

6

Law and ethical issues

OBJECTIVES

After studying this chapter, you should be able to:

1. Understand the importance of consumer protection in the context of selling
2. Apply appropriate terms and conditions to a contract of sale
3. Appreciate how legal controls affect sales activities
4. Make voluntary and legal restraints work to the advantage of both the buyer and the seller
5. Appreciate ethical issues in sales

KEY CONCEPTS

- collusion
- consumer credit
- consumer protection
- contract
- ethical issues
- exclusion clauses
- false trade description
- faulty goods
- inertia selling
- regulated agreements
- terms and conditions
- terms of trade
- unit pricing

Consumer protection by the law is very much a twentieth-century phenomenon. Before that the prevailing attitude can be described by the phrase *caveat emptor* – let the buyer beware. Much of the legislation has been drawn up since 1970 when there was a recognition that sellers may have an unfair advantage compared with consumers when entering into a contract of sale. The major laws controlling selling activity in Britain include the following:

- Weights and Measures Acts 1878, 1963, 1979
- Sale of Goods Acts 1893, 1979
- Resale Prices Acts 1964, 1976
- Restrictive Trade Practices Acts 1956, 1968, 1976
- Misrepresentation Act 1967
- Trade Descriptions Acts 1968, 1972
- Unsolicited Goods and Services Acts 1971, 1975
- Supply of Goods (Implied Terms) Acts 1973, 1982
- Fair Trading Act 1973
- Hire Purchase Act 1973
- Consumer Credit Act 1974
- Unfair Contract Terms Act 1977
- Consumer Safety Act 1978
- Consumer Protection Act 1987.

In addition to these Acts, consumers are protected by a range of codes of practice covering such activities as advertising, market research and direct selling. Trade associations such as the Association of British Travel Agents, Society of Motor Manufacturers and Traders, and Radio, Electrical and Television Retailers' Association have also drawn up codes of practice which have been approved by the Office of Fair Trading.

The consumers' interest is also protected by the Consumers' Association, which campaigns for consumers and provides information about products, often on a comparative basis, allowing consumers to make a more informed, rational choice between products and brands. This information is published in their magazine *Which?* The National Consumer Council was established in 1975 to represent the consumer interest at national level and to issue reports on various topics of consumer concern, e.g. consumer credit.

6.1 THE CONTRACT

All this activity is centred upon the **contract** entered into when a seller agrees to part with a good or provide a service in exchange for monetary payment.

A contract is made when a deal is agreed. This can be accomplished verbally or in writing. Once an offer has been accepted a contract is formed and is legally binding. Thus if a builder offers to build a garage for £4,000 and this offer is accepted, the builder is obliged to carry out the work and the householder is under an obligation

to pay the agreed sum upon completion. Although contracts do not have to be in writing – except, for example, house purchase – to place an offer and acceptance in writing can minimise the likelihood of misunderstanding over the nature of the agreement that has been struck and provide tangible evidence in the event of legal action. Important in written contracts are the terms and conditions which apply. This aspect of the contract will now be considered, before an examination of some business practices and the way in which they are controlled by law is undertaken.

In a binding contract, one party should have made a firm offer and the offer should have received an unequivocal acceptance. An offer should be distinguished from ‘an invitation to treat’. An invitation to treat (negotiate) is not an offer. For example, the display of goods at a certain price in a shop is not an offer by the shopkeeper to sell. Rather it is an invitation to shoppers to make an offer to buy. Thus if a product is accidentally priced too low, the customer cannot demand to buy at that price.

6.2 TERMS AND CONDITIONS

As the name suggests, **terms and conditions** state the circumstances under which the buyer is prepared to purchase and the seller is prepared to sell. They define the limit of responsibility for both buyer and seller. Thus both buyer and seller are at liberty to state their terms and conditions. Usually the buyer will state them on the back of the order form and the seller will do so on the reverse of the quotation form. Often a note is typed on the front of the form in red ink: ‘Your attention is drawn to our standard terms and conditions on the reverse of this order.’ Typical clauses incorporated into the conditions of a purchase order include the following:

1. Only orders issued on the company’s printed order form and signed on behalf of the company will be respected.
2. Alterations to orders must be confirmed by official amendment and signed.
3. Delivery must be within the specified time period. The right to cancel is reserved for late delivery.
4. Faulty goods will be returned and expenses charged to the supplier.
5. All insurance of goods in transit shall be paid for by the supplier.
6. This order is subject to a cash discount of 2.5 per cent, unless otherwise arranged, for payment within 28 days of receipt. Any payment made is without prejudice to our rights if the goods supplied prove to be unsatisfactory or not in accordance with our agreed specification or sample.
7. Tools supplied by us for the execution of this order must not be used in the service of any other firm without permission.

Careful drawing up of terms and conditions is essential in business since they provide protection against claims made by the other party should problems arise in fulfilment of the contract. An example of a conditions of sale document for a seller is given in Figure 6.1.

CONDITIONS OF SALE

These Conditions apply except so far as they are inconsistent with any express agreement entered into between the Seller and the Buyer before the delivery.

