

A Preliminary of Consumer Online Disputes from the Perspective of the Consumer Protection Act

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Abstract

Due to the rapid growth of the internet, online leisure has become an integral part of people's lives. Online leisure leads to online consumer behavior, and buying over the internet has become the most common form of leisure consumption. As long as there is internet access, consumers can enjoy online shopping anytime, anywhere. However, during a transaction, if the seller's reputation is not verified, a dispute may occur, leading to an unpleasant shopping experience for the consumer. In addition, when consumers receive damaged or incomplete orders, they may not know what to do.

This study explores the issue of online shopping disputes, how to ensure internet shopping safety, and how to argue from the perspective of consumer protection, in the hope of preventing and resolving such disputes. In light of this, the study discusses internet disputes caused by online consumer behavior. The research method adopted is the content analysis method – a qualitative research method – and factual cases culled from the internet are analyzed. The research results include the types of leisure related to internet disputes and how to ensure the safety of internet transactions based on the Consumer Protection Act of the Republic of China. The expected benefit of this study is to help increase consumer awareness of, and self-protection with, online purchases.

Key words: internet shopping, consumer protection act, online consumer dispute

1. Introduction

Online shopping has become an important leisure activity in Taiwan. In 2015, online shopping exceeded NT\$1 billion (US\$31 million), and inevitably this has led to an increase in internet shopping disputes. Unfortunately, online consumers have limited information about what they buy because they cannot see or touch the products directly. Thus, internet shoppers are disadvantaged, knowing less about the products for sale than the seller knows. To reduce this inequality between consumers and sellers, internet shopping was included in the Consumer Protection Act in Taiwan in 2011, and consumer rights are now protected in cases of internet shopping disputes. This study discusses the issue of domestic internet shopping from the perspective of the Taiwanese Consumer Protection Act (henceforth, the Consumer Protection Act or CPA), how to ensure online shopping safety and how to defend consumer rights in accordance with the Act. Using real examples of online disputes, the study shows how consumers can protect their rights and enjoy internet shopping safely.

1.1 The definition of internet transactions

An internet transaction is a commercial transaction involving a product or service through an online platform. There are two definitions of an internet transaction, general and special. The special definition applies to transactions when *all* the procedures are performed through the internet. If part of the procedure occurs outside the internet, this transaction is not considered an internet transaction. The general definition applies to transactions whereby part of the procedure occurs through the internet and, therefore, is considered an internet transaction. For example, if a transaction is completed through an online ordering service, it is an internet transaction.

The focus of this study is on the relationships between internet transaction contracts, transaction disputes, and the Consumer Protection Act. According to the Act, the regulations apply to disputes of “online transactions” and “off-line transactions”. This study adopts the general definition of internet transactions.

1.2 Types of internet transaction

There are three types of internet e-commerce transactions according to who or what is involved, namely, B2B (business to business), B2C (business to consumer), and C2C (consumer to consumer). These types of transactions are illustrated below:

1.2.1 B2B internet transactions

A B2B internet transaction is a business transaction performed through the internet. There are two types of B2B transactions. The first is inter-business e-commerce, such as those transactions involving goods supply, stock

management, delivery, channel, and payment between an upstream business and a downstream business through the internet. By such methods, businesses can control their costs efficiently. The second is intra-business e-commerce. To improve competitiveness, businesses need to pass on information efficiently. Thus, a business can integrate internal information, so that its procedures concerning stocks, procurement, accounting, marketing, and dispatching can be incorporated with customer information rapidly.

1.2.2 B2C (business to consumer) internet transactions

A B2C internet transaction is one that occurs between a business and a consumer through the internet. In other words, it involves a business and a consumer agreeing to a contract regarding the transaction of a product or a service through the internet.

