

## **CHAPTER 8**

### **CONSUMER PROTECTION**

By Sara P. Sandford, Donald B. Scaramastra and Paul S. Hoff

Businesses that operate in the United States are subject to a number of different laws that attempt to protect consumers from “unfair business practices.” These laws are established by the U.S. federal government, by one or more state governments, and by local authorities. Some consumer protection laws are designed to ensure that the goods sold are safe, others to prevent sellers from misrepresenting the nature of the item sold and to help the consumer make a fully informed decision, and others to protect consumers from actions that unfairly restrain competition. For example, different federal agencies regulate the safety of everything from toys to medical devices, require clear explanation of warranties offered with products or interest charged on loans, or set product standards and require clear product disclosures about everything from whether tuna was caught in a way that avoids bycatch of dolphin, to an appliance’s energy efficiency. Others regulate the means by which certain businesses can operate, or establish minimum professional standards for those providing services to the public. Some laws are administered by federal or state agencies. Some, but not all, allow an injured consumer to file a lawsuit directly, recover money damages, and force a company to do business in a certain way.

A wide variety of business practices can be subject to these laws, and the laws and their regulations will differ from state to state. The laws are not entirely consistent with each other, and many are duplicative. Below is a brief overview of a few types of important consumer protection laws that can relate to the sale of goods in the United States.

#### **1. THE MAGNUSON-MOSS ACT**

The Magnuson-Moss Act is a federal law that governs the terms of warranties for consumer goods. While this law does not require a manufacturer to provide a warranty for a product, it sets forth several requirements if a written warranty is provided to consumers. Any Japanese business manufacturing consumer goods that ultimately will be sold in the United States must understand and follow the requirements of this law. The Federal Trade Commission (FTC) has also set forth administrative rules that warrantors must meet.

Among other things, the Magnuson-Moss Act requires that (a) written warranties specify whether they are full or limited warranties (if the product is sold for more than a certain amount), (b) the warranties must be in a clear document that is easy to read, and (c) the warranties are either available where products are sold so consumers can review them, or posted on the Internet in compliance with regulations the FTC is currently finalizing. The law also limits the degree to which a warranty can be disclaimed or modified, prohibits certain type of tie-in requirements; and prohibits deceptive warranties. The law also encourages consumer lawsuits by providing for recovery of attorneys’ fees and costs.

In addition to the Magnuson-Moss Act, any warranty offered must comply with the version of the Uniform Commercial Code (“UCC”) adopted by the state in which the company is operating. This law, in effect in all states and discussed in more details in Chapter 5, covers, among other things, warranties. Each state has enacted its own version of the UCC. Most

portions of the UCC are identical from state to state, but many states have slightly different laws dealing with the enforcement of limitations and disclaimers in consumer warranties. In other words, some warranty provisions might be enforceable in one state, but not in another. Careful drafting of a warranty is therefore required.

## **2. THE FEDERAL TRADE COMMISSION ACT**

This federal law generally prohibits “unfair or deceptive practices” in business affairs. Under this broad language, the FTC regulates many different areas of business practices, including “Truth in Advertising;” various scams, frauds, and schemes; enforcement of trade laws, rules, and guides; and fraudulent marketing schemes and practices. The FTC has an International Division that seeks to promote consumer confidence in the international marketplace by negotiating bilateral consumer protection agreements and assisting in international litigation.

## **3. STATE “LITTLE FTC” ACTS**

Many states in the United States have their own laws that parallel or duplicate the Federal Trade Commission Act. These laws can provide even broader remedies than the Federal Trade Commission Act, including the right for consumers to sue directly and the right for consumers to recover so-called exemplary or punitive damages (money used to punish a wrongdoer, as opposed to money used to compensate for harm suffered). Generally speaking, the large awards being handed down in U.S. courts that the media reports are from these types of punitive or exemplary damages. The state laws generally prohibit unfair or deceptive practices, but states frequently have different regulatory frameworks to explain which practices are acceptable and which are not. Often a state agency is given some form of regulatory and enforcement authority over deceptive practices, but the activity level of each such agency varies from one jurisdiction to another.

## **4. FEDERAL AND STATE ANTITRUST LAWS**

Various federal and state laws prohibit monopolization, restraint of trade, certain types of mergers and acquisitions, and certain types of price discrimination and exclusive dealing arrangements. The general purpose of these laws is to foster and encourage competition in a free marketplace. Different federal agencies, including the FTC and the Department of Justice, have jurisdiction over certain types of activities that might violate the federal antitrust laws. Private individuals or businesses may also bring civil claims for violation of the antitrust laws; such violations can lead to awards that include treble (triple) damages. (See Chapter 10 for further discussion of antitrust laws.) All states have their own antitrust laws, and some prohibit more actions as anticompetitive and harmful to consumers than would be the case in the comparable federal law.

## **5. RICO**

RICO is the Racketeering Influenced and Corrupt Organizations Act. This federal law was designed to attack criminals who infiltrated or used legitimate businesses in their

illegitimate activities. However, RICO's potential breadth is vast; it can lead to potential liability in any matter where criminal fraud can be alleged and proven. If two or more acts are committed that are criminal under federal law (e.g. mail fraud), and if those criminal acts are interrelated to form a pattern of continued illegal activity that affects a third-party enterprise, there is potential for a RICO claim. Such claims can include both criminal and civil liability.

RICO is significant in part because of the broad remedies it provides. Any person injured in his business or property can sue in a civil action. Damages claims are trebled (tripled) for a RICO violation, and an award of attorneys' fees for the winning claimant is allowed. Criminal penalties include fines and imprisonment. In all cases the court may order forfeiture of the defendant's property.

**For more questions, please feel free to contact Donald B. Scaramastra at [dscar@gsblaw.com](mailto:dscar@gsblaw.com) or at 206.816.1449 or Paul S. Hoff at [phoff@gsblaw.com](mailto:phoff@gsblaw.com) or at 202.298.1790.**