

MAIL ORDER LAWS AND REGULATIONS

An Overview

Introduction

The intent of this report is to give the newcomer to the mail order business an overview of those laws and regulations that most affect the small mail order operator. The intent is not to give legal advice. Such advice should always be sought from an attorney. Only those laws and regulations that apply to the small order operator most directly are covered. Advice is given from the perspective of an operator of a mail order business rather than from a legal perspective.

For those interested in an in-depth review of the laws which affect the mail order industry, it is recommended that you read the following book: *The Direct Marketer's Legal Advisor*, by Robert J. Bosch, McGraw Hill Book Company.

The 30 Day Rule

To protect the consumer the FTC has enacted the Mail Order Merchandise Rule which is generally referred to as the 30 Day Rule. Many states have enacted similar laws. Some of those laws have a more narrow definition than the federal; the most notable is New York State.

The 30 Day Rule requires the seller to deliver the order within a 30 day period, unless otherwise stated in the sales literature. If the seller, for example, states in the order form that delivery takes 4 to 6 weeks, he has effectively insulated himself from the law. In a practical matter, however, he may have also affected his business in a negative way.

The 30 day period begins when an order arrives and has been properly paid for.

The 30 Day Rule is an easy regulation with which to comply. It should rarely take longer than 30 days to fill an order. If it does, the seller must notify the buyer of the delay and the reason for it.

Some mail order companies delay shipment of orders until checks

rendered for payment have cleared. This should generally not take longer than 10 days. If the seller wishes to follow such a policy, he should so state in his literature. From the perspective of a mail order operator, I do not consider this to be a sound policy. NSF and ACCOUNT CLOSED checks are relatively rare and can be minimized with proper controls. If you practice such a policy, you may save a few dollars but in return you will make customers unhappy. I personally do not buy from companies that state in their literature that they hold checks for clearance. Most mail order companies experience very small bad debt ratios. It is recommended that you call the bank the check is drawn on to verify funds on larger amounts; as for example, on orders over \$50.

Once the buyer has been notified that an order has been delayed, the seller is automatically granted an additional 30 day delay unless the customer advises the seller that the delay is not acceptable. If he does not reply to the notification, it constitutes legal acceptance of the delay. In general, and in most states, the seller may obtain a second 30 day delay as long as there is a good enough reason.

The New York law differs from the Federal law in that stipulates a maximum period of 65 days (including delays) for an order to be filled. Newcomers to the mail order field residing in New York State should obtain a copy of the New York regulations.

The 30 Day Rule does not pertain to credit card sales. Credit card charges should be processed when an order is filled. If a mail order credit card sale is cancelled, the seller must issue a credit against the account of the buyer within one billing cycle following receipt of the cancellation request.

Unordered Merchandise

The Federal law pertaining to unordered merchandise is simple. It strictly forbids this practice. Free samples, if so identified, are exempted.

Merchandise Substitution

Most states, including New York, as well as the Federal law permit sellers to substitute merchandise of similar or superior

quality. The law requires it, and it is also a good business practice, to advise the buyer when making a substitution that he may return the merchandise free of charge if he is not satisfied. Certain items, such as merchandise which has artistic value, cannot be substituted. In this regard, for example, a book on how to start a given business may be substituted by a similar book on the same subject, but a book of literature by a renowned author may not be substituted.

Return of Merchandise

Unless the seller specifically states that he does not offer a money back guarantee or offers, for example, a 30 day money back guarantee, he is required to make a full refund for a period of 60 days if the material is returned in good condition.

My own experience with returned merchandise indicates that it is quite rare. Our company, as an example, received no more than 1 to 2 returns for every 120 to 150 orders. If you are a seller of information products and you sell reports or other information which can be easily copied, you may wish to enact a policy stating that there is a no return policy for reports, etc.

The above laws are the only Federal regulations pertaining to the sale of merchandise which are unique to the mail order industry.

Headliners in Advertising and Sales Literature

A few words should be said about the proper usage of some of the most common headlines used in advertising. Again, for an in-depth review of laws pertaining to advertising, refer to the book as listed above.

The most common and most effective of these terms are: SALE, NEW and most of all FREE. FREE is a magic word in American advertising used by giant companies and small ones alike. By all means, these terms should be used since they do produce sales. And if the advertiser follows a simple rule of honesty in the usage of these and other advertising terms, he will stay out of trouble.