- 1 Where the Seller delivers in bulk it is the Buyer's responsibility
 - (a) to provide a safe and suitable bulk storage which complies in all respects with all relevant regulations made by H.M. Government or other competent authority.
 - (b) to ensure that the storage into which delivery is to be made will accommodate the full quantity ordered and in the case of Petroleum Spirit to procure certification to this effect and also to the effect that the connecting hose is properly and securely connected to the filling point. In this regard the Buyer is referred to the regulations currently in force relating to the storage and use of petroleum spirit.
 - (c) in the case of highly inflammable products and where otherwise applicable, strictly to observe any regulations laid down by H.M. Government or other competent authority in respect of the avoidance of smoking, naked lights, fires, stoves or heating appliances of any description in the vicinity of the storage and the fill, dip and vent pipes connected thereto.

The Buyer will indemnify the Supplier against any damages, claims, expenses or costs which may arise as a result of the Buyer's non-observance of these conditions.
- 2 It is a condition of every bulk sale that the quantity shown by any measuring devices employed by the Seller shall for the purpose of accounts be accepted by the Buyer as the quantity delivered but the Buyer may be represented at the taking of these measurements in order to verify them if he so desires. The Seller cannot accept any responsibility whatever for discrepancies in the Buyer's tanks, dip rods or other measuring devices.
- 3 Prices include any Government Tax (other than Value Added Tax) in force at the time of supply. Any variation in the rate of existing tax, or any additional taxation, is for Buyer's account.
- 4 All products supplied are chargeable at the price ruling on the day of despatch irrespective of the date of the order or the amount of cash sent with order.
- 5 In the event of missing consignments, short delivery or damage the Seller can only investigate the circumstances if
 - (a) In the case of damage the Buyer notifies the Railway or other Carrier and the Seller of the damage immediately upon receipt of the damaged goods, such notices to be in writing and quoting the invoice number;
 - (b) In the case of non-receipt or short delivery the Buyer notifies the Seller in writing of non-receipt or short delivery. Such notice, quoting the invoice number, should be sent within 21 days of date of despatch.
- 6 Acceptance of goods will be treated as acceptance of the Seller's conditions.

Figure 6.1 Example of conditions of sale document

6.3 TERMS OF TRADE

In addition to the tactical and strategic aspects of international selling discussed in Chapter 5, sellers and buyers need to be aware of the **terms of trade** that apply when trading overseas. Differences in the terms of trade can have serious profit consequences for the unwary. Terms of trade are used to define the following:

- (a) who is responsible for control over the transfer of goods between importer and exporter;
- (b) who is responsible for each part of the cost incurred in moving the goods between importer and exporter.

A number of terms are used to cover these aspects of delivery and cost. Variations in definitions led to the International Chamber of Commerce drawing up formal definitions in 1936. These were published under the title of INCOTERMS and have since been subject to update. For example, in 1980 a new edition of INCOTERMS covered two new terms that were required because of the increasing importance of container transportation.

Terms of trade are useful in that they cover a range of situations extending from the case where exporters merely make their goods available for collection by importers or their agents at their factory (ex works) to the case where the exporter agrees to deliver the goods to the importer's factory, thereby taking responsibility for the costs and administration of that delivery (free delivered). The following sections list the more commonly used terms.

Bills of lading

A bill of lading is a receipt for goods received on board a ship that is signed by the shipper (or agent) and states the terms on which the goods were delivered to and received by the ship. The Bills of Lading Act 1855 laid down the following principles:

1. It maintained the right of the shipper to 'stoppage in transit'. Thus an unpaid exporter could reclaim the goods during shipping.
2. It set up the principle of transferability that allowed the transfer of the bill of lading from the holder to a third person who then assumed ownership of the goods as well as any rights and liabilities stated in the bill.
3. It stated that the bill of lading was *prima facie* evidence that the goods had been shipped.

The bill of lading thus acts as evidence that the goods have been received by the shipper. It can also act as part of the contract between the shipper and person or organisation paying for the shipping. For example, if the goods are damaged on arrival at the port of departure, a shipper can 'clause' the bill of lading to that effect. A bill of lading will usually cover the following details:

- name of the shipper;
- ship's name;
- description of the cargo;
- payment details, e.g. whether freight has been paid or is payable at destination;
- name of consignee;
- terms of the carriage contract;
- date when the goods were loaded in the ship;
- who is to be notified on arrival of the shipment at its destination;
- ports of departure and final destination.

In summary, the bill of lading is a receipt for the goods shipped, a transferable document of title to the goods allowing the holder to claim their goods, and evidence of the terms of the contract of shipping.

Ex works

An exporter may quote a price to an importer 'ex works'. This places the exporter's liability for loss or damage to the goods at a minimum and also means that the exporter's duties in delivering the goods are minimal. Ownership of the goods passes to the buyer once they leave the factory and the buyer pays all costs of exporting and accepts the risks once the goods pass through the factory gates. Quoting ex works may make sense if the goods are to be combined with those of another organisation to form a joint export cargo, or when the buyer has well-developed transportation facilities, e.g. buyers of commodity items such as tea and coffee beans. However, for other customers, quoting an ex works price may not meet their needs, since they cannot easily compare the actual cost of such goods against buying in their own country where prices are quoted with delivery.

Free on board (FOB)

This extends the responsibility, liability and costs of delivery for the exporter until the goods have been loaded on to the ship ('passed the ship's rail'). From this point, the importer pays the costs of insurance and freight. However, the exporter still has the right of 'stoppage in transit' should the importer fail to pay for those goods. Variations for land transport are 'free on rail' (FOR) and 'free on wagon' (FOW) which mean that the seller has the responsibility and cost of delivering goods on board a railway transporter or wagon.

