

IT LAW AND ETHICS TERMINAL ASSESSMENT

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Q1. European Union (Consumer Information, Cancellation and Other Rights) Regulations 2013 and Distance Selling

The preliminary goal of European Union (Consumer information, Cancellation and Other Rights) Regulation 2013 is to ensure the safety and the rights of the customers. Part 2, Part 3 and Schedule 2 of the S.I No 484/2013 concentrates on the distance selling/ off-premises. The aim of the European Union legislation in the field of distance selling is to increase the consumer confidence in the ecommerce by putting consumers who purchase goods or services through online, similar to the consumer who buy goods directly or on-premise. The Distance Selling Directive along these lines applies to most agreements where a shopper and a provider running a sorted-out distance selling plan don't meet up close and personal at any phase until after the agreement has been finished up. The Directive applies to any consumer distance contract made under the law of an EU-Member State just as the European Economic Area (EEA). It gives a number of crucial lawful rights for consumer so as to guarantee a significant level of purchaser assurance all through the EU.

Rights by Distance Selling directive

- Provision of comprehensive information before the contract or purchase, which should include the identity and the address of the supplier, characteristics of the goods or service, delivery cost
- Confirmation of most of the information in a durable medium and relevant information after the sale, which should include the conditions for exercising the right of withdrawal, the place to address the complaint
- Right to cancel the contract within 14 working days without penalty, except the cost of returning the goods. Upon cancellation the trader is entitled to repay all the payments made by the consumer, including the delivery charges. Once the contract is cancelled, all the other credit agreements entered into at the time of the contract are cancelled as well.
- Right to a refund within 30 days from the cancellation. If any goods or service turns out to be faulty or not as advertised, consumer has rights to ask for refund if not interested in repair or replacement.
- Delivery of goods or service within 30 days from the order placement
- Right to redress for faulty goods. if any goods or service turns out to be faulty or not as advertised, consumer has rights to
- No waiver of the right and obligations provided for under the directive, though instigated by the consumer or the supplier

Cooling off period:

Cooling off is the time during which the customer may cancel a distance contract without providing any reason and without costs or penalties other than potential charges incurred in returning the products. The customer is entitled to a 14-day cooling off period, which begins on the day the products are purchased by the customer. In the case of service, the duration of cooling-off starts on the day the distance sales contract is concluded.

If a trader neglects the customer with specifics of the right to cancel, the period of cooling-off can be extended up to 12 months from the date on which it would have expired if the correct information had been given. If, during this 12-month span, the trader provides the details, the cooling-off span expires during 14 days of the customer receiving it.

Derogation and exemption from the Directive

There are few types of contract that are exempted from provisions of the Distance Selling directive, which includes financial service contracts, gambling contracts and the contracts that made through an auction. As the financial services are under Distance marketing of the Financial Service Directive.

The provision of comprehensive information before the purchase and the right to cancel the contract are exempted from the core provision of the Directive. The contracts for services to be performed on a specific date or a specific period such as concert, travel or hotel room bookings. The right of withdrawal is exempted in few cases, unless the consumer and supplier agree otherwise. This covers perishable goods, goods made to the customer's specifications etc.

Penalties for offences

If a consumer or a trader found guilty on summary conviction to a class A fine or to a maximum term of 12 months imprisonment or found guilty on indictment to maximum fine of €60,000 or a maximum term of 18 months imprisonment.

Case Law:

In Amazon EU Case C-649/17, the Court of Justice of the European Union (CJEU) held that the Consumer Rights (CR) Directive 2011/83/EU doesn't necessitate that a web-based business stage gives shoppers a phone number preceding the decision of an agreement.

Facts:

This contradicts with the first right of the off-premise consumer. The trader must provide complete information to the consumer including the supplier's identity, communication details (address and phone number).

Dismissal:

Under EU law, Article 6(1)(c) of the CR Directive requires that, before a buyer is limited by a separation or off-premises contract, the dealer must give him/her, in a reasonable and intelligible way, "the geographical location at which the merchant is built up and the broker's phone number, fax number and email address, where accessible, to empower the shopper to contact the merchant rapidly and speak with him effectively".

