

MAIL ORDER AND YOU

By Attorney Michael H. Wald

Mail order in the U.S. is becoming big business, but are you afraid you'll be "taken to the cleaners"? The Federal Trade Commission has a Mail Order Rule which is designed to correct a big problem that has existed with late or undelivered mail-order merchandise. The rule was issued after federal, state and local consumer protection authorities received thousands of consumer complaints about mail order problems. The major complaints that brought about the need for the rule were: failure to make prompt refunds and failure to answer customer inquiries about delayed or lost orders.

Under this rule, a merchant has the duty to ship your merchandise on time. The merchant must also follow procedures that the rule requires, if he cannot ship the ordered merchandise on time.

When a merchant places an advertisement in a paper or magazine, or any other media, he must provide the shipping date in the ad, clearly and conspicuously. If the ad does not provide a shipping date, then the merchant must ship the merchandise within thirty days of receiving a "properly completed" order. An order is properly completed when the merchant receives payment as required by the offer, accompanied by all information needed to fill the order (i.e. size, color, shape). Payment must be made by cash, check, money order or credit card, whichever is stated in the advertisement. If payment conditions are not stated in the ad, then all methods are assumed to be reasonable methods of payment. If you put your order on a credit card, your order is considered properly completed when the merchant charges your account.

When the merchandise cannot be shipped on time, the merchant must provide the customer with an "option notice." The notice must provide an option to cancel the order and receive a prompt

refund, or offer another option of agreeing to a delay in shipping. The notice must include a tentative shipping date for the delayed merchandise. The merchant must also have a reasonable basis for informing the customer that they do not know when the merchandise can be shipped. In this case, the merchant must provide customers with specific reasons for the shipping delay. A good example of this is "due to a fire in our warehouse, all merchandise was destroyed, and we do not know how long it will take to replace the merchandise."

The rule further states that the merchant violates the rule if upon delay he fails to offer the option of canceling the order completely and getting a refund in full, or consenting to a delay. The merchant also violates the rule if he finds that for any reason he must cancel the order, and he neglects to inform the customer and provide an instant refund.

Mail order sales that are exempt from the rule are magazine subscriptions and similar deliveries, except for the first shipment; sales of seeds and growing plants; orders made on a collect on delivery basis (C.O.D.); book and record club sales; mail order photo finishing; or orders made by telephone and charged to a credit card.

The Mail Order Rule does not apply to merchandise that is delivered but was not ordered. An unordered merchandise statute governs this situation and provides that only two kinds of merchandise can be sent legally through the U.S. mail without a consumer's prior consent: free samples that clearly and conspicuously are marked as samples, and merchandise mailed by a charitable organization asking for contributions. Consumers may consider unordered merchandise sent through the U.S. mail service as a free gift. People are NOT obligated to return unsolicited mail, or pay for it. Also, it is illegal for a company to send a bill or dunning communication seeking payment of unordered merchandise.

If you ever have a problem or questions concerning mail order sales there are some agencies available to help you: the

Federal Trade Commission, 767-7083; Direct Mail Marketing Association, 1730 K. St., NW, Washington D.C. 20006; your local United States Postal Service; or your local consumer protection office.

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