Free alongside ship (FAS)

This term means that the exporter is responsible for and must pay all the costs of transport up to the point of placing the goods alongside the ship. A provision should be made covering who is responsible for any loss or damage before the goods are actually loaded on to the ship. The importer thus pays for the loading of the cargo and the cost of insurance and freight to its destination.

Cost, insurance and freight (CIF)

If a cost, insurance and freight agreement is reached, the exporter is responsible for the delivery of the goods onto the ship and pays the insurance on the part of the buyer against loss or damage while on ship. Should any loss or damage occur after the shipping company has received the goods and given the shipment a clean bill of lading, the buyer can take action against the ship owner or underwriter. Thus responsibility has passed from the exporter once the cargo is aboard ship, although it is the exporter who pays for the shipping to the importer's port.

The term *cost and freight* (C&F) is similar to CIF except, as its name suggests, the exporter is not responsible for insurance during shipping. Instead the importer incurs the cost of this insurance.

Free delivered

This places maximum responsibility and cost on the exporter, who undertakes to deliver the goods to the importer with all costs paid and all of the administrative duties (e.g. obtaining an import licence) carried out by the exporter. From a marketing perspective, quoting a delivered price has the advantage that it minimises customer uncertainty and workload since the costs of transport, obtaining documentation, arranging shipping, etc., are borne by the seller. Furthermore, it allows the customer to compare actual prices from a foreign source with local prices where delivery costs are included or are minimal. However, customers who have an efficient importing system may prefer to pay 'ex works' or 'free on board' and organise carriage themselves, rather than pay the higher 'free delivered' price.

6.4 BUSINESS PRACTICES AND LEGAL CONTROLS

False descriptions

Unscrupulous salespeople may be tempted to mislead potential buyers through inaccurate statements about the product or service they are selling. In Britain a consumer is protected from such practice by the Trade Descriptions Act 1968. The Act covers descriptions of products, prices and services and includes both oral and written descriptions.

Businesses are prohibited from applying a **false trade description** to products and from supplying falsely described products. The false description must be false to a material degree, and the Act also covers 'misleading' statements. Not only would salespeople be contravening the Act if they described a car as achieving 50 miles per gallon when in fact it only achieved 30 miles per gallon, they would also be guilty of putting a false trade description if they described a car as 'beautiful' if it proved to be unroadworthy.

The Trade Descriptions (Place of Production) (Marking) Order 1988 requires that where products are marked in such a way as to suggest they were made elsewhere than is the case, a clear statement of the actual place of manufacture must be made.

Misleading price indications are covered by the Consumer Protection Act 1987. This Act states that it is an offence to give a misleading indication of the price at which goods, services, accommodation or facilities are available. Agents, publishers and advertisers are covered by the Act as well as the person or organisation offering the goods or services. Prices can be misleading when:

- it is suggested that a price is less than it actually is;
- it is suggested that other charges are included in the price when, in fact, they are not;
- it is suggested that prices will increase, decrease or stay the same;
- it is suggested that the price depends on certain circumstances or particular facts;
- consumers are encouraged to depend on the truth of the price indication by circumstances which do not apply.

The Act covers both products and services.

Confusion over value for money due to differing pack sizes can be reduced by **unit pricing** whereby packs are marked with a price per litre or kilogram, etc. An EU Directive that came fully into force in 1994 requires that many supermarket products, for example, must be marked with a unit price unless packed in EU-approved pack sizes.

Faulty goods

The principal protection for the buyer against the sale of **faulty goods** is to be found within the Sale of Goods Act 1979. This Act states that a product must correspond to its description and must be of merchantable quality, i.e. 'fit for the purpose for which goods of that kind are commonly bought as it is reasonable to expect'. An example is a second-hand car that is found to be unroadworthy after purchase; it is clearly not of merchantable quality, unless bought for scrap. Finally, a product must be fit for a particular purpose that may be specified by the buyer and agreed by the seller. If, for example, a buyer bought a car in this country with the expressed desire to use it in Africa, a retailer may be committing an offence if they agree that the car is fit to be used when in fact, because of the higher temperatures, it is not.

The condition that products must correspond to their description covers both private and business sales, whereas the merchantability and fitness for purpose conditions apply to sales in the course of a business only. The latter two conditions apply not only at the time of purchase but for a reasonable time afterwards. What exactly constitutes 'reasonable' is open to interpretation and will depend upon the nature of the product.

In order to protect the consumer against faulty goods, some companies give guarantees in which they agree to replace or repair those goods should the fault become apparent within a specified period. Unfortunately, before the passing of the Supply of Goods (Implied Terms) Act 1973, these so-called guarantees often removed more rights than they gave. However, since the passing of that Act it has been unlawful for a seller to contract out of the conditions that goods should be merchantable and fit for their purpose. Buyers can now be confident that signing a guarantee will not result in their signing away their rights under the Sale of Goods Act 1979.

The Consumer Protection Act 1987 came into operation in response to an EU Directive. This protects buyers if they suffer damage (e.g. death, personal injury or damage to goods for private use). They must be able to prove that the good was defective and that the damage was caused by the defect in the product. Usually liability falls on the manufacturer or importer of the finished product or of the defective component or raw material. A product is considered to be defective when it does not provide the safety that a person is entitled to expect (including instruction for use). A major defence against claims is the 'development defence' where the manufacturer proves that the state of technical knowledge when the product was launched did not enable the existence of the defect to be discovered.

