

Online Shopping During MCO: What Consumers Should Know in Dealing With Sellers On Social Media?

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Abstract

The application of online platform as a method to shop has grown rapidly especially during the Movement Control Order. Online shopping has become a trend and an easy method to purchase goods without any necessity to go out from home, and get everything we want by browsing and later on do our purchase through the respective websites. Recently, the Prime Minister has unveiled a new short-term economic recovery plan called PENJANA in order to boost the economy due to the outbreak by allocating RM 70 million under its Shop Malaysia Online campaign for Malaysians to encourage domestic spending while following the requirements of new norms. However, the complex nature of e-commerce may lead to the ambiguity on the legal rights of the consumers especially when the seller breaches the contract. This paper examines the current issues on online shopping through social media such as Facebook and the information that consumers need to know in order to protect their legal rights with reference to selected legislations pertaining to the online purchase issues. Advancement of technology with consumers without adequate knowledge become a handicap for the consumers in making effective decisions to protect their rights and in becoming a resilient millennium community.

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INTRODUCTION

The emergency of COVID-19 pandemic has reshaped the lifestyle of world population, which include purchasing attitude (Syed Marzuki, Abdullah, Ab Halim, Buyung, Zreik, 2020). As the government implements the Movement Control Order, Malaysian community has found an easiest way to carry out shopping and buying various necessities without going out from their homes which is through online purchase. This change is parallel to the advancement of technology enjoyed by Malaysians generally, where majority of them are actively using the internet and social media platforms as a medium of interaction, communication and business transactions.

This comprises of seventy percent of the whole population, spending almost RM 4.5 billion on online

shopping (Ong Soo Ting, Md Ariff, Zakuan & Sulaiman, 2016). In 2017, 76% of online consumers in Malaysia have conducted their shopping online once in a month (SME & Entrepreneur Magazine, 2017). Online shopping provides an alternative platform to do shopping as it is convenient and easy regardless of the consumers' locality. The consumer does not have to leave his or her house to get what he or she wants as once the order is placed and payment is made, it will be delivered to their house. There are a lot of online retailers that use online platforms such as zalora.com.my, Shopee and Lazada that offer attractive deals with large discounts. In addition, individuals also use online platforms such as Facebook (FB) and Instagram (IG) to market and advertise their products and it has

become prevalent among the consumers (Jun & Jaafar,2011). Those platforms are excellent alternatives for both consumers and sellers especially during Movement Control Order (MCO) as the consumers may make a purchase from the comfort of their house so as to lessen the exposure to the Covid-19 whereas for a seller, the online platform is a perfect avenue to save on expenses such as rental of premises or paying employees' salaries. Even after MCO, online shopping might become one of the thriving business opportunities due to recent proclamation made by the government. It is supported by a study conducted by Sahak, S.Z et al. in year 2019, in which one of the findings indicates the salespeople are willing to use social media as a platform for selling the company's products and services to their existing and potential customers. They are expected to adopt any new technology in building a relationship with their customers, and social media is one of the platforms for this.

The Prime Minister, Muhyiddin Yassin on June 5, 2020 has unveiled a new-short term economic plan called Pelan Jana Semula Ekonomi Negara or PENJANA worth RM 35 billion to boost the economy, a plan which highlighted forty initiatives provided by the government. Among others is the effort made by the government to encourage the local market and new norm of social distancing for which the Malaysian government has allocated RM70 million under its Shop Malaysian Online company to be used for e-Commerce promo codes and discount vouchers ("PENJANA",2020). This paper highlights the current issues on online shopping through social media such as Facebook and Instagram and also the information that consumers need to know in order to protect their legal rights with references to selected legislations pertaining to the online purchase.

2. PROBLEM STATEMENT

A total of 300 complaints involving losses of more than RM 30 million concerning online purchase fraud were received by the National Consumer Action Council (MTPN) from the public since the implementation of the MCO until last July (Bernama, 2020). MTPN Welfare Bureau Chief, Datuk Seri Kenta Goh said the victims have not lost small amounts but instead large amounts on online purchases that makes the total amount of losses to be more than RM 30 million. The complaints were received in five states with Johor and Selangor recording the highest number of complaints and losses followed by

Kuala Lumpur, Melaka and Negeri Sembilan. The main reason many consumers are cheated online was because online sellers took advantage of the implementation of MCO as people have been buying more online and some of the customers even believe in cheap online sales.

