



It can't be fraud – or is it?

Summary

Bad commercial behavior and practice may be no different from fraud as far as the customer is concerned. Taking money before making 'arbitrary' decisions about supplying goods or services may not be technically fraud because that requires deception to be deliberate. However, the physical world provides the customer with the ability to gain some remedy easily but the Internet does not. Regulation may be needed to address this problem.

Introduction

The physical world provides buyers and sellers with many ways of protecting their interests.

A buyer can actually inspect goods, ask for a demonstration, see what other people on the premises are doing, ask to see a manager if the sales staff cannot answer questions to their satisfaction, add requirements to the supply of a good or a service to qualify its acceptability. If it is an auction, the buyer can see the thing being auctioned.

A seller can check the credentials of a buyer, can explain restrictions on the good or service, can negotiate a delivery time or schedule, can insist on payment in cash or agree a deposit or part payment prior to fulfillment.

Finally, both parties have seen each other, are able to check such things as office or home addresses, and can be reasonably certain of how to enforce the agreement if things do not work out.

The Internet world does not support the buyer or seller. This is a situation that is very much in the favor of the seller and to the disadvantage of the consumer, and even of the business.

In this article we examine common issues that trade over the Internet has exposed and consider how they might be remedied. The sub-sections headings are indicative rather than following strict legal definitions or understandings.

Contract terms

An increasing number of web services are being 'sold' on contract terms that would confuse the honest man. The essence of the terms is that the supplier can change the terms without notice (even from the published terms at the time the payment under the contract is taken) and reserve the right not to provide the advertised service without recompense.

For the buyer and seller there is little or no indication of the law that is expected to be in force over the contract, or how to enforce it. Whilst a number of Internet sites may give forms to fill in to contact them a surprisingly high proportion of these do not work. Others provide the e-mail address of the web site manager as their only contact. Neither of these approaches are contractually satisfying.



Rather too often the supplier does not identify themselves to anything like the extent that they must when operating a physical trading address.

Sale terms

The principal form of payment (not settlement) on the Internet is the credit card. It has significant attractions to the buyer and seller for quite different reasons. It is the only universally available means of making a payment by Internet (the other is ATM cards).

This has the attraction to the seller of getting the money in at the point of contact regardless of any other issues. This has the attraction for the buyer of a limitation on their exposure if the seller defaults, and the likelihood of getting all their money back from the card supplier if all else fails.

But making a payment is only one of the sale terms. Getting a refund because the sale system added something that the buyer did not notice is a different problem. For a period of time some Internet travel companies would include an option for travel insurance where the customer would have to uncheck the box to avoid paying for it. If the information for their travel was reasonably long the box would only be visible if they scrolled down the screen. Removing part of a payment is much harder than removing a payment completely.

Buying goods internationally may attract customs fees on import, even if there is no sales tax levy, but these may not be mentioned even when the supplier knows where the goods will be shipped from.

One approach, particularly with online auctions, to matching the supply of the goods to the making of the payment, has been the use of an escrow service. However, all aspects of this article also apply to escrow services as online suppliers.

Warranties

Warranties on goods are another source of confusion. For the buyer it is not clear who provides the warranty and what limitations there are. Some sellers try to deny warranty if goods are sold outside a particular territory. Others will only accept warranty claims if they deal with an address in a specific territory.

Shipping terms

It is normal when buying physical goods to ask when they will be delivered if they are not available to take home immediately. Surprisingly often suppliers will show goods as available on their web site, but within minutes of closing the order you are notified by e-mail that the goods are not available and will be shipped at some later time. There is no ability to cancel immediately, without charge, and the e-mail is often sent from an address that does not accept replies.

Consistently failing to deliver, and constantly moving the delivery date back are also reported problems. These also make it difficult to cancel an order and also make it more difficult to cancel the credit card part of the transaction.



Whilst the situation may be perfectly genuine for the supplier the purchaser has paid the money and should receive the goods.

Errors and exceptions

These are probably the hardest area to deal with. A newspaper report mentioned a situation where a customer was overcharged by a supplier. The supplier realised the error, and immediately credited the amount involved directly to the customer. What no-one knew until later was that the supplier was in the USA and the customer in the UK.

The result was that the UK customer was charged currency conversion fees twice by the banking system, and these fees were substantially higher than the real transaction cost. This is also a common problem with credit card transactions where foreign currencies are involved.

Some shopping cart systems use 'cookies' as a way of remembering purchases. However, they may add previous purchases back in to the electronic order and the user may not notice that an order for 10 is now 11.

Conclusion(s)

In a number of cases listed above, it could be hard for a user to know if they are dealing with an honest trader or a fraudster, or even some mixture of both. What are often genuine, normal commercial practices become indistinguishable from fraudulent behavior when the physical link between a buyer and seller has been cut. Many of the traditional protections and remedies are not available if the Internet is being used, even where there is national law in place and buyer and seller are in fact in the same country. Poor systems design and lack of understanding of the traditional values of the actual shopping experience have allowed Internet designers to produce less than satisfactory results in too many cases.