

## LEGAL BRIEF #7: INFLUENCERS AS SELLERS - NON-CONFORMITY ISSUES WITH GOODS AND SERVICES

When you sell goods and services to your consumer audience, you need to make sure that they receive what they were promised within a reasonable time, according to your agreement, and that the quality of what they ordered reflects both of your expectations. When your customer opens up your delivered merchandise, it must look exactly the same as how you advertised it. Negative surprises would be bad both for the consumer, as well as for your reputation. This is why it is important to understand the laws that apply to selling goods as well as providing services, and highlighting some of the most important obligations that you need to keep in mind as a trader. Making sure you deliver high quality goods that are not harmful for consumers is not only a legal obligation, but a healthy business mindset of growing your reputation. Selling subpar products will most likely get you negative reviews and a decrease in sales.

### Selling goods

According to the [Consumer Sales Directive](#) updated in 2019, a 'sales contract' is a transaction where the trader agrees to deliver a product and transfer ownership to a consumer, and the consumer agrees to pay a price. These products need to comply with certain standards.

Article 6 of this Directive elaborates on what it calls the **'subjective' requirements** for 'conformity' - in other words, conditions for the quality of the goods which are established by your and your client's expectations. According to Article 6, in order to be in conformity with the sales contract, goods must:

- a) *'be of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the sales contract;*
- b) *be fit for any particular purpose for which the consumer requires them and which the consumer made known to the seller at the latest at the time of the conclusion of the sales contract, and in respect of which the seller has given acceptance;*
- c) *be delivered with all accessories and instructions, including on installation, as stipulated by the sales contract; and*
- d) *be supplied with updates as stipulated by the sales contract.'*

For illustration purposes, we will unpack some of these requirements. For instance, whatever goods your consumers order have to be 'of the description, type, quantity and quality, and possess the functionality, compatibility, interoperability and other features, as required by the contract'. In other words - this means that the product should be as you have advertised it - if you say a hoodie has four pockets and a two-way zipper, it must have these features. If you say that a game is compatible with a Nintendo Switch, then this must be the case. Another example is that the goods need to be 'fit for any particular purpose required by the consumer, which was communicated' to you as a trader. Basically if someone sends you an email to ask if a camera you're selling is waterproof and can be used in diving, and you say yes, then this must be accurate.

Another important article in the new Consumer Sales Directive is Article 7, which establishes additional so-called **‘objective’ requirements** for the quality of the goods, based on more external expectations. In addition to the subjective requirements, Article 7 mentions that goods must:

- a) *‘be fit for the purposes for which goods of the same type would normally be used, taking into account, where applicable, any existing Union and national law, technical standards or, in the absence of such technical standards, applicable sector-specific industry codes of conduct;*
- b) *where applicable, be of the quality and correspond to the description of a sample or model that the seller made available to the consumer before the conclusion of the contract;*
- c) *where applicable, be delivered along with such accessories, including packaging, installation instructions or other instructions, as the consumer may reasonably expect to receive; and*
- d) *be of the quantity and possess the qualities and other features, including in relation to durability, functionality, compatibility and security normal for goods of the same type and which the consumer may reasonably expect given the nature of the goods and taking into account any public statement made by or on behalf of the seller, or other persons in previous links of the chain of transactions, including the producer, particularly in advertising or on labelling.’*

Here’s one example as an illustration of this list. The goods you sell must be ‘fit for the purposes for which goods of the same type would normally be used if we take into account technical standards or industry-specific requirements’ - for example that a jacket that you have claimed is water resistant would meet the industry standard for water resistance.

If the relevant standards are not met, then consumers have a few rights that you need to be aware of (Article 13): they can ask for the goods to be repaired, they can ask for a price reduction proportionate with the lack of conformity, or they can terminate the contract, which means that they would be entitled to get their money back from you and send you the goods back.

These rules are particularly relevant if you do not have a lot of control over the quality of the goods you sell. One reason why control might lack is due to the use of dropshipping - where you accept orders that are actually fulfilled by a third party (for example a merchandise company that will print your t-shirts and send them to your customers for you). On the one hand, this model has really big positives - it has opened up potential for you to sell to your fans all over the world without you needing to stock, pack and ship the items you are selling. But dropshipping also creates more distance between sellers and producers, whose relationship is now intermediated - or enabled - by digital platforms like Shopify.

Selling goods that are produced and packaged overseas also brings with it risks relating to product safety. The [General Product Safety Regulation](#) rules require all producers to only place safe products on the internal market. Depending on the nature of the product, safety is considered according to further industry standards covered by special laws. To make sure that you are not selling unsafe products, you can always check [Safety Gate](#), the EU’s centralised tool that national authorities can use to quickly alert the European Commission – and each

other – about non-food products that pose a risk to the safety and well-being of European consumers.

## Providing services

Maybe you're not selling merchandise, but have designed online courses where your followers can learn about make-up techniques, dating advice, or learn how to cook, knit, or become better at online advertising. Or maybe you've expanded in the world of apps, e-books or podcasts. In this case, you are providing digital content and digital services to your consumer audience, which means the [Digital Content Directive](#) is applicable to you.

'Digital content' and 'digital services' are defined very broadly in this Directive:

- digital content' is means any '*data which are produced and supplied in digital form*'; and
- 'digital service' means '*a service that allows the consumer to create, process, store or access data in digital form*' or '*a service that allows the sharing of or any other interaction with data in digital form uploaded or created by the consumer or other users of that service*'.

Without going into too much legal detail, just remember that online courses, e-books, newsletters, and any other form of content that you may share with your consumer audiences will most likely fall under these categories. If you do receive money for digital content or services, this means you need to be familiar and comply with certain standards in your commercial activity. You also need to give your consumers specific rights when things don't go as planned.

In the [Digital Content Directive](#), very similarly to the [Consumer Sales Directive](#), Articles 7 and 8 outline the 'subjective' and 'objective' standards for conformity. The legal requirements are very similar to the list we explored just now. On the one hand, they deal with the expectations the consumers had relating to quality, functionality, etc., and on the other hand with some external industry standards. An example of a subjective requirement is that both you and your consumer understand that your online e-commerce course will include knowledge about drop-shipping. If you agree on this and then you don't provide this content, we can say there is a lack of conformity. An objective requirement reflects industry standards. For instance, if you make a fitness and diet app and offer it to your European consumer followers, you need to make sure it complies with state of the art cybersecurity standards.

Another important thing to remember is that as the trader, you need to provide the digital content or service without unreasonable delay (Article 5). This means that if you promise to share online tutorials on a given date, and that does not happen, you haven't complied with your obligation to deliver that content in a timely manner.

According to Article 14, infringing the consumer's right to have their content in a timely manner and for that content to be of a good quality, whether agreed upon or expected from similar types of content, will lead to the following consumer rights:

1. rectifying the digital content or service (meaning improving the resources and sending them out again),
2. receiving a proportionate price reduction (a discount or refund),

3. or terminating the contract, which means that consumers would be entitled to get their money back and give up their access to digital content or services.

It's important to realise that if you want to be a successful part of the European Union's digital internal market, you need to know and apply the standards that apply to traders who target European consumers, and deliver high quality goods and content in a timely manner.