On the other hand, the Ministry of Domestic Trade and Consumer Affairs (MDTCA) reported that an average of 2,500 complaints were received monthly on e-commerce fraud (The Star Online, 2020). The number one complaint by consumers is online fraud, which revolves around items purchased online that do not reach the consumers, ordering an item that turns out to be not as advertised, receiving different items altogether and receiving damaged goods. Other than that, the price hike on food and drinks were also among the complaints received by MDTCA.

Some of the complaints were the same with what had been reported in a study conducted by Azanis, S.A. (2019) that in some cases consumers received goods which are far different from what has been ordered or they do not receive the goods at all. The MDTCA has received 26.2 percent out of 2,500 complaints pertaining to fraud in e-commerce ranging from failure to deliver the goods, goods that do not fit the purpose, goods damages once received and others.

It seems like most of the consumers do not know what they should look at when dealing with the online sellers before they make their purchase(s). They are also not aware of their rights and legal actions they can take if they become victims of online fraud.

3. METHODOLOGY

This legal research used qualitative method. The study is carried out based on the primary and secondary sources of data collected from statutes, case law, official government website, journal articles, and online news portal. These data were then analysed using legal content analysis method in order to answer the problems at hand.

4. DISCUSSION

With the exponential growth of digital technologies in business transactions, Malaysia has enacted several statutes and regulations to regulate and govern the online business transactions. Among them are Electronic Commerce Act 2006, Digital Signature Act 1997, Personal Data Protection Act 2010, Consumer Protection Act (CPA) 1999, Consumer Protection (Electronic Trade Transactions) Regulations 2012, Sale of Goods Act (SOGA) 1957, and

Communication and Multimedia Act 1998. For the purpose of this article, the discussion will only concentrate on issues relating to availability of terms of contracts provided for the small online traders when using social media as a medium of business, and obligations that should be observed by them when dealing with online business through this medium.

The surge in online purchase has resulted in many small traders to join online business using social media platform such as IG or FB. Unlike big retailers and traders such as Lazada or Shopee who may be aware of the legal obligations that need to be observed by the online traders, many small traders are oblivious to the protection given by law to online consumers and thus fail to observe the obligations imposed by these laws.

In any business transaction, clarity of the terms of the contract are very pertinent as a vague term may lead to a void contract (section 30, Contract Act 1950). Unfortunately, the terms and fine prints displayed by the online small business traders are sometimes unclear and vague which may lead to misunderstanding. Due to this, online business traders must ensure that the terms and conditions as displayed clearly on the traders' sites and consumers must be aware of it because failure to read or understand the terms of the agreement is no defence for the consumer to withdraw himself from the contract. With the introduction of Consumer Protection (Electronic Trade Transactions) Regulation 2012, the law imposes an obligation upon the online traders to display information about the products or services offered by them. Among others, the Act provides obligation on the seller or trader to disclose certain pertinent information such as the full price of the goods or services which include taxes and transportation, the name of the company or owner of the business, the company's registration number, email address and also detailed descriptions of the goods supplied, or services rendered by the trader (Regulation 3, Consumer Protection (Electronic Trade Transactions) Regulation 2012).

Besides having to display pertinent information regarding products and services offered, online traders must allow the consumer to rectify any errors prior to the confirmation of the order made by him (Regulation 4, Consumer Protection (Electronic Trade Transactions) Regulation 2012). If a dispute arises between the parties, records or relevant documents must be made available to speed up the mediation process. For this purpose, the online market operator is under obligation to maintain a record of the names, telephone numbers and address of the supplier for a period of two years (Regulation 5,

Consumer Protection (Electronic Trade Transactions) Regulation 2012).

It should be noted that commercial transactions can be made electronically (section 7 of Electronic Commerce Act 2006). Therefore, the same principles under the law of contract also applies to the contract formed electronically. It is worth noting that in a contract using electronics as a medium of transaction, the issue of an invitation to treat also arises. When an online trader uses webpage to display his products or services, it can be safely adduced that he is not making an offer for sale but a mere invitation to treat following the rule established in the case of *Pharmaceutical Society of Great Britain v. Boots Cash Chemist (Southern Ltd)* [1953] 1 QB 401. Thus, by virtue of the rule established in this case, the online trader is allowed to refuse to sell the product if for instance the price of product is mistakenly marked to a cut-rate price or at a discounted price. However, it should be noted that there are circumstances where an advertisement constitutes an offer especially if there are descriptive words which bind the contracting parties and if the terms displayed are not vague and are sufficiently certain to constitute an offer. In addition, the consumer is also opened to be manipulated by the online traders in the matter of price. In this regard, the Parliament has enacted Price Control and Anti Profiteering Act 2011 to protect the consumer from online traders who charge consumers with unreasonable price.