Sale

A sale is a reduction from the seller's own former selling price of a given article. The seller must have sold, not just offered the article, for a reasonable period of time. This simply means if a 50% discount is offered on a \$10 book, the book at some previous time must have actually been sold at \$10. If it just has a cover price of \$10 but was always sold at \$7, a \$5 price is not a 50% discount.

Free

Free means it is free. To re-emphasize, the term is very successful and will generate sales. But if something is offered for free, it should be free. The value of the free item cannot be hidden in another part of the offer, such as charging more for the other items than you would normally charge.

New

Here is another straight-forward terms. It should only be used when new items are advertised. A new book is one which came out in the last 6 months (maybe 12 months, and that would be stretching it) but definitely not 2 years.

How to Start Your Own Company

Once you have decided you want to go into business, you must set yourself up to get started. This is not at all difficult. You should have no concerns on this matter. It is easy and inexpensive to do. There are no unusual legal requirements to sell by mail.

There are generally three ways to structure a business entity. The sole proprietorship, the corporation, and a partnership. The sole proprietorship is the easiest, fastest and least expensive way to set yourself up. In most cases this would be the way to start out for a small business.

Corporations have tax benefits that can be more advantageous than a proprietorship, but they also have strict record keeping requirements. As a rule of thumb, a business should be incorporated if it has annual sales in excess of \$250,000. It is against the law in most states to use the abbreviation Inc.

unless the business is incorporated. But you can use Co. Partnerships also have specific legal requirements. Forming a partnership is generally necessary when going into business with someone else. There are advantages and disadvantages in doing this. Besides sharing workloads and profits, the partners must get along well. It is almost always necessary to obtain legal counsel in order to set up a corporation or a partnership.

D.B.A. and/or Business License

In most cities or towns it is required that a business license be obtained. In addition, you generally need to register your business name if you are using a fictitious name. If you are using your own name, it is not required. Call your local city or county clerk's office to obtain the necessary information.

A Summary of Copyright Laws

For those interested in becoming self publishers either by creating their own work or using someone else's, here is a short summary of copyright law.

What Copyright Is

Copyright is a form of protection provided by the laws of the United States (Title 17, U.S. Code) to the authors of "original works of authorship" including literary, dramatic, musical, artistic, and certain other intellectual works. Under the copyright law, copyright protection (for printed works) pertains only to the words and their sequence; it does not pertain to any idea, process, system, etc., regardless of the form in which it is described. That is, you copyright the words contained in the copy, not the content. The copyright law generally gives the owner the exclusive right to do and authorize others to do the following: in the case of printed works, to reproduce the work in various forms such as copying, etc. It also gives the owner the right to display the copyrighted work publicly.

Copyright Secured Automatically Upon Creation

The way copyright protection is secured under the present law is frequently misunderstood. No publication or registration or

other action in the Copyright Office is required to secure a copyright. There are, however, definite advantages in doing so since, in the case of a litigation, it is substantially easier to prove copyright if registration has taken place.

Under the present law, copyright is secured automatically when the work is created, and work is "created" when it is fixed in a copy for the first time.

Registration Procedures

Registration procedures are simple. In general, to register a work, three elements have to be sent to the Copyright Office in Washington, DC. An application (proper form can be obtained from the Copyright Office), a \$10 fee, and a nonreturnable deposit of the work to be copyrighted. For more specific information, including a copy of the law, write to:

Register of Copyrights, Copyright Office, Library of Congress,
Washington, DC 20559

U.S. Postal Laws

In general, it is against the postal regulations to utilize the U.S. mail service to transport hazardous materials, pornographic materials and chain letters involved money. For more specific information, write to:

Consumer Advocate, U.S. Postal Service, 475 L'Enfant Plaza
West, W.W., Washington, DC 20260

You may also obtain a free copy of the Consumer's Resource Handbook. It is designed to help consumers resolve complaints about goods and services with local, federal and state agencies.

Write to:

Consumer Information Center, Department 532, Pueblo, CO 81009

Other free publications that may be of interest to you:

"Selling by Mail" can be obtained from:

Small Business Administration, Washington, DC 20416-1110

"The Mail Order Rule" can be obtained from:

Federal Trade Commission, Publishing Office, #130, 6th
and Pennsylvania Avenue, Washington, DC 20580-0001

A final thought: In the conduct of your business, let common
sense and honesty be your guide.