



Key perspectives for a virtual holiday shopping season

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Holiday checklist: Compliance considerations for your business

James Denvil, Sophie Baum, and Filippo Raso

This holiday season, e-commerce will help your customers connect with friends and family. But e-commerce can present a new range of compliance considerations for your business. Here's a holiday checklist to help you stay on top of the issues while serving your customers:

- Make sure that your privacy disclosures are updated to reflect new data collection practices.
- If you are engaging with new suppliers or service providers, confirm that your contracts address data use and data security.
- Confirm that you have addressed data transfer restrictions before shipping customer data to your overseas affiliates.
- As you deploy cookies to improve your digital offerings, check that your cookie consent and choice mechanisms comply with applicable laws.
- If you are shipping globally, assess whether your new customer base makes you subject to foreign laws.
- And if you offer digital “try-ons” for makeup, accessories, or clothes, consider the potential for biometric privacy laws to create class action risk.

Creative ways to win and maintain consumers during the holiday season

Golo Edel and Janna Weimer

The COVID-19 pandemic makes it obvious: it's not only supply chains that are heavily affected, but also the (offline) retail business. Due to the second wave of the pandemic, most parts of the world are again under lockdown and in many regions retail stores are closed until further notice. Therefore, this year's holiday shopping season will be different: there will be less open retail stores and the streets will not be crowded with people looking for presents as usual. Instead, consumers will focus on online purchases for their presents, leading to a significant increase in online sales. Particularly now everybody needs something as a gift (e.g. shoes, clothes etc.)

However, as profitable this might sound for online retailers, the competition in the e-commerce space is extremely high. How is it possible for an online retailer to distinguish themselves in a crowded marketplace? The answer is: be creative and provide incentives for consumers!

How?

- Offer extended warranties and longer return options (e.g. 30 to 60 days after purchase) granting consumers more rights than under statutory law.
- Offer special loyalty programs for regular customers (e.g. making replacement products available during the time defective products will be repaired).
- Offer special discounts, vouchers, or small gifts (e.g. Christmas tree decorations) in case orders exceed a certain value.
- Known and well proven: Be competitive in terms of prices (or even cheaper) than others.
- Finally: Set up a good marketing strategy promoting your advantages over other competitors.

Of course, new and creative incentives for consumers and promotions always need to be in line with the statutory requirements. In this respect, online retailers particularly need to comply with consumer protection and unfair competition laws. For instance, it is imperative that extended warranties comply with the applicable transparency requirements and that loyalty programs and promotions are in line with unfair competition and data protection laws.

China's retail sector powers through COVID-19 downturn as vendors turn to live-streaming to boost growth

Eugene Low, Grace Guo, and Stefaan Meuwissen

In China, the holiday season starts slightly earlier as the "Double 11" Festival (a.k.a. Singles' Day) already pre-heats the consumer market at the beginning of November. Live streaming has become the second to none feature of the 2020 Singles' Day, propelling significant sales of products and services featuring in live streaming sessions, often hosted by influencers. Live streaming has become particularly common in China since the beginning of 2020, when many consumers had to stay indoors due to the outbreak of the COVID-19 pandemic.

The main advantage and attractiveness of live streaming is that it enables salespeople to demonstrate a product vividly and in detail, and allows them to respond to questions from consumers in real-time. Live streaming sessions are often made even more attractive to consumers compared to traditional e-commerce, as the prices offered in the live streaming rooms are typically lower and additional gifts are usually offered. As ever increasing numbers of consumers visit live streaming rooms to purchase products, brands also boost the attractiveness of the process by engaging celebrities and influencers to host live streaming rooms.

While China's Advertising Law and its related regulations contain concrete provisions on endorsement activities and online advertising, the live streaming phenomenon still attracted special attention from the authorities due to a mixture of various legal issues such as false advertising, substandard or counterfeit products, consumer protection, data security, content examination, individual and platform liabilities, etc. In this context, in July 2020 the State Market Supervision Administration of China published a draft version of the Guidance on Enhancing Supervision on the Internet Live Streaming Marketing (amongst a flurry of other regulatory pieces emerging since March 2020). Its final version was adopted recently, and took effect on 6 November 2020.

Now that live streaming has come under the active scrutiny of the most powerful market administrative authority in China, companies should turn on their radar to monitor and prevent legal liability in the live streaming room, while embracing this pervasive, remarkable, and successful new marketing tool.

Rapid surge of e-commerce in Indonesia

Karina Syahril Antonio, Roland Sunardi, and Fakharsyah Hanif Sugiyartomo

The holiday season in Indonesia is no longer going to the mall looking for an end of season sale. Now it's just about a step away from your device – thanks to massive sales and promotions offered by e-commerce platforms. Over the past year, the lives of Indonesian citizens have changed radically. Indonesia went into various degrees of lockdown which interrupted business and everyday life on every level. This condition has shifted Indonesian consumers to use e-commerce to fulfill their needs.

E-commerce was already gaining significant traction in Indonesia, and is expected to be worth US\$130bn by 2025. With a population of around 270.2 million, Indonesia is now enjoying the growth of a middle-affluent class (MAC), and according to a report released by the World Bank, the expansion of the MAC will help Indonesia grow rapidly. To this end, Indonesia's e-commerce sector has been eyed by major tech companies across the globe, including Google, Microsoft, the Chinese e-commerce company JD.com, and Singapore's Sea Group through Shopee.

In anticipation of the rapid growth of e-commerce business, the Indonesian government issued Government Regulation No. 80 of 2019 marking Indonesia's step forward in establishing a regulatory framework for the country's fast-growing digital economy and e-commerce sector. As an implementing regulation, the Minister of Trade of the Republic of Indonesia recently issued Regulation No. 50 of 2020, which provides more detailed provisions on e-commerce businesses in Indonesia, including a provision regarding electronic advertisements that must be in compliance with the advertising code of ethics, consumers' protection aspects, and equitable information of the services/products.

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When COVID-19 delays Santa

Florian Unsel

With many regions around the globe in the midst of a second lockdown, Santa, too, has to deal with a new villain that stepped on the scene this year. Amongst all the hardship Covid-19 brings with it, many national and international supply chains do not work as smoothly as before. Let alone that we consumers all are longing for some peaceful and harmonious holidays.

If presents do not arrive on time, consumers may have claims against retailers that in turn may take recourse against brands. Surely force majeure is a widely recognized international principle which may protect in certain cases. However, the local particularities vary: Does force majeure have an element of (un-) foreseeability, and is COVID-19 still unforeseeable in its second wave? What are the legal consequences of force majeure?

In any case, a more pressing problem may be the disappointment of the consumer when they have to leave their dear ones without a present. So what should companies do?

- Start your holiday business early and set a strategy for delivery delays.
- Make sure your contracts allow for the necessary flexibility. Have appropriate force majeure clauses in your contracts, which specifically address the risks and uncertainties brought about by COVID-19.
- Be transparent to your customers about delivery capabilities and the potential impact of COVID-19 on your supply chain.
- Communicate any delivery delays clearly and in due time.
- Think about alternatives to deal with delivery delays. Rather than relying on the legal position or even engaging in a dispute, a small apology gift or a smart voucher policy may be the better way to deal with this unparalleled COVID-19 pandemic – and Santa may still have something to put under the Christmas tree.

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