In January 2017, the Ministry of Domestic Trade, Co-operatives, and Consumerism gazetted the new Price Control and Anti Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016 (Regulation 2016). Unfortunately, Regulation 2016 only applies to the two classes of goods namely food and beverage, and household goods. This may lead to uncertainty in determining the classes of goods that are covered by this regulation. However, it is interesting to note that, in June 2018, a new regulation was introduced namely Price Control and Anti Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2018 which has effectively repealed the 2016 Regulations. The most notable feature is the new regulation now applies to any goods sold or offered for sale and any services supplied or offered for supply and has remedied the setback of Regulation 2016.

In any online purchase, consumers normally relied on the description of products as displayed and written on the website of the trader. Similarly, the online consumers place their trust on the online traders to supply a good quality product in accordance with the description given and the

online trader is trusted to ensure that the goods must be fit for the particular purpose required by the seller. The Sale of Goods Act 1957 (SOGA 1957) and Consumer Protection Act (CPA 1999) apply in this regard. It should be noted that the SOGA 1957 applies to business-to-

business contracts conducted online whereas CPA 1999 applies only to business-to-consumer contracts. The statutory provisions of implied terms under SOGA 1957 and CPA 1999 provide for protection to online consumers when making transactions online. It is worth noting that the SOGA 1957 applies only to the contract of the supply of goods whereas CPA 1999 regulates the contract in respect of supply of goods and services to consumers. Among the implied terms provided by SOGA 1957 are that the goods supplied by the seller must be fit for the particular use required by the buyer (section 16(1)(a)), the goods supplied must be of merchantable quality (section 16(1)(b)), the goods must comply with the description as stated by the seller (section 15,) and the goods supplied must be in accordance with the sample (section 17). Unfortunately, even though these implied terms confer rights upon the consumer to take legal action against the seller in matters of breach of implied terms, these implied terms can be excluded by the seller by virtue of Section 62 of SOGA 1957. Therefore, the seller may avoid these obligations and dominate the terms to their advantage by virtue of this provision. In addition, the rule of *Caveat Emptor* applies in a contract of sale of goods. Under this rule, it is stipulated that the consumers must be aware to protect themselves before buying products. Unfortunately, this practice is quite difficult to follow when purchasing goods online. Thus, it may cause injustice to the consumer when the consumer is unable to make any inspection on the respective goods as it is not available at the time when the purchase is made.

CPA 1999 on the other hand, provides comprehensive protection towards the consumer. Previously, CPA 1999 did not apply to the online business transactions by virtue of section 2(g) of CPA 1999. However, an amendment was made in 2007 to extend the statute protection to online consumer. CPA 1999 provides guarantees to the consumer which must be observed by the seller or supplier. These guarantees are identical to the implied terms under SOGA 1957 such as implied guarantees as to the acceptable quality of goods (section 32), implied guarantees as to fitness for particular purpose (section 34), and implied guarantee that the goods shall comply with the description (section 35). However, there were

certain terms which were not found under SOGA 1957 to further protect the interest of the consumer. This has been remedied under the amendment to CPA 1999. To safeguard the interest of consumers, section 37 of CPA 1999 for instance imposes obligation upon the seller to take reasonable action to repair the defects in goods supplied and to provide spare parts whenever necessary. This term has given much benefit to the online consumer

especially when he received a defective product as he could not inspect it beforehand.

As noted above, it is quite impossible to scrutinize or evaluate the product before making online purchase as it is not available at the time when the purchase is made. In online business transactions using social media such as Instagram, some sellers fail to include a clause of refund and replacement. Thus, the consumer normally is left with no choice but to contact a seller and negotiate but sometimes the effort is fruitless as the seller gives numerous excuses to not give a replacement. Dispute will sometimes arise between them before reaching a consensus. In this respect, the consumer's right to get replacement is well established under section 46 of CPA 1999. The consumer is entitled to reject the goods delivered by the seller if the goods received are not in a satisfactory condition. The provision entitles the consumer to have a refund of money or received goods of the same type and of similar value to replace the rejected goods. The obligation to refund however cannot be satisfied by permitting the consumer to acquire other goods from the supplier (section 46(3), CPA 1999).

