

Fake and Misleading Discounts from Online Shopping Platforms and Consumer Protection in Malaysia

With the prevalence of the Covid-19 pandemic, many have opted for online shopping as their primary shopping method to satisfy their buying needs while attempting to keep safe from the virus. As more and more online retailers emerge in this ever-growing and ever-advancing market, the number of online shoppers has increased as well. As a result, instances of online retailers taking advantage of their customers using unethical or even illegal advertising or marketing tactics to attract more customers has increased as well.

Online retailers have many ways to increase their chances of profit-making by using pricing strategies such as 'yo-yo pricing' (i.e. increasing the price of their products when supply is low and then decreasing the price after the supply increases) and 'predatory pricing'. Predatory pricing occurs when online businesses lower the price of their products below the manufacturing cost in hopes that it will drive their competitors out of business.

Another strategy that is often deployed is when unscrupulous retailers mislead customers/consumers through 'fake'/misleading discounts, which many consumers are unaware of. This was rumoured to have happened recently during the highly-anticipated yearly nationwide '11.11', Black Friday, and '12.12' sales. Now, you might be wondering what 'fake'/misleading discounts are, and what transpired during the aforesaid sales which may have fooled many consumers.

This article seeks to outline the issues surrounding fake/misleading discounts, the relevant laws applicable to the same, and the avenues available to consumers who have fallen prey to such methods by online retailers.

Fake/misleading discount

The term "fake discount" and "misleading discount" are often used interchangeably. However, there is a distinction between the two. Generally, a misleading discount refers to situations where an online business advertises their business or certain products as having a promotion or discount for a specific amount of time, when it is actually the original price of the product but marked up combined with a discount percentage that will be equivalent to or higher than the original price once deducted at the checkout point. For example, the recommended retail price of a vacuum cleaner is RM500, but the seller increases the price of the vacuum cleaner to RM600 immediately before the 12.12 sale and offers a 10% discount for the product. In this scenario, the discounted price of the vacuum cleaner (RM540) is actually higher than the recommended retail price.

If you have any related questions/queries please do not hesitate to contact us:

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Whereas, a fake discount refers to situations where an online business advertises their business or certain products as having a promotion or discount, but upon checkout, the price of the product reverts back to the original price before the discount. The advertised prices are not what the consumer is charged. For instance, if a seller offers a 10% discount on a RM500 vacuum cleaner during the 12.12 sale, the price payable by the consumer would be RM450. However, upon checkout, the price of the vacuum cleaner is restored to RM500. If consumers are not cautious about checking the price of the product, shipping fees and taxes, they will end up paying the original price without the discount.

Consumer Protection Act 1999 (“CPA 1999”)

Fake/misleading discounts are prohibited under the CPA 1999. Pursuant to Section 12 of the CPA 1999, a person commits an offence if he gives to a consumer an indication which is misleading as to the price at which any goods or services are available.

An indication given to a consumer is misleading as to a price or a method of determining a price if what is conveyed by the indication, or what the consumer may reasonably be expected to infer from the indication, or any omission from it, includes any of the following:

- (a) **that the price or method is not what in fact it is;**
- (b) that the applicability of the price or method does not depend on facts or circumstances on which it does in fact depend;
- (c) that the price covers or the method takes into account matters in respect of which an additional charge is in fact made;
- (d) **that a person who in fact has no such expectation, expects –**
 - (i) **the price to be increased or reduced, whether or not at a particular time or by a particular amount;**
 - (ii) the price, or the price as increased or reduced, as the case may be, to be maintained, whether or not for a particular period;
 - (iii) the method to be altered, whether or not at a particular time or in a particular respect; or
 - (iv) the method or the method as altered, as the case may be, to remain unaltered, whether or not for a particular period;
- (e) that the facts or circumstances by reference to which the consumer may reasonably be expected to judge the validity of any relevant comparison made or implied by the indication are not what they in fact are.

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Under Section 145 of the CPA 1999, any person who is convicted of an offence under the CPA 1999 for which no penalty is expressly provided shall be liable to a fine not exceeding RM50,000.00 and/or to imprisonment for a term not exceeding 3 years, and for a second or subsequent offence to a fine not exceeding RM100,000.00 and/or to imprisonment for a term not exceeding 5 years. Any body corporate which is convicted of an offence under the CPA 1999 for which no penalty is expressly provided shall be liable to a fine not exceeding RM100,000.00, and for a second or subsequent offence to a fine not exceeding RM200,000.00.

Filing a complaint

There are many ways for consumers to protect themselves when faced with misleading advertisements or representations by online businesses.

Consumers can opt to file a complaint with the E-commerce platforms directly. Many E-commerce platforms such as Shopee and Lazada have their own policies for dealing with misleading discounts. For example, Shopee prohibits price manipulation and fake discounts as they create a false impression of the product prices. Listings with misleading discounts will be suspended by Shopee for a first offence, with no penalty as a warning. However, if there is any subsequent offence by the seller in the future, all listings found with the behaviour of misleading discounts will be deleted as it would be a "Prohibited Listing". Similarly, sellers on Lazada are not allowed to offer misleading discounts during the campaign period such as 11.11, 12.12, etc. Lazada may remove the products from listing if the sellers are found to be in breach of the policy.

Consumers can also choose to lodge a complaint to the National Consumer Complaints Centre ("**NCCC**") or the Ministry of Domestic Trade and Consumer Affairs ("**MDTCA**"). The NCCC is a non-profit organisation in Malaysia that aims to be a local complaint centre to help consumers solve their problems and complaints. The NCCC also acts as a mediator to help consumers and businesses resolve disputes. To strengthen the affairs of solving problems, the NCCC works closely with relevant authorities such as the Tribunal for Consumer Claims Malaysia ("**Tribunal**"), MDTCA, the Malaysian Bar Council, and so on. Complaints can be easily made through the NCCC and MDTCA as it may be done online or through a phone call. Once the complaints are lodged, the NCCC or MDTCA will try their best to resolve the dispute as soon as possible.

Consumers can also file claims to the Tribunal (an independent body established under the CPA 1999 to provide an alternative to the civil courts for consumer claims) to seek damages. The Tribunal was established to ensure that consumers have the option to file claims in a simple, inexpensive, and speedy manner.

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Conclusion

Although there are a number of ways for consumers to protect their interests when encountering fake/misleading discounts, consumers themselves out to be circumspect and careful when buying goods and services online, and to undertake their own research on pricing of products as questionable businesses that use questionable tactics have turned up in droves in this day and age. Online shopping platforms should also consider improving their policies when it comes to allowing the businesses using their platform to arbitrarily price their goods. These platforms should heighten their controls over these businesses so that when a problem such as fake/misleading discounts arise, these issues may be dealt with in a speedy and satisfactory manner to the consumers affected by such tactics.

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