

LAW

Sellers beware: Watch what you say about your products

Because of the number of complex and specialized goods in the market, buyers increasingly depend on information that businesses provide about what they sell. Thus, courts have largely discarded the old saying, "Buyer beware," and are increasingly willing to hold sellers accountable to buyers for goods that don't comply with sellers' warranties.

Warranties generally are express and implied. Express warranties are based on sellers' written or oral statements. Implied warranties are imposed by law.

Express warranties

Express warranties are generally made in three ways:

■ First, a buyer may ask a seller about his goods, and the response may be an express warranty. For instance, a buyer may ask a seller if an insecticide will work for beetles. If the seller says it will, he will be liable to the buyer if the insecticide does not work on beetles.

■ Second, a seller may provide a description or picture of goods in a catalog, television or radio advertisement or brochure. Those are warranties, and the seller will be liable to a buyer if the goods do not conform to the description provided.

■ Third, a seller may show a buyer a model or sample of goods, and it must accurately reflect the goods sold. A seller shouldn't pick only the good tomatoes out of a large shipment as a sample when the actual shipment will include good and some bad tomatoes.

Statements of opinion are generally not warranties. Thus, statements that goods are "the best" or "better than competitors' goods" are not warranties.

Statements of value are also generally not considered warranties unless they include a statement of fact. Saying a Swiss watch is worth more than a similar watch because it is from Switzerland is a warranty that the watch is from Switzerland.



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Implied warranties

Implied warranties accompany any sale of goods unless expressly disclaimed. There are two principal implied warranties: merchantability and fitness for a particular purpose.

Warranty of merchantability warrants that goods are fit for the ordinary purpose for which they are used. If an ant spray doesn't kill ants, the seller has breached that warranty.

Warranty of fitness for a particular purpose arises when a seller knows the particular purpose for which someone is buying goods and knows the consumer is relying on the seller's expertise in choosing the appropriate goods. If a consumer asks a shoe seller to recommend a pair of hiking shoes, but the seller recommends a pair of walking shoes, the seller has breached the fitness warranty because walking shoes are likely not fit for hiking. As long as the walking shoes are of a fair quality, there will likely not be a breach of the warranty of merchantability if the walking shoes are fit for walking — the ordinary purpose of walking shoes.

Disclaimer of warranties

Sellers can expressly disclaim warranties of merchantability and fitness by including a conspicuous written clause in the sales contract saying such warranties are expressly disclaimed. Sellers can also disclaim the warranty of merchantability by saying the goods

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are sold "as is" or "with all faults." Disclaimers should be in bold print, all caps or both.

Avoiding warranty liability

Sellers can take the following steps to help prevent liability for breach of warranty:

1. Carefully review and draft all written materials describing goods, making sure the goods conform to such descriptions.

2. Review all radio and television advertisements, making sure the goods conform to the descriptions.

3. Ensure that all models, pictures, and samples accurately reflect the goods.

4. Educate salespeople regarding the goods and the importance of knowledge about the goods they sell.

5. Develop a way for salespeople to find the answers to questions from consumers and educate them about the process.

6. Consider a written contract that disclaims warranties of merchantability

and fitness for a particular purpose.

7. Consider a written contract that disclaims all warranties except those made in writing.

Buyer protection

Buyers seeking warranty protection should consider a written contract expressly:

■ Stating the warranty of merchantability applies;

■ Warranting each statement the seller makes on which the buyer relies;

■ Providing the purpose for which the buyer will use the goods.

Robert Goff is an associate with Paducah's **Denton & Keuler** law firm. His areas of practice include estate planning wills, trusts, estates and probate, contracts, business corporations and partnerships, and elder law. He is admitted to practice in Kentucky and Tennessee and Illinois. He can be contacted at 270-443-8253.

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