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Warranties - A Primer on Express and Implied Warranties

Every merchant should have some understanding of what his or her legal obligations are when selling a product to the public. What is significant is not only the quality of the product sold, but also the representations that are made to the customer and the suitability of the product to meet the customer's specific needs.

The key legal concepts are express and implied warranties. An express warranty is a guarantee that arises from what the customer is told or shown about the product. For example, telling a customer that a tire will withstand certain conditions creates a legal guarantee that it will do just that. By contrast, merely extolling its virtues in general terms -- such as saying that it is the greatest thing since the invention of the wheel -- is mere unenforceable "puffery".

Express warranties may arise not only from what the consumer is told at the point of sale but also from the description that accompanies the product or from a model or example that is shown to the customer. In sum, the nature of an express warranty is that the product must be what it is held out to be.

Implied warranties are a different animal. They arise not from what a customer is expressly informed but as the result of what the law has decided are minimally acceptable

business practices. The two implied warranties recognized in merchant transactions are the implied warranty of merchantability and the implied warranty of fitness for a particular use.

The implied warranty of merchantability simply means that a product is fit to be used in the manner that the product was supposed to be used. This means the goods must be of at least average quality, properly packaged and labeled and fit for the ordinary purposes that they are intended to serve. A discount product, for example, does not have to have all the qualities of a premium product unless it is sold as such but it must meet realistic performance standards.

The other type of implied warranty is that of fitness for a particular purpose. This means that if a merchant is informed that a product is required for use in a specific way the merchant has an obligation to provide a product that is fit for that stated purpose. This implied warranty arises from the legal supposition that the buyer is relying upon the merchant's expertise and knowledge concerning the range of products that he or she sells.

Implied warranties normally can be disclaimed -- that is to say rendered null and void -- if done properly. This is a tricky proposition, however, and local law should always be consulted. Stating that a product is being sold "as is," for example, may or may not be effective depending upon the nature of the product sold or the extent of state consumer protection law. As a general rule, to be effective disclaimers must be conspicuous and should identify the specific implied warranty that is to be excluded.

The legal consequences arising from any warranty -- express or implied -- are significant.

Liability may extend not only to the direct purchaser but also to household members and guests who suffer harm from a warranty's breach. In sum, the law of warranty creates business risks for the merchant, which -- like all business risks -- should be understood by the merchant.