5. CONCLUSION

Online shopping is expected to grow and become a mainstream business trend and experience a rapid development especially due to the recent Covid-19 outbreak. Although various legislations have been enacted by the government to protect the interest of consumers, if consumers are not well-informed of their legal rights and do not equip themselves with necessary information, the effort of the government is futile. Thus, consumers must be pro-active in pursuing the accurate information pertaining to their legal rights especially the right to receive fair judgment which includes the right to be heard at a consumer's tribunal and receive adequate compensation from the defaulted party. MPTN and Ministry of Domestic Trade and Consumer Affairs (KDPNHEP) are hoped to work together on consumer issues, especially to prevent

the consumers from becoming victims of fraud in online purchases.

References:

- Aman, A.S. (2020, August 15). *MDTCA receives 2,5000 e-commerce complaint per month*. New Straits Times. <https://www.nst.com.my/business/2019/08/513061/mdtca-receives-2500-e-commerce-complaints-month>
- Amin, N., & Mohd. N. R. (2013). Online Shopping in Malaysia: Legal Protection for E-Consumers. *European Journal of Business and management*. Vol. 5 (24)
- Bernama. (2020, August 15). *Consumers Lost Over RM30 mil on Online Purchases During MCO*. <https://www.theedgemarkets.com/article/consumers-lost-over-rm30-mil-online-purchases-during-mco-%E2%80%94-mtpn>
- Consumer Protection Act 1999
- Consumer Protection (Electronic Trade Transactions) Regulations 2012
- Contracts Act 1950
- Electronic Commerce Act 2006
- PENJANA. (2020). Retrieved from <https://penjana.treasury.gov.my/>
- Jun, G., & Jaafar, N.I. (2011). A Study on Consumers' Attitude towards Online Shopping in China. *International Journal of Business and Social Science*, Vol.2 (22)
- Ting, O. S., Ariff, M. S. M., Zakuan, N., Sulaiman, Z., & Saman, M. Z. M. (2016). *E-Service Quality, E-Satisfaction and E-Loyalty of Online Shoppers in Business to Consumer Market; Evidence form Malaysia*. Paper presented at the IOP Conference Series: Materials Science and Engineering.
- Pharmaceutical Society of Great Britain v. Boots Cash Chemist (Southern Ltd) [1953] 1 QB 401
- Price Control and Anti Profiteering Act 2011
- Price Control and Anti Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2016
- Price Control and Anti Profiteering (Mechanism to Determine Unreasonably High Profit for Goods) Regulations 2018
- Rahman, N.R.A. (2018). The Rise and Fall of Caveat Emptor in Malaysian Sale of Goods Contract. *Journal of Laws and Governance*. Vol 1 (1), 1-14
- Sahak, S.Z., Hashim.N. and Zaki, M.R. Assessing Factors Associated to Social Media Adoption Among Sales people of Environmental Services Company in Malaysia (2019). *ASEAN Entrepreneurship Journal*, Vol. 5 (2), 35-40.
- Sale of Goods Act (SOGA) 1957
- SME & Entrepreneur Magazine, (2017), "76 percent of Malaysians Shop Online At Least Once a Month". Retrieved from, <https://smemagazine.asia/76-percent-of-malaysians-shoponline-at-least-once-a-month/>
- Sondakh, J. J. (2017). "Behavioural Int
- Syed Marzuki,S.Z., Abdullah, H., Ab. Halim,R., Buyung,S.,T., Zreik, M.,Purchasing Behaviour on Halal Food Products during Movement Control Order (MCO): Quantitative Evidence from COVID-19 Pandemic (2020).*ASEAN Entrepreneurship Journal*, Vol. 6 (2)
- The Star Online. (2020, August 15). *MDTCA gets 2,500 e-commerce fraud complaints monthly*. <https://www.thestar.com.my/business/business-news/2019/08/15/mdtca-gets-2500-e-commerce-fraud-complaints-monthly>