Further consumer protection is provided by the Consumer Safety Act 1978, which prohibits the sale of dangerous products, and by various EU regulations. For example,

the EU mark can only be used on aerosol containers if they conform to EU regulations regarding dimensions, strength, etc.

Inertia selling

Inertia selling involves the sending of unsolicited goods or the provision of unsolicited services to people who, having received them, may feel an obligation to buy. For example, a book might be sent to people who would be told that they had been specially chosen to receive it. They would be asked to send money in payment or return the book within a given period, after which they would become liable for payment. Non-payment and failure to return the good would result in letters demanding payment, sometimes in quite threatening terms.

The growing use of this technique during the 1960s led to a campaign organised by the Consumers' Association demanding that legislation be enacted curbing the use of the technique. As a result the Unsolicited Goods and Services Act 1971 was passed, followed by the Unsolicited Goods and Services (Amendment) Act 1975.

These Acts have not prohibited the use of the technique but have created certain rights for consumers that make the use of the method ineffective. Unsolicited goods can be treated as a free gift after a period of six months from receipt if the sender has not reclaimed them. Further, if the recipient notifies the sender that they are unsolicited, the sender must collect them within 30 days or they become the property of the recipient. The 30-day rule was felt to be a fair compromise between the rights of the recipient and the rights of the sender who may be the subject of a false order placed by a third party.

The practice of sending threatening letters demanding payment has been outlawed, as have the threats of legal proceedings or placing of names on a published list of defaulters.

Unsolicited services have also been controlled by law. For example, the practice of placing unsolicited entries of names of firms in business directories and then demanding payment has been controlled.

The law therefore gives sufficient rights to consumers effectively to deter the practice of inertia selling. Fortunately for the consumer, the trouble and costs involved in using this technique nowadays outweigh the benefits to be gained.

Exclusion clauses

Another practice that some sellers have employed in order to limit their liability is the use of an **exclusion clause**. For example, a restaurant or discotheque might display a sign stating that coats are left at the owner's risk, or a dry cleaners might display a sign excluding themselves from blame should clothes be damaged. This practice is now controlled by the Unfair Contract Terms Act 1977. A seller is not permitted to limit liability or contract out of their liability for death or injury arising from negligence or breach of contract or duty.

For other situations, where loss does not include death or injury, an exclusion clause is only valid if it satisfies the requirement of 'reasonableness'. This means

that it is fair taking into account the circumstances prevailing when the sale was made. Relevant factors which are taken into account when making a judgement about 'reasonableness' include the following:

- the strength of the bargaining positions of the relevant parties;
- whether the customer received an inducement to agree to the exclusion clause;
- whether the customer knew or ought to have known of the existence of the exclusion clause;
- whether the goods were produced to the special order of the customer;
- for an exclusion clause which applies when some condition is not complied with, whether it was practicable for the condition to be met.

Buying by credit

Under the law, before 1974 obtaining **consumer credit** through a hire-purchase agreement was treated differently from consumer credit by means of a bank loan. However, from the consumer's point of view there is very little difference between paying for a good by instalments (hire-purchase) or paying in cash through a bank loan which is itself repayable by instalments. The Consumer Credit Act 1974 effectively abolished this distinction. Almost all consumer credit agreements up to £15,000 are termed **regulated agreements**, a notable exception being a building society mortgage. Regulations concerned with 'truth in lending' provisions of the Act came into operation in 1985. The Act now replaces all former statutes concerning credit (e.g. hire-purchase).

An important consumer protection measure that resulted from the Act was that a lender should disclose the true interest rate in advertisements and sales literature. This true rate now appears in advertisements as the annual percentage rate (APR) and enables consumers to compare rates of interest charged on a common basis. Prior to this Act, cleverly worded advertisements and sales literature could give the impression that the scale of charges was much lower than was the true case.

Control of credit trading was achieved by a system of licensing that is placed in the hands of the Director-General of Fair Trading. This system was designed to ensure that only people with a sound trading record are able to deal in credit. Not only finance companies, but also retailers who arrange credit in order to sell their products, must have a licence. Exempt from the Act, however, is weekly or monthly credit. Thus, many credit card agreements are exempt since total repayment is often required at the end of each month.

People entering credit agreements are entitled to receive at least one copy of the agreement so that they are informed of their rights and obligations. A 'cooling off' period is provided for in the Act when the agreement is preceded by 'oral representations' (sales talk) and the agreement was not signed on business premises. This provision was designed to control doorstep selling through credit arrangements. A consumer who wishes to cancel must serve notice of cancellation within five days of the date of receiving the copy of the signed agreement.

The Consumer Credit (Advertisements) Regulations 1989 laid down the minimum and maximum information that may be given in credit or hire advertisements. Advertisements are categorised as being simple, intermediate or full advertisements and the information content is regulated accordingly.

Collusion between sellers

In certain circumstances it may be in the sellers' interests to **collude** with one another in order to restrict supply, agree upon prices (price fixing) or share out the market in some mutually beneficial way. The Restrictive Trade Practices Act 1979 requires that any such trade agreement must be registered with the Director-General of Fair Trading, a post established under the Fair Trading Act 1973. If the Director-General of Fair Trading considers that the registered agreement is contrary to the public interest, they are empowered to refer it to the Restrictive Practices Court. If the Court agrees, the agreement may be declared void. The EU Commission also has powers over collusion and has had notable successes in breaking down price cartels, for example, in plastics.

