



Liability in E-Commerce

Liability occurs when someone is held legally responsible for something. It may arise whenever an interaction between a business and a customer or another person exists. Liability concerns vary depending on the type of product or service a business owner offers. For specific questions about liability exposure consult an attorney. This tip sheet presents information about a few liability issues an e-commerce business may encounter.

Product Liability

A business is liable for the products that it sells. This means that a business owner is generally responsible for the quality of the product and for any damages or injuries that result from the use of the product. A business may encounter product liability issues due to **negligence**, **breach of warranty**, **strict liability**, or **product defect**.

Negligence

A manufacturer may be negligent if s/he does not take proper care in the design or manufacture of their product or the warnings, labels, and instructions accompanying the product.

Breach of Warranty

There are two primary categories of warranty (a legally binding agreement involving a product's integrity):

1. **Express warranty.** A guarantee that a product functions as advertised and is safe. A product that does not function or is unsafe, could qualify as a breach of express warranty. Sellers can limit aspects of the warranty, such as its duration, the types of remedies available, the geographic scope, and the method of making a claim. Because express warranties are created by statements made by the seller, business owners should be cautious about what they say about the product and the promises they make regarding the product.
2. **Implied warranties.** State law creates implied warranties and they apply to all products sold. State law allows sellers to disclaim implied warranties in a

“conspicuous” writing or by including language like “as is.” The two main implied warranties are

- a. **Implied warranty of merchantability**, which requires that a product is suitable for the ordinary purposes for which it is used.
- b. **Implied warranty of fitness for a particular purpose**, which requires that a product must be able to be used for the purpose for which it was purchased. This claim may arise when there is a particular purpose for which the product is required and the buyer relies on the product seller's skill or judgment to select an item suitable for that specific purpose.

Strict Liability

Strict liability goes beyond negligence by not requiring fault on the part of the seller. For example, the manufacturer may be liable for a product even if the buyer did not purchase it from them directly.

Product Defect

A product may be considered defective due to the design of the product, the manufacturing of the product, or insufficient warnings and instructions accompanying the product.

Business owners can limit their exposure to product liability issues by adequately testing their product for safety and usability, including appropriate warning labels and instructions. Consult an attorney before selling your manufactured products to the public.

Intellectual Property Infringement

A business can encounter intellectual property infringement through **copyright, trademark, or patent infringement**.

Copyright Infringement

Be cautious when using material that may be copyrighted, including photos, characters, stories, and music. Also, be aware of fair-use provisions in copyright law, which may allow limited use of copyrighted material for purposes such as criticism, comment, news reporting, teaching, scholarship, and research without the need for explicit permission. However, if the use falls outside the scope of fair use, obtain permission from the copyright holder or use materials that are in the public domain and do not require permission. If in doubt about whether a particular use qualifies as fair use, or if you require legal guidance on intellectual property issues, consult with an attorney who specializes in copyright issues.

Trademark Infringement

A trademark is any word, name, symbol, or device used in commerce to identify and distinguish goods or indicate the source of goods. To avoid trademark infringement, avoid using another company's logo, image, slogan, or name as an identifier of your product or service. The United States Patent and Trademark Office, as well as each state, maintains publicly available lists of registered trademarks. The internet is also a helpful source to identify possible existing trademarks. For further assistance, speak with an attorney specializing in trademark issues.

Patent Infringement

A patent grants a property right to an inventor for twenty years, prohibiting others from using the invention. In the United States, a patent is any process, machine, manufacture, or composition of matter. Patent infringement occurs when making, using, offering to sell, or selling something that contains every element of a patented process, machine, manufacture, or composition of matter. For further assistance, speak with an attorney specializing in patent issues.

Data Breach Liability and Privacy Issues

Depending on the type of e-commerce business you run, you may store information such as names, email addresses, phone numbers, credit card information, etc., on your website. As the business owner, you or your business could thus be liable to customers if their information is stolen or misused. The best way to limit this liability is by restricting customer data collection to only what is essential for your transactions, for business promotional purposes, and for applying the appropriate data security measures. It is best to refrain from storing credit card information, to use a secure platform to host your website, to encrypt your data using Secure Sockets Layer authentication, to update your software consistently, to keep your site backed up regularly, and to invest in small business cyber insurance. Numerous state and federal laws govern the way you acquire, store, and use sensitive personal information. Consult with an attorney and/or data security expert prior to processing such information.

Unauthorized Selling of Your Product

A business that produces and sells goods could be liable for damages caused by those goods even if a third party sells the goods. Protect your products from unauthorized reselling by obtaining copyright, trademark, or patent protections, keeping your distribution lines small, and knowing who sells your product. Keep in mind that unauthorized sellers of your product could undercut your business' sales by selling products at a lower price.

Minimum Advertised Price (MAP)

When your e-commerce business sells products from another business, ensure that you comply with the minimum advertised price (MAP) policy if it is mentioned in the contract with the other party. This policy means that you cannot advertise the products for a price less than the specified amount mentioned in the contract. Therefore, it is crucial to make sure your e-commerce business adheres to the MAP policy while advertising the products to avoid any legal issues.

Americans with Disabilities Act (ADA) Considerations

The ADA is intended to offer protection to people with disabilities. Business owners are responsible for ensuring their business is reasonably accessible to people with disabilities. The ADA applies to e-commerce as well as physical commerce locations. Web accessibility is critical to ADA compliance. See the latest [Web Content Accessibility Guidelines](#) for more information.

Final Thoughts

Liability is a multifaceted issue that impacts various aspects of an e-commerce enterprise. By comprehending and proficiently navigating these areas, businesses can protect their interests and intellectual property and ensure adherence to relevant laws and regulations. It is of vital importance to navigate these intricate legal matters and seek guidance from an attorney to confirm that you are in compliance and are properly safeguarding your rights and assets. Several online legal sites offer information and lower-cost advice on some of these issues. Also, the United States Patent and Trademark Office's website (<https://www.uspto.gov>) offers even more information about patents and copyrights.

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