1.2.3 C2C (consumer to consumer) internet transactions

The subjects involved in this type of transaction are individual people; that is, the transaction is related to the trading behavior of an individual with a buyer or a seller through the internet. In most cases, sellers sell their product(s) on an internet shopping platform and buyers purchase their product(s) through that platform. When a transaction is confirmed, the buyer pays the seller an agreed sum and the seller delivers the purchased product to the buyer through a courier. This is how C2C internet transactions work.

Among the three types of internet transactions, only B2C transactions are covered by the regulations of the Consumer Protection Act. Therefore, the focus of this study is on B2C transactions.

1.3 The definition of business operators

1.3.1 Business operators

According to Item 2, Article 2 of the Consumer Protection Act, a business operator is a person who operates a business for the purpose of manufacturing, importing, producing, designing, offering services, or selling products. Article 2 of the Rules for Implementation of the CPA provides that “businesses specified in Item 2, Article 2 of this Act include non-profit businesses.” Thus, based on the regulations of the CPA, the concept of the business operator is outlined below:

1.3.2 Those who do business are business operators

Those who do business in relation to manufacturing, importing, producing, designing, offering services, or selling products are considered to be business operators specified in the Consumer Protection Act. ‘Doing business’ means operating a business. In other words, individuals, groups, and companies running a business by providing product(s) or service(s) are considered as business operators specified in the Consumer Protection Act.

However, sellers who sell items only occasionally, instead of making a living out of selling products, are not considered business operators, according to the Consumer Protection Act. The CPA does not apply to them.

1.3.3 Required conditions for a business to be considered as non-profit

According to the Consumer Protection Act, business operators are those who operate a business for the purpose of manufacturing, importing, producing, designing, offering services, or selling products, but Article 2 of the Rules for Implementation of the CPA provides that businesses do not have to operate for the purpose of making a profit. Thus, a business operator who does not have to pay any profit-seeking enterprise income tax (in accordance with Item 13, Article 4 and Article 14 of the Income Tax Act) is considered a business operator according to the Consumer Protection Act.

Businesses run by business operators can be publicly or privately owned, according to the CPA. Therefore, public enterprises such as the Taiwan Water Corporation and the Taiwan Power Company are businesses covered by the Consumer Protection Act. In addition, the business operators specified in the Consumer Protection Act are the organizations themselves, not the organization’s owners or employees.

Based on Articles 7-9 and Item 2, Article 2, there are four types of business operators related to product liability in the Consumer Protection Act. These are (1) business operators in design, manufacturing, and production; (2) business operators providing services; (3) business operators selling as a consignee; and (4) business operators importing products or services.

In cases of internet transactions, with business operators setting up their own website online and providing internet users an online shopping service, the website is called an 'e-store'. Therefore, running a business with an e-store is a business among the aforementioned four types and thus subject to the Consumer Protection Act.

1.4 The definition of consumers

According to Paragraph 1, Article 2 of the CPA, consumers are defined as "those who carry out a transaction, use a product, or receive a service for the purpose of consumption." The definition of 'consumer' is illustrated below:

1.4.1 We are all consumers

In a modern society, where most people are not self-sufficient, labor is divided, and because people need to purchase products or receive services, they are all consumers sooner or later. At one time or another, we are all consumers.

1.4.2 Business operators can be consumers as well

Consumers are those people who perform a consumption behavior. When a business operator performs a consumption behavior, instead of a behavior to make a profit, this business operator is considered to be a consumer as well.

1.4.3 Consumers are not business operators

Customers become consumers because of the existence of business operators and the customer's behavior of purchasing products from them. As a result, a consumer in a transaction cannot be the business operator in the same transaction at the same time.

The Consumer Protection Act provides consumer rights as well as business operator obligations, which help to improve the quality of the internet consumer environment.

2. Research method

This study's framework for exploring the issue of internet shopping disputes is composed of four variables, namely, "product defect", "returning or exchanging a product during a cooling-off period", "non-delivery after payment", and "complaint channel". The study discusses how the Consumer Protection Act safeguards internet shopping and establishes consumer rights to resolve internet shopping disputes. Real examples are provided to show how consumers can protect their interests in any internet shopping dispute and enjoy online shopping. The research framework for internet transaction disputes can be seen in Figure 1.

