

NJORD Estonia: Order not as expected? Return it!

The advantage of online shopping is the right to return the goods, regardless of the reason. Consumer behaviour research in the field of e-commerce shows that easy and free return conditions significantly increase the likelihood that the consumer will make more purchases from the same shop again. However, it is not rare that shoppers abuse the right of returning goods.

A recent striking case concerned a customer of Zara, the fast-fashion brand, in Spain. The customer was convicted of a criminal offence for removing labels from new clothes and attaching the labels to the used Zara garments, which they repeatedly returned to the shop. However, the law in force does not provide for specific regulation against the "return fraud".

Considering the EU and Estonian legislation regulating consumer rights, e-retailers must take into account the following aspects in their return policies:

- E-retailers are obliged to notify the consumer of the conditions of the right of withdrawal, the deadline, and the procedure, before the conclusion of the e-shopping agreement, i.e. before the purchase (usually the relevant information can be found under the general conditions describing the use of the e-shop and the purchasing procedure, published on the e-shop's website).
- E-shop agreements are considered to be distance contracts from which the consumer is allowed to withdraw without providing any reason in the course of 14 days from acquiring physical possession of the goods. If the consumer withdraws from the contract on such basis the merchandise is not required to be damaged, i.e. goods of high quality can be returned as well. It may be the customer's personal decision. The consumer may also use the right of withdrawal and return the goods purchased from the e-shop despite the fact whether the goods were sold at a discount or purchased during a campaign. The cases where the consumer does not have the right to withdraw from the contract are very limited. Shoppers cannot return groceries, tailor-made garments, underwear, etc.
- Upon withdrawal, the consumer has an obligation to return the goods after 14 days from withdrawal. Thereby, the consumer shall only bear the direct costs of returning the goods which usually consist of courier or postal service fees. The consumer shall not have the liability to cover the mentioned costs in case the retailer has not informed the consumer that the consumer shall cover the costs related to the return of goods.
- In addition to returning the purchase price amount, the e-retailer has an obligation to cover the delivery costs of the purchased goods to the consumer as well.
- It is important to notice that in case the e-retailer has not informed the consumer of the abovementioned right of withdrawal from the contract, the consumers may withdraw during a longer period, i.e. 12 months after the receipt of goods (retailer is obliged to return the purchase price amount and the delivery costs of the purchased goods).
- Regarding the consumer's right to return goods without providing a reason in the course of 14 days from the receipt of the goods, a distinction must be made with a case when the customer wants to return goods due to a defective product. This case falls under another legal basis for sales contract termination. The seller is responsible for any shortcomings in the course of two years from the delivery of the merchandise to the purchaser. During the first six months from the delivery of the merchandise to the consumer, the seller has an obligation to prove that the shortcomings existed at the time of delivery.



KATRIN SARAP
ATTORNEY AT LAW,
PARTNER

(+372) 66 76 440

KATRIN.SARAP@NJORDLAW.EE