Q4. Trademarks Act, 1996

A trademark is a sign fit to be spoken to graphically which is competent enough to distinguish products or administrations from those of specific efforts for one endeavor (segment 6). It involves words, plans, letters, numerals, or product or bundling status. In Ireland, trademarks are primarily defined by the Trademarks Act 1996 which implemented EU Directive 89/104/EEC. Network trademarks may have an effect in Ireland, and Ireland can be granted foreign trademarks under the Madrid Protocol.

Application process:

Enrollment is not compulsory in Ireland to build up trademark rights. The proprietor of an unregistered trademark can, as a customary ward of law, acquire consumer rights under the law of going off. This protects the honesty from fraud connected with a trademark. Despite this, consumer privileges can be difficult to prove and exorbitant to authorize. The best way to ensure trademarks is therefore by enlisting at the Irish Patent Office. The applicant must announce that the trademark is being used or that there is a true-blue requirement to be used while recording an Irish trademark application. The applicant is not expected to show use, however it may be. Applications for a trademark in multiclass are permitted. A registrable trademark is any sign designed for practical representation and fit for product or administration recognition.

Grounds of refusal:

Absolute - There is a reasonable reason for refusal on evaluation, namely that the mark has no special character, consists solely of unmistakable signs or signs, or contains only regular signs or signs in the language or trade practices. Such a complaint can be conceivable if the trademark has gained specific character through use (Section 8).

Relative - A striking feature of the process for Irish trademarks is the determination of subjective reasons. This implies that the Irish Patent Office embraces searches for prior trademarks and may be critical of them. A argument concerning relative grounds can be overcome by contention, restriction of goods or administrations, evidence of equal simultaneous use or letter of consent (Section 42).

Registration:

The application is circulated in the wake of finishing evaluation and there is a three-month limitation period (Section 45). Resistance could be recorded on the basis of prior rights, to be specific Irish trademarks, Community trademarks, international trademarks assigning Ireland, and customer rights secured in Ireland under the law of off. Resistance proceedings occur legally before the Patents Office and can require a court of choice.

On the off chance that no restriction is recorded inside the important term, or if resistance is successful settled, the trademark application will continue to enrollment. Trademark registration establishes restrictive rights extending to the indistinguishable imprint and indistinguishable merchandise or administrations, just as the indistinguishable imprint and comparable products or administrations, or a comparable imprint and indistinguishable or comparable products or administrations, where there is a likelihood of disarray with regard to the general public. Rights can also refer to identical or similar trademarks where the trademark is infamous in Ireland and usage of a later trademark without justification will misuse the unmistakable character or reputation of the trademark or be inconvenient to it.

Ownership:

A registered trademark is a property right acquired by enlistment of the imprint and joint ownership of the imprint might be enrolled where the connection between the properties are with the end goal that nobody of them is qualified for use it, save money in the interest of both or every one of them (Section 26).

Transfer:

A trademark may be assigned or otherwise transmitted in whole or in part. It may be transmitted by testamentary disposition. By operation of the law or by assignment. A license may be general or limited and exclusive or non-exclusive (Section 32-33).

Duration:

Trademark enrollment continues from the recording date for a long time. Enrollment on installment of expenses could be restored for ten-year timeframes. There is no precondition for

proving use on resettlement. However, a registration of a trademark may be repudiated by an outsider if, within five years of the date of production of the registration, the trademark has not been put into real use in Ireland by the merchandise or administrations for which it is registered, or if such use has been suspended for a continuous period of five years.

Infringement:

Any use of a registered Trademark without consent or the commission of any act under Section 14, considered as an infringement of the trademark under Section 13.

Case study:

Alcohol Countermeasure Systems (International) Inc

vs.

European Union Intellectual Property Office

The Court of Justice of the European Union so held tight an interest brought by the competitor, Alcohol Countermeasure Systems Inc, the proprietor of an EU trademark, against the decision of the General Court of the European Union on March 29, 2017, (T-638/15), which had pardoned its application for the undoing of the decision of the First Board of Appeal of the European Association Intellectual Property Office of August 11, 2015, (Case R 1323/2014-1), relating to lack techniques brought by Lion Laboratories Ltd against the up-and-comer. The United Kingdom of Great Britain and Northern Ireland intervened in the interest. The court said that on January 28, 2010, the up-and-comer gained enlistment of the EU word mark Alcolock (the tested imprint) from EUIPO. On August 13, 2012, Lion Laboratories recorded an application for an introduction of shortcoming of the tested imprint.