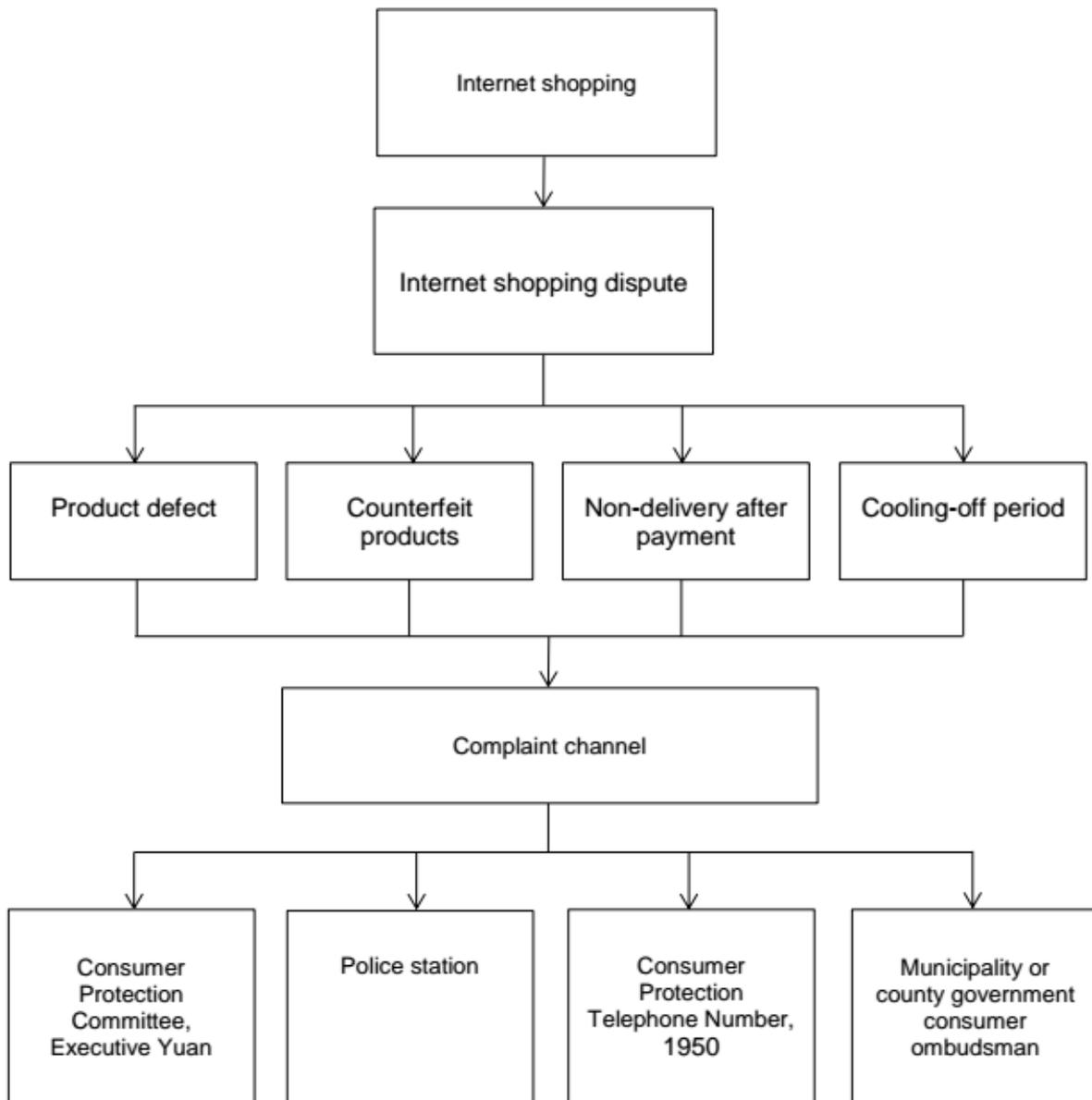


Fig. 1 Research framework for internet transaction disputes (R. O. C.)

