

WHEN PURCHASES GO SOUR

BY CHESTER TOH & ALROY CHAN

Businesses that understand the obligations and limits of the Lemon Law are better placed to compete and in turn, succeed

THE Lemon Law provisions in the Consumer Protection (Fair Trading) Act that came into effect more than 18 months ago are among the most significant pro-consumer regulations in recent times, eclipsed perhaps only by the new data protection laws. Prior to the introduction of the Lemon Law, consumers who purchased defective goods, also known as “lemons”, had limited recourse. It is not uncommon for retailers to proclaim in their receipts that refunds are not accepted, leading consumers to rely on the limited protections afforded under the then-existing laws.

From the perspective of businesses, the Lemon Law is often seen as part of a raft of regulatory measures that can only add costs to compliance.

However, what the Lemon Law seeks to do is to strike a balance between the rights of consumers and the interests of businesses by providing a clear framework for the repair or return of defective goods.

In many instances, businesses already have recourse against the supplier or manufacturer for defective goods. The Lemon Law merely extends the protection to consumers. It also levels the playing field as many businesses already have pro-customer policies before the Lemon Law came into effect. Such laws can help raise consumer confidence in our retail sector, ultimately reinforcing Singapore’s reputation as the premier shopping destination in the region.

Businesses that worry about the rising costs of compliance would be pleased to hear that there are certain limits to the ambit of the Lemon Law.

First, it generally only applies to physical goods including those purchased online. Services or virtual goods such as tokens and bitcoins are not covered. In other words, a consumer who purchases a defective mobile phone case from a Singapore online retailer is protected by the Lemon Law but a consumer who purchases a spa package and is dissatisfied with the service level of the therapist would not have similar recourse.

Next, in order for the Lemon Law to apply, the goods sold must be found to have not conformed to the purchase contract. This can arise in two situations.

In the first situation, non-conformity occurs where the item plainly fails to meet contractual specifications. For example, the invoice may state that eight speakers will be supplied with an audio system but only six were found when the item was unpacked.

In the second situation, non-conformity arises where the item is not of satisfactory quality or does not match the sales description or display. In a recent case involving a second-hand car dealer Speedo Motoring, the Singapore court held that the dealer had sold a used car to a buyer that was not of satisfactory quality as its hybrid battery was defective upon delivery. In that case, the court considered the battery to be an integral component of the car. Nonetheless, whether a particular item is of satisfactory quality would very much depend on its nature – simply put, a second-hand car will not be held to the same standard as a brand-new car.

By way of contrast, in another recent case involving Trans Eurokars, a businessman failed in his bid to seek compensation for his new Rolls Royce which emitted vibrations and noise when turning. The court in that case found that such vibrations and noise to be within reasonable limits and denied compensation to the buyer.

It is perhaps rare for consumers to go to court to enforce their rights unless the purchase is a significant one such as a car. It is however worth noting that the Lemon Law does not go as far as to provide recourse against an individual car owner who is looking to sell his used car, unlike in the case of businesses such as used car dealers.

The Lemon Law also provides for other remedies. If the goods fail to meet contractual specifications or are of unsatisfactory quality, the Lemon Law allows an aggrieved consumer to seek repair or replacement of the “lemon” from the retailer. The retailer will have to do so within a reasonable timeframe, without causing significant inconvenience to the consumer. Alternatively, the consumer is entitled to ask for a price reduction or refund.

Consumers would have encountered cases where their purchase seems to look and work fine for the first few weeks, only to break down or have defects appear after some time. In this case, the provision of consumer recourse for latent defects in applicable goods that manifest only after delivery is another significant feature of the Lemon Law. If the consumer discovers a defect within six months after delivery, the retailer will be required to offer repair or replacement unless the retailer can demonstrate that the goods in question were not defective at the time of delivery.

To ensure continued compliance with the Lemon Law, businesses may wish to consider certain measures to mitigate the risks of liability under the Lemon Law. Such measures are especially important given that a business cannot contract out of its obligations under the Lemon Law.

For example, a business cannot limit its liability by simply displaying a notice stating “no refunds or exchanges allowed for sales items” or “goods are sold on an as is, where is basis”.

However, where a retailer wishes to clear certain goods with minor defects at a significant discount, such defects must be drawn to the attention of the purchaser before the sale is concluded. The purchaser is then precluded from seeking recourse against the retailer for such

defects. However, defects that are not highlighted will still be covered under the Lemon Law.

Given the obligations imposed under the Lemon Law, businesses are advised to check existing contracts with their suppliers or manufacturers to ensure that repairs or returns are covered.

If the retailer is required to offer a refund or discount, the retailer may need to ensure that there is back-to-back indemnity from the supplier. The businesses may also wish to, as a matter of practice, ask potential purchasers to physically examine the goods before the purchase is made. This is especially relevant for goods that are susceptible to wear and tear or where external appearance is critical.

In an increasingly competitive retail environment, the Lemon Law sets a baseline standard for businesses in terms of what one must offer to consumers. Businesses that understand the obligations and limits of the Lemon Law will no doubt be better placed to compete and in turn, succeed. Reviewing your terms of sale to ensure compliance with the Lemon Law and training your customer service staff to respond to customer complaints are also measures that one should adopt to ensure continued compliance with the Lemon Law. ■

Chester Toh is a partner and the head of integrated regulatory practice and Alroy Chan is an associate with the integrated regulatory practice, Rajah & Tann



PHOTO: ISTOCKPHOTO