6.5 ETHICAL ISSUES

Research into relationship marketing and personal selling highlights the importance of gaining customer trust in the establishment and development of mutually beneficial buyer–seller relationships.¹ Salespeople can partially create and keep trust by showing competence, reliability and customer focus. Of equal importance is the willingness to be honest, exercise fairness and refrain from unethical behaviours.² Salespeople face many **ethical issues** including bribery, deception, the hard sell and reciprocal buying. Most companies operate within a predetermined set of ethical guidelines (see box).

British Gas and ethics

Ethical decisions are integral in making investment decisions. BG Group's Statement of Business Principles sets out the fundamental values and ethical principles within which the company operates. BG Group will only enter countries where the company can operate in accordance with its business principles.

Important statistical and financial procedures are involved in making an investment decision, but it is important to emphasise the weight given to non-financial factors involved in such decisions. Gas is the cleanest fossil fuel, but any form of energy production involves some form of environmental cost, e.g. the sight of windfarms located in fields, or harmful release of greenhouse gases when burning fossil fuels.

BG Group will only bid to explore if it can operate within its ethical guidelines. This can sometimes be difficult since natural gas resources can be located in difficult areas, including sensitive environments, conflict zones and territories with indigenous peoples where land rights are contested or inadequately protected.

Source: http://www.thetimes100.co.uk/case_study with permission.

Ethics are the moral principles and values that govern the actions and decisions of an individual or group.³ They involve values about right and wrong conduct. Business ethics are the moral principles and values that guide a firm's behaviour. Until recently, for many companies, business ethics consisted mainly of compliance-based, legally driven codes and training that outlined in detail what employees could or could not do regarding such areas as conflicts of interest or improper use of company assets. Now, an increasing number of companies are designing values-based ethical programmes that are consistent across global operations. The aim is to provide employees with an in-depth understanding of ethical issues that helps them to make the correct decisions when faced with new ethical situations and challenges.⁴

Selling ethics are the moral principles and values that guide behaviour within the field of selling and sales management. Selling ethics cover issues such as the avoidance of bribery, deception, the hard sell, reciprocal buying, the use of promotional inducements to the retail trade, slotting allowances and pyramid selling. Sales professionals should be aware of the distinction between the legality and ethicality of selling practices. Ethics concern personal moral principles and values, while laws reflect society's principles and standards that are enforceable in the courts.

An unethical practice may be perfectly legal. For example, it is not illegal to include genetically modified (GM) ingredients in products sold in supermarkets. However, some organisations, such as Greenpeace, believe it is unethical to sell GM products when their effect on health has not been scientifically proven. Such concerns have led some supermarket chains to withdraw GM ingredients from their own-brand products.

Ethical principles reflect the cultural values and norms of society. Norms guide what ought to be done in a given situation. For example, being truthful is regarded as good. This societal norm may influence selling behaviour. Hence – since it is good to be truthful – deceptive, untruthful selling should be avoided. Often, unethical behaviour may be obvious but, in other cases, deciding what is ethical is debatable, leading to ethical dilemmas. These often derive from the conflict between the desire to increase profits and the wish to make decisions that are ethically justified. For example, many companies use overseas subcontractors where labour is cheap to cut production costs. This has led to accusations of unethical behaviour because of poor pay and working conditions and the use of child labour. Companies such as Nike and Reebok seek to address such conflicts by monitoring the overseas production of sports goods to check on working conditions and to ensure that no child labour is used.

We will now discuss a number of key ethical issues in selling and sales management beginning with bribery.

Bribery

This is the act of giving payments, gifts or other inducements to secure a sale. Such actions are thought to be unethical because they violate the principle of fairness in commercial negotiations. A problem is that in some countries bribes are necessary simply to compete for business. Organisations need to decide if they are to market in such countries. Taking an ethical stance may cause difficulties in the short term but

over a longer period the positive publicity (or lack of exposure to the risk of bad publicity) that can follow may be of greater benefit.

Deception

A problem faced by many salespeople is the temptation to mislead the customer in order to secure an order. The deception may take the form of exaggeration, lying or withholding important information that would significantly lessen the appeal of the product. Such behaviour should be discouraged by training, sales management promoting ethical actions by their own words and behaviour and by establishing codes of conduct for their salespeople. Nevertheless, occasionally reports of malpractice in selling reach the media. For example, in Britain it was alleged that some financial services salespeople misold pensions products by exaggerating their expected returns. The scandal resulted in millions of pounds of compensation being paid by the companies to their clients. In the United States, the Prudential Insurance Company of America had to take a \$2.6 billion charge against earnings to pay policy holders damages after the company allowed their salespeople to use deceptive sales practices.⁵

Secrets and lies of beauty industry laid bare by advertising watchdog

They are promoted as products that will rejuvenate, regenerate, tighten and tone, bringing instant smoothness to your skin and bounce to your hair.

The multibillion-pound industry of beauty creams, lotions, gels and ointments suffered a rebuke yesterday as two leading brands were found not to defy the ageing process or rigours of daily life, but medical science.

In a warning shot to an industry reliant on increasingly extreme claims, the Advertising Standards Authority upheld complaints about the promotion of an 'anti-cellulite' cream and an 'amino-acid replenishing' shampoo. Claims attached to the two products were found to be misleading and unsubstantiated, the watchdog ruled.