Research findings

Causes of Internet Shopping Disputes and Examples

3.1 Product defects

Buying items online is not like buying in a physical store where consumers can check what they intend to buy before paying. Thus, in the case of internet transactions, it is common for consumers to find that orders are either incomplete or defective when they arrive.

3.1.1 Example

Miss Yang bought a bag online. When she received it, she found that the imitation jewels, which were supposed to be on the bag, had become detached. She notified the seller, but the seller insisted that the jewels were attached when the bag was shipped. He believed that the fault was Miss Yang's and was not willing to refund her purchase.

3.1.2 Solution

Article 19 of the Consumer Protection Act states that "the consumer of a communication transaction or a door-to-door transaction can terminate the relevant contract within seven days after receiving the product/service of the transaction by returning the product or sending the other party a written notification. No reason needs to be provided. And the consumer does not have to bear any expense or consideration."

In this example, Miss Yang could terminate the contract within seven days after receiving the order, by returning the purchase or sending a written notification to the business operator who sold her the bag, in accordance with Article 19 of the Consumer Protection Act.

3.2 Counterfeit products

Many Taiwanese like famous brands, and some unscrupulous vendors will advertise counterfeit products as authentic. Consumers may buy these items believing them to be genuine.

3.2.1 Example

Miss Yang purchased online a coat of a famous brand. After she received the coat, she compared it to a genuine one and found that the item she purchased was manufactured from different material. The item she purchased was counterfeit. The seller did not respond to her complaint.

3.2.2 Solution

Article 4 of the Consumer Protection Act states that "business operators shall take consumer health and safety seriously in relation to the products/services they provide and inform consumers with instructions on how the products/services" were made or provided. Article 4 of the Consumer Protection Act states that "the consumer of a communication transaction or a door-to-door transaction can terminate the relevant contract within seven days after receiving the product/service of the transaction by returning the product or sending the other party a written notification. No reason needs to be provided. And the consumer does not have to bear any expense or consideration."

In this example, the business operator, by not disclosing that the coat was an imitation, violated Article 4 of the Consumer Protection Act, which says that accurate information shall be provided to consumers. Thus, the contract could be terminated within the cooling-off period in accordance with Article 19 of the Consumer Protection Act, which says that "the consumer of a communication transaction or a door-to-door transaction can terminate the relevant contract within seven days after receiving the product/service of the transaction by returning the product or sending the other party a written notification. No reason needs to be provided. And the consumer does not have to bear any expense or consideration."

3.3 Returning or exchanging products during the seven-day cooling-off period

When shopping online, consumers cannot examine the products they buy until they receive them, producing an information inequality between the buyer and the seller. To protect the consumer's rights, the Consumer Protection Act specifically says that consumers can return a product they purchased within seven days of receiving it.

The key points regarding the seven-day cooling-off period in the CPA are summarized below:

1. The seven-day cooling-off period starts on the day the consumer receives the product that he or she purchased. If the seventh day happens to be a statutory holiday, the period will be extended to the next working day.
2. Consumers can terminate the contract of a transaction with a seller by returning the product or sending written notification, without consent from the seller. The seller shall not ask the consumer to cover any expense.
3. Even if the seller declares on the transaction's website that the seven-day cooling-off period does not apply, the regulation does apply.

The following examples provide further details:

3.3.1 Not being able to reach the seller

It is common when consumers want to return or exchange products (during the cooling-off period) that the seller is unavailable. Indeed, sometimes sellers mysteriously go missing after the product is returned. In this case, the behavior of the seller – that is, the business operator – has already infringed the consumer's rights.

