

Legitimacy of Online Business & Measures in Place to Check Sale of Spurious Products

1. Background

On-line marketing through the use of various social media is gaining popularity in Bhutan. In order to formalize online business, Guideline on E- Commerce, 2019 is already in place. The Department of Trade (DOT) is the authorized agency to issue e-commerce license; while the RoEAs are tasked to ensure that all e-commerce businesses are licensed. The OCP is mandated to ensure health, safety and economic interest of consumers are protected, during the conduct of such business.

2. Legitimacy of online businesses in Bhutan

The Guidelines on E-Commerce, 2019 is the framework to guide operation of online business in the country. Any individual or enterprise wishing to operate e-commerce businesses are required to acquire a license from the DoT.

The guidelines categorizes e-commerce operator into three group as follows:

- Platform Operator: refers to any legal person/organization/agency that provides cyber space, virtual places of business, transaction matching, information distribution and other services to the parties of an e-commerce transaction to enable them to carry out independent e-commerce activities. For e.g., Zala.bt, Druksell, One Click Shop.
- Operator on Platform: refers to an e-commerce operator that sells goods or provides services to customers through e-commerce platforms operated by Platform Operators, such as Druk Bees.
- Other Operator: refers to an e-commerce operator that sells their own goods or provides their own services through self-established websites, e.g. Trend Locket, Sherza Ventures, Becoming-for-You.

The guideline outline procedures on the overall governance of e-commerce business in the country including specific obligations of the business entities to ensure protection and promotion of the economic interest and rights of the consumer.

In particular, Section 8.1.8 of the Guidelines states that the e-commerce business entity shall comply with rights of the consumers, and duties and obligations of business entities with regard to consumer protection as enshrined in the CPA, 2012 and CPRR, 2015. Further, Section 16.2 states that in case of disputes, the aggrieved party may approach the Office of Consumer Protection for grievance redressal.

The CPRR, 2015 is also applicable to on-line marketing as well. Section 2 of the CPRR, 2015 states, “This Rules and Regulations shall apply:

- a) To every transaction, marketing, offering, selling or supply of goods and services within Bhutan, whether online or offline, unless it is exempted under any other law in force in Bhutan.
- b) To supply of goods or provision of services in Bhutan, whether online or offline, irrespective of the residence and location of the supplier and the service provider”.

3. Online business - What are the applicable laws governing it?

Apart from CPA, 2012 and the Guideline on E-Commerce, 2019 which is leveraged on the CPA, 2012, there are several legislations and policies that touch on the e-commerce aspects, such as: Information, Communication and Media Act of Bhutan, 2018 and the Consumer Protection for Financial Services (CPFS) Rules and Regulation, 2019. The E-Commerce Policy 2021 is in the approval process, once passed will provide a comprehensive policy framework for e-commerce sector.

4. Flow of counterfeit or duplicate goods into the country. What are the checks in place?

The import of counterfeit or duplicate products is generally regulated by the Department of Revenue and Customs (DRC) at the point of entry as per the Customs Act of Bhutan, 2017 and the Customs Rules and Regulation, 2017. However, it is enforced only on the following grounds:

- By order or by notification by the government or concerned government agencies like BAFRA, BSB, BICMA, NEC, DRA, DOIP, etc.;
- In accordance with other laws in force; or
- In accordance with the international conventions, covenants, treaties, protocols and agreements duly ratified by the Parliament.

The DOT, MoEA may regulate the import of restricted or prohibited counterfeit products through non-issuance of import license.

The OCP may notify the DRC and DOT for import regulation, if false advertisement, misleading representation and other consumer deceptive practices are involved in import of counterfeit products. The public may be warned of health risks and economic damages through public cautionary notice.

The Consumer Board and Competition Council (CBCC) has the authority to ban the import of any counterfeit products that pose serious risks to lives, health and safety of the general consumers.

5. Recommendations

While there appears to be adequate legislation in place to regulate e-commerce, actual policing is a challenge since they operate in a virtual world where identification of the source of business would be challenging. Nonetheless, with stepped-up on-line monitoring and education, a good degree of consumer protection can be achieved. Specifically, the following recommendations needs to be taken up.

- The ROEAs is recommended to step up the monitoring of online businesses that may be operating without valid licenses and keep an eye for those that may deal in spurious products, that could have negative impacts on the consumers.
- Similarly, the OCP should also step-up monitoring of online businesses to strengthen the protection of consumers engaged in online transactions. It should also educate consumers about the risks involved in dealing with online businesses and what to watch out for.
- The DOT should educate and regularly remind the general public on the E-Commerce Guideline, 2019.

- If any doubtful on-line businesses appear that may have implications on the health and safety consumers, relevant agencies such as DOT, DRC, BSB, OCP, BICMA and DOIP will need to collaborate to stop or regulate the import and sale of counterfeit products.