Source: Adapted from an article by Sam Lister in *The Times* 11 May 2005, News Supplement p. 3.

Nestlé is a further example of a company that has been criticised for deception. In the 1970s and 1980s, it sold its infant formula (dried milk used to bottle feed babies) in the developing world, using saleswomen dressed to look like nurses. This gave the impression, among a vulnerable target group that the product was endorsed by the medical profession and represented a healthy and desirable alternative to breast feeding, despite the fact that the medical profession consistently advises that 'breast feeding is best'. Following a major boycott of its products, Nestlé agreed to honour a code drawn up by the World Health Organisation, which controls the selling of breast milk substitutes.

The hard sell

A criticism that is sometimes made of personal selling behaviour is the use of high pressure (hard sell) sales tactics to secure a sale. Some car dealerships have been accused of such tactics to pressure customers into making hasty decisions on a complicated purchase that may involve expensive credit facilities. Such actions encouraged Daewoo to sell cars using non-commission customer advisors, whose job it is to help customers choose the car which best meets their needs rather than pressure them into an ill-considered purchase.

15,000 a month hit by phone scam

Rogue salespeople are switching phone users to new suppliers without permission. People receive letters saying their landline accounts have been taken over by firms they may never have heard of. They are victims of 'phone slamming' which takes advantage of a legal loophole. Salespeople only need their name, postcode and phone number. They do not have to obtain a signature or evidence of consent, provided the customer is sent a letter giving them a 10-day 'cooling off' period to cancel the switch. There are six steps:

1. Salesperson for phone company rings customer of rival firm and tries to get their business with promises of lower bills.
2. Customer declines to be signed up, but agrees to be sent information by post. Salesperson asks customer for their full address, including postcode.
3. Unbeknown to the householder, the salesperson – armed with their name, address and phone number – registers them as a new customer and sends an order to BT, to change the supplier to the new firm.
4. Once the order to switch has been made, the existing supplier, usually BT, sends a letter telling the customer their account will end on a given date.
5. The new supplier sends a letter telling the customer the date the new service will begin and giving them ten days to cancel.
6. If the customer does not take the opportunity to cancel, their phone service is automatically switched. Bills are either sent in the post or cash taken from the customer's bank via direct debit if these details have been given.

Providing the 'slammer' has given the householder the opportunity to cancel, the whole process is within the law.

Source: Adapted from headline article in *Daily Mail* 25 April 2005.

Reciprocal buying

Reciprocal buying occurs when a customer agrees to buy from a supplier only if that supplier agrees to purchase something from the customer. This may be considered unethical if the action is unfair to other competing suppliers who may not agree to

such an arrangement or not be in a position to buy from the customer. Proponents of reciprocal buying claim that it is reasonable for a customer to extract the best terms of agreement from a supplier, even if this means reaching agreement to sell to the supplier. Indeed, they argue, counter-trade where goods may be included as part payment for supplies has been a feature of international selling for many years and can benefit poorer countries and companies that can not afford to pay in cash.

The importance of business ethics in Cadbury Schweppes

Ethics concern an individual's moral judgements about right and wrong. Decisions taken within an organisation may be made by individuals or groups, but whoever makes them will be influenced by the culture of the company. The decision to behave ethically is a moral one; employees must decide what they think is the right course of action. This may involve rejecting a route that would lead to a bigger short-term gain.

Ethical behaviour and corporate social responsibility can bring significant benefits to a business. For example, they may:

- attract customers to the firm's products, thereby boosting sales and profits
- make employees want to stay with the business, reduce labour turnover and increase productivity
- attract more employees wanting to work for the business, reduce recruitment costs and enable the company to obtain the most talented employees
- attract investors and keep the company's share price high, possibly protecting the business from takeover.

Unethical behaviour and lack of corporate social responsibility may damage a firm's reputation and make it less appealing to stakeholders. Profits could fall as a result.

Along with good corporate governance, ethical behaviour is an integral part of everything that Cadbury Schweppes does. Treating stakeholders fairly is seen as an essential part of the company's success: 'A creative and well managed corporate and social responsibility programme is in the best interests of all our stakeholders – not just our consumers – but also our shareowners, employees, customers, suppliers and other business partners who work together with us.'^{*}

Ensuring that employees understand the company's corporate values is achieved by the statement of 'Our Business Principles' which makes clear the behaviour it seeks from employees.

Cadbury Schweppes' good practice was recognised when it was voted one of the 'most admired companies for community and environmental responsibility' by

^{*}Cadbury Schweppes Corporate and Social Responsibility Report 2002 and 2006

The importance of business ethics in Cadbury Schweppes (*continued*)

Management Today magazine in 2003. It was also ranked second in the Food and Drink sector in the Business in the Community 'Per Cent Club' index of corporate giving for 2003, with an investment in the community of around 3 per cent of its UK pre-tax profits.

Cadbury Schweppes have built on this strong base by updating their 2002 report with another in 2006 in which a new set of goals and commitments on sustainability by 2010 are laid out. These cover marketing; food and the consumer; ethical sourcing; environment; health and safety; human rights and employment standards; and the community.

Source: http://www.thetimes100.co.uk/case_study with permission.

Promotional inducements to the trade

Manufacturers like retailers to promote their products rather than those of the competition. They, therefore, sometimes offer inducements to retailers to place special emphasis on their products. So, for example, when a consumer asks to see trainers the salesperson is likely to try to sell the brand of trainers that gives them the extra bonus. This may be considered unethical since it may result in the consumer buying a brand that does not best meet their needs.