3.3.2 Example

In early January, Wang bought a suitcase online for NT\$15,600. The seller told him that all the products he sold were brand new. However, when Wang received the suitcase, he found that it was used. He contacted the seller and the seller asked him to return the item. Wang sent the product back, but he did not receive a refund.

3.3.3 Solution

Item 5, Article 19 of the Consumer Protection Act states that “the contract of a transaction is considered terminated when the consumer sends out the product or a written notification within the period provided in Item 1 and Item 3.” In addition, Article 19-2 of the Consumer Protection Act provides that the seller shall refund the consideration of the amount paid by the consumer within 15 days after the day the product is received.

In this case, the consumer returned the suitcase to the business operator. Thus, according to Article 19 of the Consumer Protection Act, the contract of this transaction was terminated, and the business operator had to refund the consideration of the amount paid by the consumer within 15 days after the day the product was received. If the seller did not refund the consumer before the deadline, the consumer can file a complaint with the Consumer Protection Committee.

3.3.4 Being asked to pay an additional charge when returning an item or the shipping cost deducted from the refund

In many cases, when a consumer returns a product within the cooling-off period, he is asked to pay for the shipping cost or an equivalent amount is deducted from the refund.

3.3.5 Example

Mr. Huang bought a digital recorder online for NT\$789 on 7/23. Three days after receiving the product, he asked to return the product. The seller asked him to ship it back at his own cost. Mr. Huang wanted to handle this issue within the cooling-off period, so he spent NT\$30 mailing the product back to the seller. However, the seller refunded NT\$734, which was NT\$55 less than the expected refund.

3.3.6 Solution

According to Item 1, Article 19 of the Consumer Protection Act consumers do not need to provide a reason for returning a product and they do not have to pay for shipping. Thus, sellers cannot ask a consumer to pay for a product's return or to pay for any bank charges incurred due to the refund.

In this case, Mr. Huang asked to return the product within the cooling-off period. Unless otherwise provided in a contract, the online business operator is supposed to pick up the item at the point of delivery. He

cannot compel the consumer to mail the product to him; nor can the seller ask the consumer to bear any additional expense. Therefore, he is not allowed to deduct any amount – in this case NT\$55 – from the refund.

3.3.7 Business operators establish product-return conditions in a standard contract

It is common on many shopping websites for business operators to specify conditions that exclude product returns. This violates the consumer's protection rights.

3.3.8 Example

Miss Wu bought a dress online. After she received it, she found it was too small. Within the cooling-off period, she asked to return the product to the seller, but the seller said that the measurement of the dress was specified on the web page. Thus, she could not return the product because of size. The business operator's behavior infringed Miss Wu's consumer rights.

3.3.9 Solution

According to Item 1, Article 19 of the Consumer Protection Act consumers do not need to provide a reason for returning a product. In addition, Item 2, Article 19 of the Consumer Protection Act provides that any regulation conflicting with Item 1 is invalid. The seller refused the consumer's request by claiming that the reason was illegitimate, which violates the terms of Item 1, Article 19 of the Consumer Protection Act. Thus, the seller's claim was not valid and he had no right to refuse Miss Wu's request to return the product.

3.4 Non-delivery after payment

There are also cases in which a business operator promises to deliver a purchased product within seven days but the consumer does not receive the order after payment is made. In some cases, the consumer cannot then locate the seller.

3.4.1 Example

Miss Chang bought a table online for NT\$3500. The seller asked her to pay before shipping. A month after Miss Chang had paid, the seller had not shipped the table. Nor did the seller reply to Miss Chang's emails or answer her calls.

3.4.2 Solution

There is no paragraph in the Consumer Protection Act regarding this issue. Yet, Article 339 of the Criminal Law of the R.O.C. might apply. This article provides that "anyone who defrauds his/her or a third person's item with the intent to gain illegal ownership for himself/herself or a third party shall be sentenced to imprisonment for no more than 5 years or short-term imprisonment; in lieu thereof, or in addition thereto, a fine of more than five hundred thousand NT dollars may be imposed." In this example, Miss Chang was asked to make the payment, yet the product was never delivered. If it can be determined that the seller intended to defraud Miss Chang, then, according to Article 339 of the Criminal Law, Miss Chang can go to the police and report the case to resolve the dispute between her and the seller.

