



On-line shopping continues to grow: how did the Quebec legislator deal with this new trend?

Introduction

How often do you purchase goods over the Internet? Does your company sell goods over the Internet? These are few of the questions which were covered by the *2007 Survey of Electronic Commerce and Technology* which was conducted by Statistics Canada and released on April 24, 2008. The survey covered over 19,000 enterprises across the economy. It appears that online sales increased at a double-digit pace for the last sixth consecutive years. Total private and public sector Internet sales hit an estimated \$62.7 billion, up 26% from 2006. While online sales increased, the proportion of private sector companies that sold goods and services online remained stable at about 8%. In the public sector, some 16% of organizations reported e-commerce sales. Private sector businesses dominated online sales in 2007. E-commerce by private sector firms increased 25% to \$58.2 billion, while public sector e-commerce rose 30% to almost \$4.5 billion.

Definition of “Distance Contracts”

Since online sales increased and will continue to increase in the next few years, on December 15th, 2007, new provisions concerning “distance contracts”, contained in the Quebec’s *Consumer Protection Act*, 2006, c. 56, a.5 (hereinafter referred to as the “Act”) came into effect. These amendments added new requirements with regards to agreements entered into between a merchant and a consumer without the parties being in each other’s presence, neither at the time of the offer nor the acceptance (defined as “Distance Contract” in the Act). The pertinent provisions of the Act dealing with “distance contracts” will apply to all purchases done by a consumer located in Quebec even if the merchant is located outside of Quebec. The Act does not deal separately with Internet and telephone contracts.

Disclosure Requirements of Mandatory Information

The major concern for the merchant is the obligation to disclose mandatory information prior to the conclusion of the agreement with a consumer. The main advantage for consumers is the possibility to cancel the agreement and request a refund should the merchant not comply with the provisions of the Act.

The merchant must disclose certain information before entering into a Distance Contract with a consumer. The merchant *must* provide the following information in a manner which allows the consumer to easily retain or print the information:

- Its name or any other trade-name under which it carries on business;
- Its address;
- Its telephone and fax number and email address;
- A description of the goods or services to be the object of the contract, including characteristics and technical specifications;
- An itemized statement with the prices of each good or service and any related fees;
- A description, if possible, of any charges payable to a third party (custom duties, brokerage fees, etc.);
- The total amount paid by the consumer under the contract as well as the amount of instalments, the charge applicable for the use of the goods/ services and the terms of payment;
- The applicable currency, if not Canadian dollars;
- The date or time on which its principal obligation must be performed;
- The mode of delivery, the name of the carrier and the place of the delivery;

- The applicable cancellation, rescission, return, exchange and refund conditions; and
- Any other applicable conditions or restrictions.

The Distance Contract must be written and must contain the consumer's address, the date of the contract and all the information for which disclosure is required, as mentioned above. The merchant must provide the consumer with a copy of the Distance Contract within fifteen (15) days of its acceptance, in such a manner that it can be easily retained or printed.

Cancellation of the "Distance Contract"

The consumer may cancel the agreement within seven (7) days of the receipt of a copy if: (i) the information required to be disclosed was not disclosed by the merchant prior to the contract, (ii) the consumer did not have the opportunity to accept, decline or correct the proposal, (iii) the contract did not provide the required information or (iv) the merchant did not submit a copy of the contract that could easily be retained or printed by the consumer.

The consumer may also cancel the Distance Contract prior to the performance of the merchant's principal obligation if this obligation is not performed within thirty (30) days of the mentioned date, or, if no date is mentioned, thirty (30) days following the conclusion of the Distance Contract.

If the consumer wishes to cancel the Distance Contract, as mentioned above, he or she must send a notice to the merchant. The contract will be cancelled upon receipt of the notice. The pertinent provisions of the Act provide for a chargeback mechanism for transactions paid by way of a credit card.

Within fifteen (15) days of the cancellation, the merchant must completely reimburse the consumer of all amount paid including sums paid to a third party. The consumer must also return the goods to the merchant within fifteen (15) days of the cancellation. All related costs are the merchant's liability. If the merchant does not reimburse the consumer within fifteen (15) days and the consumer has paid with a credit card, the consumer may request a complete chargeback from the card issuer, within sixty (60) days following the default.

Conclusion

As there are significant disclosure requirements for companies who conduct online sales in Quebec, we would strongly recommend that your company's web site be reviewed in order to ensure that it provides the pertinent disclosure information and meet all the requirements. If the shopping online trend continues to grow, there are high chances of seeing companies, who do not comply with the pertinent provisions of the Act, faced with legal proceedings.

This update is intended to provide general comment only and should not be relied upon as legal advice.

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