Facts:

The applicant could not have raised that request under the General Court's careful gaze, given that the decision took place after the system made piece had closed on 11 February 2016. The competitor further maintained that it would not be necessary for it to register another EU trademark near completion of the technique provided for in Article 50. Without a doubt, it will never be in a situation around then again to protect the full points of interest of its rights of place.

Dismissal:

Q3. Code of ethics in business organization

In an organization a company collection of values establishes a atmosphere of obligation. It does not simply lay a strong social foundation for the company, but also allows associations to accept and enforce actual, additionally moral game plans and strategies for a wide dynamic range. A deliberate code may create trust between the association and a number of accomplices affected by their exercises including staff, suppliers, consumers, and the general population. An incredible arrangement of recognized principles develops affiliation estimates which drive its exercises and dynamic guidelines.

Advantages of having a business code of conduct

1. Key Decision-Making

Business visionaries pick choices at the official degree of their affiliation. A code of morals in a private undertaking can give an establishment on which to base all choices that sway inside and outside accessories, for example, delegates or occupants in the nearby framework. Moral difficulties faced by business visionaries should not routinely have the indistinguishable increase as problems faced by corporate heads, such as laying off a colossal number of workers or bringing massive proportions of toxic substances into the environment. Nevertheless, having a clear moral code set up from the earliest starting stage will help guide you when your partnership eventually reaches a corporate level.

2. Organization Reputation

Privately owned companies launched a strong offer to create advantages. Getting ideal conditions from a positive reputation in the business location can be adequate to ensure larger contenders have a sizeable bit of the pie. Delightedly demonstrating your code of ethics on your website or in authoritative declaration, while considering ensuring that your exercises are accurate in compliance with your terms, you will establish a positive picture among customers and job searchers, build a steady customer base and help grow your picture.

3. Lawful Considerations

The legitimate points of interest of having a code of ethics in place make clarifications of ethics a virtual co-operation essential. The sum of the ideal conditions referred to above will serve to stay with your out of genuine trouble which, though fundamental to any relationship, is especially critical for sole possessions and affiliations that despise singular affirmation of danger. Moreover, if a single participant completes a criminal display for the sake of the organization, a robust code of ethics will provide extra protection. For example, if a single purchasing chief tricks your suppliers, your code of ethics can help convince a court that this kind of behavior is not supported by your association.

4. Construct Customer Loyalty

Buyers can allow them to be exploited by the association once, but, if they agree that they have been abusively handled, such as by being robbed, they will not be repeated as customers. Having a loyal client base is one of the keys to long-range market achievement because servicing a current customer avoids pursuing expenditures as well as attracting another. The credibility of an organization for moral direct will allow it to build a dynamically positive image in the place of company, which can attract new customers by verbal referrals. Then again, the association's chances of having new customers are damaging a reputation for dishonest dealings, particularly in this season of casual communication when confused consumers can easily spread details about the bad experience they have had.

5. Positive Work Environment

Delegates are committed to being successful by making their first inevitable worker come together afterwards. They should be clear as to their capabilities and experience. Moral workers

are seen not as individuals but as agreeable individuals. They respond favorably to partners. Their manager trusts them with knowledge about mysteries and is usually granted more flexibility in the same manner. Agents caught in lies by their executives are damaging their chances of success within the relationship, and that end in risk. A unusual case of bad ethics is a burglary of an employee. This can cost the company a lot of money in a few projects, for example, bistros whose delegates pick up funding from the extra storeroom or cooler.

6. Evade Legal Problems

Once in a while, the organization of an association may be tempted to compromise in mission to benefit, for example, by not completely agreeing to common rules or labor laws, by neglecting the dangers of prosperity for authorities or by using standard materials in their products. The processes for receiving it may be exceptional, including real expenses and fines or government occupational approvals. The arrival of negative publicity will cause long-going harm to the credibility of the organization which is much more costly than the actual charges or fines. Associations that uphold the most elevated good rules set aside the drive to create every person out of the partnership about the lead they are foreseen to lead.

Principles in code of ethics:

The principles of ethics are honesty, integrity, promise-keeping and trustworthiness, loyalty, fairness, concern for others, respect for others, law abiding, commitment to excellence, leadership, reputation and moral, accountability.