Although salespeople concede that this practice has the potential to lead to abuse, they agree that most consumers have a good idea of their needs and the type of product they want. They claim the practice will be most effective in product categories where there are brands from different suppliers that are largely undifferentiated so that the consumer has a number of options that fulfil their needs. Critics counter by arguing that if the practice leads to overemphasis on a more expensive alternative to the neglect of a cheaper rival brand, the consumer's interest is still not being upheld.

Slotting allowances

A slotting allowance is a fee paid by a manufacturer to a retailer in exchange for an agreement to place a product on the retailer's shelves. The importance of gaining distribution and the growing power of retailers means that slotting allowances are commonplace in the supermarket trade. They may be considered unethical since they distort competition, favouring large suppliers that can afford to pay them over small suppliers who may in reality be producing superior products.

Salespeople argue that they are only responding to the realities of the marketplace (and the immense power of some retailers) and claim the blame should rest

with the purchasing practices of those retailers that demand payment for display space, rather than the sales profession who is often powerless to resist such pressures.

Pyramid selling

The primary purpose of pyramid selling schemes is to earn money through recruiting other individuals. Individuals are encouraged to join through the promise that they will receive payments for introducing further participants. The Department for Business, Enterprise and Regulatory Reform in Britain refers to such schemes as illegitimate and illegal if, 'while purporting to offer business opportunities, the sole purpose of the scheme is to make money by recruiting other participants, rather than trading in goods or services'. Other countries similarly consider this a 'bogus' form of selling. The main problem with pyramid selling is that it requires an infinite supply of new participants if everyone is to make money; since supply will always be finite, saturation point is generally reached quickly and later recruits have little chance of recovering their money.

6.6 CONCLUSIONS

This chapter has examined some of the laws and organisations which have been established to protect consumer interests. Unfortunately the unscrupulous few have made it necessary to enact laws that provide consumer protection.

Central to the study of the sale is an understanding of a contract and its associated terms and conditions. Following this, a number of business practices and their related legal controls were described. Finally, ethical issues in sales were examined.

Part Three examines the techniques of selling.

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PRACTICAL EXERCISE

Kwiksell Cars Ltd

John Perry spent £1,500 on a second-hand car bought from Roy Clarke, salesperson at Kwiksell Cars. He is rueing his decision. Perry had never bought a car before but believed that he was smart enough to tell a good car from a bad one. After several weekends of trying to buy a car from private sellers, he decided that going to a dealer was the only sensible option left to him if he wanted to buy one quickly.

A four-year-old Astrada 1100 in the forecourt of Kwiksell Cars had caught his eye as he travelled to work by bus. It was advertised at £1,800 and looked in good condition.

When Perry and his girlfriend visited Kwiksell Cars the following Saturday he was greeted by Roy Clarke, who asked him which car he was interested in and took him to see the Astrada. Clarke described the car as 'in lovely condition', the mechanics having been overhauled recently and the engine tuned. Perry was concerned about petrol consumption and was told that he could expect around 40 mpg around town, increasing to nearly 55 mpg on long runs. Perry was very impressed but he was a little worried about the car's capacity to pull his father's caravan. 'There's no problem there,' said Clarke. 'The Astrada might have a small engine but the carburettor has been souped up and it will cope with a caravan. No problem!'

Clarke asked Perry if he and his young lady would like a test drive. Perry agreed and found the car quite good on acceleration, although the engine was a bit noisier than his father's car. 'That's the souped up engine,' said Clarke. 'It makes it sound a bit racey, doesn't it?'

To Perry, the car looked like the solution to his long search but he knew that, as a cash purchaser, he might be able to negotiate a lower price.

'The car seems to suit my purposes but the price is a little higher than I would be prepared to pay.'

'Yes, but it's not often a car in this condition comes on to the market, sir,' retorted Clarke.

'What would you be prepared to knock off the price for a cash deal?' asked Perry.

'Usually, the maximum I am allowed to go is £200, but if you are prepared to pay a deposit now, with the remainder on, say, Tuesday when you collect the car, I'm willing to reduce the price to £1,500.'

Perry felt pleased with himself, and in front of his girlfriend too! He agreed. He wrote a cheque for £500 and agreed to bring the balance in cash on the following Tuesday. Clarke asked him to sign a contract of sale and promised that the car and all the necessary documents would be ready by Tuesday.

Perry was pleased with his new purchase at first, but the following weekend on a long run, he noticed a knocking noise coming from the engine. The car also appeared to be using much more petrol than he expected. He decided to buy a car guide from WH Smith and check the petrol consumption figures. The guide stated that the Astrada would achieve 30 mpg on the urban cycle and 40 mpg at a steady 56 mph. Perry was livid!

The knocking noise was still to be heard, so he took the car to his father's garage. The mechanic told Perry that the car's big end was badly worn. It would cost £300 to be repaired. 'The engine's not souped up,' he said, 'it's kaput!'

'But I need the car next weekend. I'm going on holiday in my father's caravan,' said Perry.

'Well, I hope you're thinking of using your father's car,' said the mechanic. 'You'd blow the engine for sure with a car like the Astrada. It's only got an 1100 engine.'

Perry stormed into Clarke's office.

'I'm sorry you've had these problems but engine troubles are common with Astradas,' explained Clarke. 'I'd like to help but I did take you for a test drive.'

