

Top three legal issues you should know before starting an online business

Thinking of starting an online business? Here are three key legal issues you need to consider before you start an online business (such as e-commerce) in Hong Kong. This may help you stay out of potential trouble that can be avoided.

1. Product Description

We understand that you are eager to highlight all the good things about your products. However, you should always be careful not to misrepresent or lie. A false or misleading trade description of the products, such as quantity, composition, origin or price is illegal under the Trade Description Ordinance (Cap. 362). In addition, there should be no misleading omission of material information regarding the products.

Another thing to note is that you should avoid any misrepresentation, whether fraudulent, negligent or innocent, in the product description. Even if you made an innocent misrepresentation, you may be liable under the Misrepresentation Ordinance (Cap. 284) and could face lawsuits. If you are found to be liable, the transaction can be rescinded and you may have to pay damages.

2. Product Warranty and Safety

You should know that there are some terms, conditions and warranties automatically implied to the products you sell under the Sale of Goods Ordinance (Cap 26). For example, there is an implied condition that the products will correspond with the description, be of merchantable quality (free from defects), safe and durable as reasonably expected and fit for purpose for which the products are bought. If this is breached, you may be liable under a lawsuit in contract or tort.

In addition, no matter what kind of product you are selling, you should follow approved and general safety standards or specifications, according to the Consumer Goods Safety Ordinance (Cap. 456). Punishment for an offence may be a fine, imprisonment, or both.

3. Privacy and Data Protection

When a customer tries to buy a product online, he or she will provide you with personal information such as name, address and (as the case may be) credit card number. You should be very careful with the collection of personal data – You have to provide the customers with a detailed explanation on what kind of information is being collected and for what purposes.

Usually, by clicking the checkbox accompanying a statement saying “I agree to the terms and conditions and the privacy policy of your website”, customers give their express consent to your collection of the data for the purpose alleged by you. However, be aware that you are obliged to inform the customers and procure their consent for a second time if you wish to use the data collected for other purposes.

Also, it would be cautious for you to do the following:

- to incorporate in your privacy policy a statement to the effect that you would not keep the data longer than reasonably necessary to do so;
- to provide contact details of your data protection officer to whom users can reach out for a data access or data correction request and report a suspected breach or request the erasure of their data;
- to check the Codes of Practice/Guidelines published on the website of the Privacy Commissioner for Personal Data and the latest development of the Personal Data (Privacy) Ordinance (Cap 486); and
- to consider whether your website may be used by European customers who are likely protected by GDPR (General Data Protection Regulation). If so, you need to consult overseas lawyers with expertise in GDPR to advise you in this respect.

What else do you have to know?

Online transactions are pretty similar to offline transactions. They are also subject to various rules and regulations. In addition to the three issues we have identified, online business owners should also consider the following issues:

- Advertisements – no false or misleading advertisement, no misleading omission, no bait advertising, no unsolicited electronic messages for marketing purposes;
- Non-delivery of the product on time;
- Refund or return of the product;
- E-payment regulations;
- Domain name disputes;
- Intellectual property registration or infringement; and
- Tax.

If you need help with any of the above, the Corporate & Commercial lawyers located on LegalClarus may be able to assist.

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