Principle of the golden mean - The fundamental guideline of the golden mean set somewhere near Aristotle 2,500 years prior is balance or making progress toward a harmony between boundaries. A related idea in business correspondence is "satisfying," or doing a tad bit of what everybody needs except with nobody getting precisely what s/he needs, basically a tradeoff between invested individuals. The thing that matters is that the brilliant mean is a standard of balance proposed to serve the wellbeing of one's partners and public, as opposed to a strategy of exchange.

Principle of natural law - The people are qualified for complete those activities that transcendently center upon the qualities that are depicted by the characteristic tendencies of individuals. Given that individuals are normal they can distinguish the characteristic tendencies as well as skilled to recognize different people having a similar character. This will improve the organization's moral and be understanding and help the colleagues and will create good environment in the work.

Principle of the golden rule - The Golden Rule is one of the most brief and general standards of morals you can discover in business or somewhere else. It is perfect for the business setting where chaotic calendars, stress, and employment pressures make moral problems hard to sift through. With your employment in question, you don't need your moral contemplations to be only an untimely idea yet your guideline standard of working together. The excellence of the Golden Rule is that it's so unbelievably basic yet significant.

Principle of Double Effect - This principle restricts the people structure performing insidious activities, so as to make beneficial things occur. In any case, there are two different ways great can come out of insidiousness. It can come to deflect awful or it can come to have any new great. White lies are an example of this principle.

Principle of usefulness - One should always do whatever is most useful to bring happiness. This could bring a good harmony in the organization environment and improve the productivity of the organization.

Principle of respect for autonomy - This demands each individual ought to be accommodating of every other individual, and never define implies so as to achieve the parts of the bargains. Each and every other human must be dealt with deferentially and ought to be considered as a human not simply as a thing or intends to accomplish the objectives for example individuals have rights.

Principle of universality - The activities completed by any individual must be founded on those guidelines that both the human doing the activity stands to the standards just as the withstands to the all-inclusive good laws.

Case study:

Mary owns a small toy manufacturing company. One of her employees has noticed that one of the pieces on the most popular toy the company manufactures can detach from the toy. This detachment could pose a potential choking hazard to young children who play with the toy. No customers have yet reported problems with the toy. Mary wonders if she should report the potential hazard before anyone gets hurt. However, the recall would cost her company money and result in loss of sales during the busy Christmas season.

Facts:

Mary faces ethical dilemma and wonders as to whether to report or not. Mary takes a gander at the general expense of a review, yet no episode is yet to be accounted for. Mary is taking a gander at the general cost not the imperfection which isn't right. This is being teleological in taking care of a moral quandary. The workers acted morally by seeing and revealing the imperfection, however Mary is the one to settle on moral choice yet is difficulty. She should be straight and clear on moral issues and set priority to representatives and this will urge them to act increasingly more morally.

It is acceptable to take note of that being straightforward and open may not yield brisk positive outcomes yet after some time an association wins the certainty of purchasers. Procter and bet pulled back Relytampton immediately when its utilization was measurably connected to passings while Johnson and Johnson cleared all retail retires of Tylenol Analgesic inside long periods of revelation that a few compartments had been harmed. These organizations did this to secure their notoriety and were commended for their moral lead thus they fabricated trust and regard which is vital for long haul development. In this way Mary's toy producing Company doesn't need to trust that a kid will be gagged to make a move, rather they ought to be proactive.

The solution to the ethical dilemmas in these case studies lies with the organization through its leadership offering direction and role modelling and with individuals being ethical in their conduct within a facilitating ethical environment and leadership.

References:

- [1] Europa.eu. (2020). EUR-Lex - 133193b - EN - EUR-Lex. [online] Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A133193b> [Accessed 9 May 2020].
- [2] Justice.ie. (2011). Cybercrime. [online] Available at: <http://www.justice.ie/en/JELR/Pages/Cybercrime>.
- [3] Toppr-guides. (2018). Toppr.com. [online] Available at: <https://www.toppr.com/guides/business-communication-and-ethics/business-ethics/meaning-and-ethical-principles-in-business/>.
- [4] Heineman, B.W. (2010). None. [online] The Atlantic. Available at: <https://www.theatlantic.com/politics/archive/2010/01/the-google-case-when-law-and-ethics-collide/33438/>.