

Legal Aspects of our Business



MWQA
SCOTT SCHIESSER

Legal Aspects of our Business



*This educational offering is recognized
by the Minnesota
Department of Labor and Industry
as satisfying 1 hour of
Non-Code credit toward
Water Conditioning and Plumbing
continuing education requirements.*

Honesty in Business



- Federal and State laws
- Federal Trade Commission
- Examples of deceptive acts:
 - *Claims about what your product will do*
 - *Sales practices*
 - *Claim about others' products and services*

Honesty in Advertising



- Complete and Accurate Claims
- Bait Advertising
- “Satisfaction Guarantee”
- “Money Back Guarantee”
- “Free Trial Offer”

Door to Door Sales



- What is the “Cooling off period”?
- Furnish a written copy of the contract with signatures, in the correct language.
- The proper written statement must be in 10 point bold print
- *“You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction.”*

Door to Door Sales



- Selling must inform the buyer orally, and the contract must make the previous statement.
- Seller has to furnish two copies of the “Notice of Cancellation”

Door to Door Sales



- If buyer cancels within the 3 days:
 - *Seller must return all monies, including the down payments*
 - *Buyer must return the goods in satisfactory condition*
 - *Buyer must make available within 10 days of the cancellation*

Mail Fraud



- It's unlawful to use the USPS to ENGAGE, through the mail, schemes of any kind
- The schemes cannot be used to obtain money by means of false representation
- USPS is empowered to issue “cease and desist orders”
- Only probable cause has to be proven

Express Warranties



- Written or Oral statements
- These warranties can come from:
 - *Oral statements*
 - *Advertisements in any media*
 - *Pictures*

Written Warranties



- Most common are “express written warranties”
- Dealer to customer
- Manufacturer to dealer
- Manufacturer to customer
- These are subject to Federal Trade Commission regulations
- The person/company who makes the warranty, is liable to uphold it

Written Warranties



- Dealer that sells a product is not liable for the manufacturer's warranty
- Full: must include the duration, with NO limits of any kind
- Limited: if the warranty cannot meet the FULL requirements, it's now limited

Requirements



- Identity of the parties
- Description of the product
- What will the warrantor do with a defect
- Duration of the warranty
- Step by step explanation for performance obligations
- Dispute settlement mechanism
- Limitations, such as States
- *“This warranty gives you specific legal rights, and you may also have other rights which vary from state to state.”*

Spoken Warranties



- Verbal Express Warranties
- When a seller affirms quality, suitability, and characteristics
- Statements meant to affect the buying decision
- The words “warranty” and “guarantee” don’t even have to be used

Implied Warranties



- Created by the Uniform Commercial Code
- Automatically part of every sale
- The product should do what the buyer thought it should

- This can be disclaimed by:
 - “*There are no warranties which extend beyond the description on the face hereof*”

Truth in Lending



- Federal Law that informs what a product costs
- Applies when arranging credit for consumers
- Total finance charge and APR must be on the face of the document
- APR enable the consumer to compare

Lending Contracts-Contents



- Creditors name and address
- APR
- Finance charges
- Amount financed
- Total of all payments
- Total Sale price
- Distribution of funds itemization
- Prepayment penalty, late fees, security interest
- Nonpayment, default definitions

Credit Practices



- FTC effective date 3.1.1985
- Requires notices to co-signers about defaults
- The law prohibits:
 - *His right to a court hearing*
 - *His right to keep personal belongings if they default*
 - *To wage deductions*
 - *Can't use personal household belongings as collateral*

Credit Practices-Late Fees/Co-Signers



- Can't charge a late fee for not paying a late fee
- Pyramiding late fees
- Example:

Equal Credit Opportunity Act



- This law applies to any business that decides to extend credit or refuse credit
- Intended to eliminate discriminating against: sex, marital status, race, color, religion, national origin, age
- The law covers procedures to extend credit
- The law also states the creditor must inform the applicant within 30 days of their decision

Fair Credit Reporting Act



- Intended to regulate how agencies report creditworthiness
- Must inform consumers when credit is denied, what information was used to make this decision
- A fine of up to \$5,000.00 and 1 year in jail, if someone obtains a credit report under false conditions

Retail Installment Laws



- Minimum and maximum finance charges must be displayed in writing
- Delinquency charges must also be in writing

Debt Collection Practices



- Always governed by State laws
- Uniform Consumer Credit Code UCCC
- Damages can be awarded to a consumer if a lender engages in “unconscionable conduct” such as:
 - *Using threats against the consumer or the family*
 - *Communicating at frequent levels*
 - *Communicating at unusual hours*
 - *Using fraudulent or deceptive tactics*
 - *Threatening to enforce rights that aren't true*
 - *Disclosing false information*
 - *Communicating with an employer before a judgment has been issued*

Consumer Leases



- Consumer Leasing Act of 1976
- Applies to leases over 4 months
- Things that must be disclosed:
 - *Identification of property*
 - *Down payment or security deposit*
 - *Incidental fees*
 - *Payment amount(s)*
 - *Other charges*

Product Liability



- Seller's duty to provide goods that are agreed upon by a verbal or written agreement
- To be liable for negligence, a person must prove:
 - *Seller owed a "duty of care"*
 - *Seller breached that duty*
 - *Damage was caused by the seller's breach of duty*

Anti Trust Laws



- Agreements with your actual or potential competitors that reduce competition are absolutely prohibited
- *Territory restrictions*
- *Division of customers*
- *Group boycott*
- *Price agreement*

Labor Laws-ADA



- Americans with Disabilities Act (ADA) most recent labor law that applies to employers with 15 or more employees
- ADA strictly prohibits discriminating against qualified employees or candidates
- ADA requires that employers make accommodations so a qualified employee can perform his or her duties

Practice Questions



- Question #1-Handout
- Question #2-Handout
- Question #3-Handout