



February is international scams awareness month and this month we focus on scams, and how to identify and avoid them. Our consumer query of the month concerns pricing mistakes in online sales. If you have had a problem with a purchase from another EU country, please contact us on 01 8090600 or at info@eccireland.ie. For information on your consumer rights in Europe, see www.eccireland.ie

Ann Neville
Editor

1. Too good to be true?

Have you ever received an email telling you that you have won an international lottery? Or been contacted by the relative of a deceased international politician informing you that a large amount of money is available in his bank account and you can help to access it? If so, then you have been contacted by scammers.

Cheap methods of mass communication, such as telephone, direct mail, email and the internet can be used as tools to perpetrate fraud and mass marketed consumer fraud now operates on a global scale. In Ireland the National Consumer Agency has identified the top ten scams operating here, which include the above scams as well as others, such as pyramid schemes, work at home scams, and bogus holiday clubs.

Research carried out in the UK by the Office of Fair Trading shows that each year UK consumers lose about £3.5 billion to scams, or about £70 per year for each adult living in the UK. Almost half the UK adult population is likely to have been targeted by a scam and of these just under 10% admit to having been a victim of a scam at some time. This figure is likely to under-estimate the real incidence of scams as people can often be too embarrassed to admit it. What is of concern is that once you have been scammed once, you are more likely to be targeted again, with 30% of victims falling for another scam within the following 12 months. This is because organized criminal gangs trade “suckers lists” with the personal details of individuals considered susceptible to fraud. This can lead to chronic victimization amongst vulnerable consumers and unfortunately it appears likely that Ireland is not immune to this practice.

It is often believed that older people are more vulnerable to scams and this can be true as once an older person is scammed they are likely to lose twice as much as others. However, research shows that anyone can be taken in by scams because scams are customised to fit the profile of the people being targeted. As the OFT points out, there really is a scam for everyone.

In Ireland, recent scams include “free trials” for diet supplements which really lead to the charging of consumers’ credit cards by multiple companies for sums that can often amount up to hundreds of Euro. Perpetually popular too is the vehicle matching scam where a consumer with a car for sale is phoned by a company that “guarantees” him a buyer in return for an administration fee.

ECC Ireland receives complaints from consumers about scams on a weekly basis. However as scams are by definition fraud we are unable to offer more than advice as

fraudulent companies will not respect the law and recognise their legal obligations to their customers. Therefore all we can do is offer the following advice:

If you have been sent unsolicited material:

- Stop, think and be sceptical. If something sounds too good to be true, it probably is. Do not rush into sending off money to someone you do not know, however plausible they might sound.
- How likely is it that you have been “specially chosen”? Thousands of other people are likely to have received the same offer.
- Think about how much money you could lose from replying to a potential scam – it is not a gamble worth taking.
- If you are unsure, speak to family or friends or see our website at www.eccireland.ie/topic.php?topic=8

2. I ordered a laptop from an online trader priced at €80 and received an email confirmation of my order detailing the product and cost. I was then informed by the trader that they would be unable to fulfil my order. The product is still available on the website but at a higher price of €800. I suspect that the company realised that the price quoted online was a mistake and so they cancelled my order. Do I have any grounds to dispute this and compel them to fulfil my order at the lower original price?

Of course, if the trader had a policy of deliberately quoting cheap prices to attract attention but then refusing to honour them, this would be an unfair commercial practice under Directive 2005/29/EC, as transposed into Irish law by the Consumer Protection Act 2007. Under this legislation, it is considered a misleading action to provide false or untruthful information that deceives or is likely to deceive the average consumer.

However, it is necessary to look into the case-specific situation to ascertain whether a genuine mistake has been committed or if the trader is engaged in unfair commercial practices, such as bait advertising.

The law of mistake in contract law is a complex area but the basic position is that if there is a genuine mistake on behalf of a trader in failing to display the correct price, the trader can claim that there is a defect in consent and the contract may be set aside. In other words, there was no ‘meeting of minds’ between the parties on an essential element of the contract i.e. price.

The success or otherwise of a case would depend upon the factual context and particularly whether or not the consumer acted in good faith. If it transpires that it was an obvious, rare error, quickly acknowledged and rectified, consumers who ordered knowing, or should reasonably have known, that the price was the result of an error are not entitled to benefit from the error. However, if they ordered in good faith, unaware of any error, they could look for arrangements from the trader, particularly if they incurred consequential damage.

On the other hand, it must be noted that while Directive 2000/31/EC on e-commerce provides for a specific procedure for the acceptance of an order, the contract formation aspect are not dealt with by this piece of legislation.

Turning to the case at hand, leaving the issue of whether or not a valid contract had been formed to one side, it is very unlikely that you will be able to compel the trader to complete the transaction at the initial price since the error was obvious and was quickly acknowledged and rectified. Although internet traders regularly offer legitimate deals that

could seem to be too good to be true and so it can be difficult to establish what exactly the customer had reason to know, in this case an €800 laptop for €80 might be enough to cause the customer to suspect a pricing mistake.

All we can suggest is that you contact the trader again, in case they are prepared to give you a better offer as a gesture of goodwill.

If you have incurred financial loss as a result of the trader's refusal to perform the contract you could consider seeking compensation through the courts. You may find the European Small Claims Procedure useful in this regard.

If you want more information about this or any other cross-border consumer issue you can contact us on 01 8090600 or at www.eccireland.ie.

The European Consumer Centre is funded by the European Commission and the National Consumer Agency.

Disclaimer: Whilst every effort is made to ensure accuracy, the European Consumer Centre cannot be held responsible for matters arising from any errors or omissions contained in this publication. The information provided is intended as a guide only and not as a legal interpretation.