



International Distribution Institute

WARRANTY FOR END USERS

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WHO ARE THE END USERS?

- consumer: «any natural person acting for purposes which are not related to his trade, business or profession»
(Directive 1999/44/EC)
- Non consumer (contracts normally governed by general conditions of sale or purchase)



GENERAL FRAMEWORK

Product sold through the manufacturer's distribution chain:

- The consumer purchases the product from the retailer (last seller)
- The manufacturer gives a direct warranty to the consumer (e.g. included in the product's packaging)

Different situations:

- The manufacturer is selling directly to the consumer through its internet website, or its shop

APPLICABLE RULES

Within the EU:

- Directive 1999/44/EC, amended by Directive 2011/83/EU (lack of conformity, warranty etc.)
- Directive 2005/29/EC concerning unfair business-to-consumer commercial practices
- National laws (which implemented the Directives in quite different ways)
- National case law and decisions of the competent authorities for consumer protection (e.g. in Italy, the Antitrust Authority)



CONSUMER'S RIGHTS

In case of non conformity of the good, existing at the time the goods is delivered, the consumer can claim to the seller repair or replacement, free of charge.

Repair or replacement shall be completed within a reasonable time and without any significant inconvenience to the consumer, taking account of the nature of the goods and the purpose for which the consumer required the goods



OTHER REMEDIES AND REDRESS

Further possible remedies: price reduction; rescission of the contract:

- If repair and replacement are impossible or disproportionated
- if the seller has not completed the remedy (i.e. repair and/or replacement) within a reasonable time
- if the seller has not completed the remedy without significant inconvenience to the consumer.

Possible reduction on reimbursement for the use of the good, if provided by national law

Compensation for damages?

Seller's right of redress

TIME LIMITS

- 2 years from delivery
- Presumption of the existence of the non conformity at the time of delivery for the first 6 months
- Consumer's obligation to notify the non conformity to the seller within 2 months from detection
- Possible limitation of action periods provided by national laws shall not be provided for less than 2 years



MANUFACTURER'S WARRANTY (1)

Definition under Directive 1999/44:

«any undertaking by a seller or producer to the consumer, given without extra charge, to reimburse the price paid or to replace, repair or handle consumer goods in any way if they do not meet the specifications set out in the guarantee statement or in the relevant advertising»

MANUFACTURER'S WARRANTY (2)

Manufacturer's obligations:

- To inform the consumer about its legal rights, making clear that they are not affected by the guarantee
- To clearly specify the main contents of the guarantee (duration, territorial scope, name and address of the guarantor), in writing, when requested by the consumer
- Possible language requirements imposed by national laws

CASE LAW

European case law (Court of Justice)

- Interpretation of the Directives

Italian Courts

- Application of rules provided by the Consumer Code

Italian Antitrust Authority – Administrative Courts

- Application of rules provided by the Consumer Code
 - Rules on misleading/aggressive commercial practices
 - In some cases, rules on unfair terms
- Commitments undertaken by the professionals; sanctions

ITALIAN CASE LAW

- Correct, complete information about the legal guarantee (several violations)
- Performance free of charge
- Reversal of burden of prove after 6 months: recent trend of the Antitrust Authority and Administrative Courts to exclude it, although expressly provided by the Consumer Code (Apple 2015)
- No additional costs after the first six months' period (Indesit-Whirlpool; Electrolux; Candy-Hoover - 2017)
- The warranty is not alternative to the legal rights: it may apply after the 2 initial years or provide additional services; otherwise, violation

CONCLUSION

- Do not simply refer the consumer to the Service Center; it must be a further option, in addition to the legal rights
- Include the provision of additional services and/or longer period
- Correct, complete information about the legal rights
- Repair and replacement must be the first option, always free of charge (carefull with further remedies, e.g. credit for the purchase of other goods)
- Attention to the burden of prove issue (do not count on the reversal)



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Thanks for your kind attention

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