3.4.3 Personal opinions on the regulations of the consumer protection act in relation to internet transactions and how to reduce internet shopping disputes

3.4.4 Investigation

When a consumer plans to buy a product on a website, he can check the seller's reputation on that website and read comments from buyers. If there is negative feedback, or more negative than positive comments, the seller may not be reliable. The potential buyer has to evaluate the situation carefully if he wants to buy from this seller. If the product is not located in Taiwan, it would be better to forego the sale, as Taiwan's laws are not applicable outside Taiwan.

3.4.5 Inquiring

If a consumer wants to buy a product without a clear description, or which appears amazingly inexpensive, the consumer should contact the seller through email or by the Q&A function on the website to obtain detailed information, such as product functions, properties, and manufacturing source. The seller's reply is a reference. If the seller cannot clearly describe the product, it would be better not to purchase the product from this vendor. After submitting an order online, the consumer should contact the seller immediately. If the seller's real contact information (e.g., telephone number) is unavailable, or the consumer fails to reach the seller, it would be wise not to make the payment.

3.4.6 Payment

After a consumer successfully submits an order online, before paying, he or she should check to see if the website or the platform offers a secure payment method for money transfer or credit card payment. Payment on delivery or personal delivery is a better choice, since the consumer can check the product on delivery to reduce the risk of fraud.

The methods above will not eliminate the possibility of finding an unscrupulous online vendor, but they will help to reduce the risks substantially.

3.4.7 Responding measures for a consumer dispute

3.4.7.1 Knowing your rights

In view of the information imbalance between sellers and consumers with internet transactions, consumers cannot obtain complete information about the products they purchase. The Consumer Protection Act provides consumers with some security, by ensuring that they can return products within seven days of receiving them without penalty. Even after seven days, in accordance with Article 365 of the Civil Law, consumers can request a full refund or return the item if it proves to be defective.

3.4.7.2 Complaint channels for consumer disputes

When a consumer encounters the situation of a seller taking no action regarding the dispute, or ignoring it, the consumer can file a complaint in accordance with the laws of the Republic of China through the following channels:

- (1) The online complaint page on the website of the Consumer Protection Committee, Executive Yuan, R.O.C.
- (2) Telephone line 1950 in the R.O.C.
- (3) The Consumer Protection Committee, Executive Yuan, R.O.C.
- (4) Consumers' Foundation, China Taipei
- (5) The 9th Investigation Corps, Criminal Investigation Bureau of any municipality or county/city government in the R.O.C.

4. Conclusions

The Consumer Protection Act is not perfect, but it covers many internet consumer disputes. In some cases, consumers simply do not know what rights they have. In this regard, the government should be proactive, informing consumers of what laws and regulations there are and to what extent consumers are protected from unscrupulous vendors.

The current Consumer Protection Act does not contain regulations for punishing or dissuading business operators who fail to abide by the Act, and many consumers, through no fault of their own, are victims of bad online business practices. The Consumer Protection Act is there to help protect consumers, but the best protection is the prudence and caution the consumer brings to any online transaction, paying heed to the maxim, "Buyer beware."

References

- Fan, J. D., Practices of the Consumer Protection Act of the R.O.C., Taipei: Consumers' Foundation, China Taipei, June, 1996
- Fan, J. D., the Consumer Protection Act of the R.O.C.: Fundamental Theories, Taipei: Hansin, 1999
- Wrong Price Tags Online: The New Risk of e-Businesses, Economic Daily News, 14th October, 1999, from <http://edn.gmg.tw/article/view.jsp?aid=195103&cid=10>
- Wrong Price Tags Online: The New Risk of e-Businesses, Economic Daily News, 14th October, 1999