'You conned me!' shouted Perry.

'Not at all. You will see that the contract you signed clearly states that the responsibility to check for defects was the buyer's. That means that any faults which appear after sale are your responsibility to put right. You told me you knew a bit about cars. If you didn't you should have brought a mechanic with you. I knocked £300 off the price. That was to cover for any problems like this.'

Discussion question

Did Clarke break the law regarding the sale of the car? Which laws are relevant to this case?

PRACTICAL EXERCISE

ChevronTexaco cuts losses with Innovetra Fraud Alerter

ChevronTexaco is an oil giant, active in over 180 countries and competitive in energy sectors. A key part of the UK operation is a network of Texaco-branded fuel stations with forecourt convenience stores across England and Wales. This part of the business operates in a competitive marketplace with historically low margins, putting a keen emphasis on efficiency and profitability.

Fraudulent transactions – a needle in a haystack

Like many retailers, Texaco recognises that shrinkage has a direct negative impact on the bottom line, and that internal theft is a major contributor to ‘shrinkage of stock’. The company-operated network of sites has a team of ten auditors responsible for audit, loss prevention and compliance, and a key part of their brief is to detect and investigate cases of internal theft. With a large network of sites, many trading 24 hours a day, detecting fraud and non-compliance among millions of transactions is almost impossible, and much depends on random examinations noticing something unusual.

Reducing till-based fraud

Texaco wanted to reduce the level of shrinkage, and recognised that the most effective means of achieving this would be to improve the detection and prevention of till-based fraud.

Mike Noyce, European Security and Audit Manager for Texaco explains: ‘We looked at various alternatives, and found that Managed Loss Prevention, suggested by Innovetra, provides a comprehensive approach to combating fraud.’

The implementation was managed under Innovetra’s project planning process. Noyce comments: ‘The system was up and running in eight weeks, the project went smoothly, and came in on budget.’

Direct to the field

Fraud Alerter automatically analyses and mines the transactions from all sites every night. The findings of the system are accessed directly by Loss Prevention Auditors in the field, with no need for help from specialised analysts. Each auditor spends a regular amount of time each week checking what has been found, and is then able to conduct a detailed investigation from their desktop, or to hit the road if a site visit seems necessary.

Early results

Texaco saw the benefit of the new system immediately. Noyce explains: ‘We soon found a number of instances of internal fraud and thefts that would not have been

detected without the new system. It helps root out fraud quickly, so we are able to nip it in the bud before it becomes a big problem.'

The speed with which the Loss Prevention Auditors are able to respond means that they can visit a site within days of a questionable event, making investigations more effective. 'Being able to confront people with the evidence so quickly after the event gives us a significant tool in the fight against this type of loss,' says Noyce.

Loss Prevention Auditors also find they can forward details of questionable events to the regional management team quickly and easily, bringing another resource to the fight against internal theft.

The deterrent effect has been significant. Site staff quickly became aware that frequent calls are being made to sites asking for an explanation of unusual events. This has had a measurable effect at many sites.

Training and compliance

Texaco is finding that Fraud Alerter helps identify and manage till-based training requirements and compliance issues. Noyce comments: 'Another benefit is that we have been able to identify areas where we need more staff training because Fraud Alerter shows where correct procedures are not being followed.'

A more effective team

The Loss Prevention team has become more productive and effective, and they are better able to prioritise their work. This has led directly to increased detection and resolution of fraud. The Loss Prevention Auditors are able to investigate suspicious events and access detailed till roll displays while working from home or their head office, allowing much of the investigative work to be done without the need to actually visit the retail site. This allows the investigators to be much more selective in deciding which sites to visit, resulting in fewer wasted, unproductive visits.

Managed Loss Prevention

Noyce says: 'MLP has enabled Texaco to fully benefit from the advanced technology now available. My team now have an additional, highly effective tool that complements our way of working and enables us to utilise our time more productively.' MLP and Fraud Alerter have provided Texaco with positive results. Having measured shrinkage both before and after the implementation, Texaco is able to accurately quantify the reduction which has occurred. 'Fraud Alerter has made a significant contribution to the reduction of losses since its implementation. The system has paid for itself in four months.'

About Innovetra

Founded in 1991 and based in North London, Innovetra specialises in business intelligence systems for the retail sector. Their range of products enables retailers to analyse

information from their electronic point of sale (EPOS) and other systems to gain an understanding of their customers, increase sales and reduce loss-making activities.

- Innovetra Performance Analysis enables fast analysis of all corporate data.
- Innovetra Basket Analysis is a powerful tool for analysing the basket mix, showing patterns within customer buying behaviour.
- Innovetra Retail Newswire is a browser-based system for delivering timely alerts to field staff.
- Innovetra Fraud Alerter uses advanced searching and analysis technologies to identify potential fraudulent activity by retail staff. It highlights the areas of the business that need investigation and can dramatically cut loss from staff fraud.

High-profile customers include BP Retail, Peacocks, Total UK, and Jacksons Convenience Stores.

Source: www.thetimes100.co.uk/case_study with permission.

Discussion question

How might the introduction of Innovetra in a group of retail establishments affect:

- The staff who work there including implications for training and recruitment?
- Managers of such retail establishments?

Examination questions

- 1** What is a contract? Of what significance are contracts in buyer–seller relationships?
- 2** How well protected are customers from false trade descriptions and faulty goods?
- 3** How does the external legal environment affect the role of sales management?