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E-commerce: Your Obligations regarding Consumer Protection and Competition Matters

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Before selling your products and services online, you will need to determine the form and content of your contract, and ensure that you comply with the provisions of the *Consumer Protection Act* (the "CPA"). The CPA applies to any contract between a consumer and a merchant entered into in Quebec, including online contracts of sale, which are known as "distance contracts."

Rules applicable to contracts entered into on the internet

Form

Contracts concluded on the internet must be in writing and must contain the name and address of the merchant, as well as the date of the transaction. In addition, certain information must be provided to consumers before a contract is concluded, in particular: information identifying your business; a detailed description of the goods or services you are selling, including their characteristics and technical specifications; the price of each item or the terms of payment; all the applicable fees, whether required by law or charged by the merchant; the delivery date or the date on which the service will be provided; and other details regarding delivery, cancellation policies and any other applicable restrictions or conditions.

This mandatory information must be presented prominently and in a comprehensible manner, and be expressly brought to the consumer's attention. This could be done through a web page containing said information, which must appear on the screen before the consumer pays for the items in the shopping cart. It is good practice to ensure that the information is easy to print or save in PDF format.

Acceptance

Before the contract is entered into, the merchant must provide the consumer with an express opportunity to accept or decline the offer and to correct any errors.

Copy

The merchant must provide the consumer with a copy of the contract within 15 days after the contract is entered into, in a manner that ensures that the consumer may easily retain it and print it.

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Delivery

A consumer may cancel a contract if the goods are not received (or the service is not performed) within 30 days after the date specified in the contract or within 30 days after the contract is entered into in the case of a contract that does not specify a delivery date. Note that goods for which delivery was attempted on the agreed date will be considered delivered.

Cancellation

The CPA allows consumers to cancel the contract in a number of cases, in particular when the merchant does not comply with the provisions set out above. Each merchant is free to establish a cancellation policy and set its conditions, so long as these are in accordance with laws of public order. The consumer must be informed of said policy before entering into the contract, which must include the cancellation policy.

Warranties

Legal warranty

The *Consumer Protection Act* provides for a legal warranty that automatically applies to a good, whether purchased in store or remotely. Under said legal warranty, goods must be fit for the purposes for which goods of the kind are ordinarily used, durable for a reasonable length of time, having regard to their price, the terms of the contract and the conditions of their use. Goods must also match their description under the contract. Finally, a consumer is also entitled to a recourse against the merchant should there be a latent defect in the good.

Additional warranty

A merchant may offer consumers an additional online warranty, provided that said warranty complies with the relevant provisions of the CPA.

Application and exceptions

It is noteworthy that the aforementioned rules are the consumer protection rules which generally apply to the sale of goods and services, but they may not apply in certain instances, such as in the case of contracts for the sale of goods which are likely to deteriorate rapidly, such as food. One must be mindful that the *Consumer Protection Act* contains exceptions or provisions that are specific to certain commercial sectors. Different laws and regulations may also apply to certain types of goods and services that are sold.

Competition law issues

The CPA contains competition-related obligations that are specific to Quebec. All merchants in Quebec must also comply with the provisions of the Canadian *Competition Act*. The purpose of the *Competition Act* is to (i) maintain and encourage competition between businesses in Canada, (ii) provide consumers with competitive prices and product choices, and (iii) to protect consumers from fraudulent or prohibited practices.

Prohibited business practices

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Misleading price display

Under the CPA, when you advertise the price of a product or service, you are required to advertise an “all-inclusive” price, which includes all amounts that the consumer will have to pay for the product or service. The all-inclusive price should be more prominent than the sums of which it consists. Taxes (GST/QST), among other things, may be excluded from the advertised price, but must be added at the time of payment. Price-related representations and price display are also subject to specific rules under the *Competition Act*.

False or misleading representations

Advertising that contains false or misleading representations, or fails to mention an important fact is prohibited under the CPA. The *Competition Act* prohibits the making of materially false or misleading representations to the public. The provisions of the *Competition Act* dealing with false and misleading representations apply to a number of cases, including the following:

Performance representations not based on adequate and proper tests: The making of representations to the public about the performance, efficacy or longevity of a product, which is not based on an adequate and proper test, is prohibited.
Untrue or unauthorized use of tests and testimonials: The unauthorized use of product performance tests and testimonials (e.g., scientific tests, consumer testimonials, etc.) is prohibited. Needless to say, these cannot be distorted.
Misleading warranties: Giving a consumer a warranty containing materially misleading representations that could influence the consumer’s decision to purchase goods or services is prohibited. The overall impression conveyed by a representation and the literal meaning of said representation is used to determine whether the warranty is misleading.
Misleading promotional contests: Certain information related to the holding of promotional contests must be disclosed to the public. In addition, the sending of any documentation that would mislead the recipient into believing that he or she has won a prize or other benefit is prohibited. It is noteworthy that in Quebec, there are specific rules related to promotional contests.

Other prohibited practices

The *Competition Act* aims to prevent **abuse of a dominant position** and therefore provides stricter standards that apply to businesses holding a dominant position in a market. **Conspiracy** provisions aim to prevent a business from unduly reducing competition or unreasonably increasing the price of a product. This law also prohibits the **refusal to sell a product**, insofar as a business has no right to harm a customer by refusing to supply it sufficiently under normal market conditions. Finally, **vertical restraints**, that is, practices such as exclusive dealing, tied selling and market restriction, are prohibited, as they generally impose conditions that restrict the freedom of consumers. The CPA prohibits making use of **commercial advertising directed at persons under thirteen years of age**.

Penalties

Both the *Consumer Protection Act* and the *Competition Act* provide for penalties for prohibited practices. Judges can order punitive damages for certain violations of the CPA. Under the *Competition Act*, certain acts are considered criminal if a person does them knowingly or recklessly, regardless of the consequences they may have on the public.

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