available but that for \$200 more he could have a similar one.

He was disappointed but decided to buy the more expensive one.

Gift #7

Bruce thought Aunt Mary would be a problem to find a gift for but when he was walking around 'Hats R Us' he saw a great bright blue hat and decided it was the perfect present.

When he got it home and went to wrap it up he saw that the brim was damaged.

He thought about going back and getting a refund but remembered there was a 'No Refunds' sign in the shop.

Gift # 8

Bruce remembered that he had put on a beach towel on lay-by at 'Towels R Us' for his friend Mick for Christmas. Now he wasn't friends with Mick anymore, he went to the shop to cancel the 'Lay-By'. Bruce expected to get all his deposit money back, but didn't.

Miscellaneous

Exhausted from his day's shopping spree, Bruce went into a department store to buy cards, wrapping paper and ribbons.

On his way out, the security guard insisted on searching Bruce's bag. Bruce was angry about his time being wasted and said 'no' but the security person grabbed his bag from him and checked it anyway.

Consumer law in perspective

Under the *Door to Door Sales Act 1967* a seller is legally obliged to give a purchaser:

- a copy of the written agreement;
- details of the 10 day 'cooling off' period;
- a statement advising him of his right to cancel; and
- a separate cancellation notice for him to return if he decided to cancel.

If this is not done, the contract is invalid.

This Act also states that it is illegal for a seller to :

- offer a free gift which is accompanied by a high pressure sales pitch
- refuse to leave your property when asked;
- push you into signing a contract just to get rid of them.

The *Trade Practices Act 1974* states that it is illegal for a seller to make statements about their goods or services which are:

- misleading (s52);
- false (s53).

This is a Commonwealth Act which deals only with corporations, but there are equivalent State Acts which deal not only with corporations but also individuals.

The relevant NSW Act is the *Fair Trading Act* (the equivalent sections are s42 and s44. s44).

Furthermore, under the *Trade Practices Act* s71, goods must be fit for the purpose supplied. The relevant NSW Act is the *Sale of Goods Act* which has an equivalent section. Under this Act, goods must also be of merchantable quality and must be as described or match the sample shown.

It is also an offense under the *Trade Practices Act* (s56) and the *Fair Trading Act NSW* (s51) for a shop to advertise bargains to attract customers in the door and then tell the customer the bargain isn't available or is out of stock and then offer a similar product at a more expensive price.

Under the *Sale of Goods Act* 'No Refund' signs are illegal. If a consumer buys a faulty product and was not aware of the fault at the time of the sale, or it doesn't do the job they were led to believe it would or it doesn't match the sample they were shown, they can return it to the store and expect:

- a repair;
- a replacement; or
- a refund.

If however it is simply a matter of the consumer changing their mind about the product, then it is up to the seller as to whether they offer a refund or not.

Also under this Act, a consumer can cancel a lay-by at any time but must give written notice of this unless the store agrees that it is not necessary. A cancellation charge can apply if this was stated in a written lay by agreement when the consumer took out the lay-by. The charge is usually to cover storage, handling and depreciation costs.

A consumer is entitled to a full refund only if:

- there is no written lay-by statement;
- there is no cancellation fee on the lay-by statement;
- the lay-by statement is misleading or deceptive;
- the supplier breaches any term of the agreement; or
- the goods are not supplied when or as agreed.

A customer can say no to a bag search. However, refusing to open a bag for inspection may result in staff refusing to serve the customer or asking them to leave the store.

Many stores have a policy of searching bags to prevent shoplifting. Where this is condition of entry to a store it must be clearly displayed.

Store staff can detain suspected shoplifters and call the police if they have reasonable grounds. Staff should not however use force on a customer.



Assignment

The week before Christmas Bruce panicked. He realised he had put all his purchases on his credit card and that when the bill arrives he will not be able to pay it. He is unemployed, has no money in the bank and has no way of getting the money.

He is unaware of his legal rights and has come to you, a solicitor, at his local community legal center for advice.

1. Consider Bruce's situation as outlined in this article and consider what consumer law cited in the article or otherwise, applies to the various aspects of his shopping spree.
2. Prepare a written advice to Bruce as your client, explaining his legal rights and obligations.
3. In your advice outline the options Bruce can pursue.

Essay Topic

"Consumer law in NSW forms a strong protective shield for consumers against illegal commercial practices".

Discuss with reference to examples to illustrate your answer and apply your knowledge of consumer law in doing so.