



Assignment 2 - LGST 369

Commercial Law (Athabasca University)



Scan to open on Studocu

Assignment 2 – LGST 369

Angelo Di Benedetto # 3396085

- 1) **Clickwrap contract: Terms of Purchase – Sephora Canada**
- 2) **Link to the Clickwrap contract:** <https://www.sephora.com/ca/en/beauty/terms-of-purchase>
- 3) **The parties of the contract are:**
 - a) Residents of Canada who have reached the age of majority in their provinces of residence, or also technically any tourist in Canada who walks in a Sephora store or decides to buy a product from Sephora Beauty Canada Inc. (“Sephora Canada”), but that last party is nowhere reflected in the agreement.

Clause 1 – Acceptance of Orders: *“Only residents of Canada who have reached the age of majority in their province of residence may place orders through the Sites. Product orders are available to be shipped within Canada only...”*

There is no section like in some other contracts where the parties are nominated (for example: Party 1 means John Doe) so that way, they will be named through all the contract. As one reads more through the contract, we can find one of the parties described as “residents of Canada”.

- 4) **What to do do if you have a complaint related to the contract or the product? If there is a clause concerning this, quote it in your answer.**
 - a) **Clause 8** of the contract says that in case of any disputes, will be resolved by the laws of the Province of Ontario and the affected party or customer (who has a complain about the contract or products provided by Sephora Canada) also provides an attorn to the courts of Ontario. In such case, the plaintiff would need to find legal help in that province and any court decisions would be made following the rules of the province as agreed.

Clause 8. General: *“These Terms of Purchase and all related matters are governed solely by the laws of the Province of Quebec, without reference to its conflict of laws provisions, and the federal laws of Canada applicable therein. Any dispute arising from, connected with or relating to these Terms of Purchase, or any related matters (“Disputes”) will be resolved by the laws of the Province of Ontario, Canada, and you hereby irrevocably submit and attorn to the original and exclusive jurisdiction of those courts in respect of all Disputes.”*

- 5) **In your opinion, is the contract written in plain English, or does it use legal language that is difficult to understand (“legalese”)?**

I think for the most part the contract is in plain English, nevertheless there are clauses where ambiguous legal terms are in use, for example in term 6 (Disclaimers, Liability Exclusions/Limitations on Liability and Indemnity) the wording is not so clear. Below, you can find such ambiguous terms underlined.

- i) *“Other than for expenses, legal or implied warranties that might not be disclaimer or excluded under applicable law...”*
- ii) *“...SEPHORA CANADA AND ITS SUPPLIERS ARE NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS...”*

My point of view in this case is that some of the terms used in these clauses or part of clauses are used mostly by lawyers and/or Law students who have the knowledge of the Contract Law area.

6) Clause or clauses which affects your responsibilities or liability under the contract that you think is ambiguous (can be read with two different meanings) or is unclear in its meaning.

The clauses I think are not very clear about my responsibilities or liability under this contract are:

- i) **Clause 1** – Acceptance of Orders: *“Only residents of Canada who have reached the age of majority in their province of residence may place orders through the Sites.”*

It talks about the residents of Canada, but it doesn't say this applies only for Canadian citizens who are over 18 years of age who might be probably buying from outside of Canada, so this does not apply to them?

- ii) **Clause 5** – Errors: *“If we make an error with regard to your order, we may correct or cancel an order at any time, and/or edit an order to reflect the correction (you will have the right to approve or confirm any increase in price or shipping charges).”*

In this portion of the term, the word “may” could mean it can happen or not, so there's no warranty that they will actually correct it, also it says the customer will have the right to approve or confirm any increase in the price but it doesn't say that the user can reject the increase.

Still under Contract Law the customer should have the last word in deciding whether they will agree to still buy the product after such corrections if they agree with the

price or not, so that would be a new offer and the user should accept or reject the new offer.

7) What legal principle of contractual interpretation as described in the course text would you use to resolve this ambiguity or uncertainty?

I would probably use the principle of contextual approach or the *Contra Proferentum* rule of interpretation, since as literally specified in the course book, the contextual approach goes beyond the four corners of the document by looking at the parties' presumed intentions and their circumstances, because in clause 5, for example, they use the word "may" instead of will which means that could or could not happen, and this would be unfair to the customer who probably entered the right order but then Sephora Canada makes an error then the customer will still potentially have to face the consequences, and since ambiguities are interpreted against the person or the party who drafted the clauses, then this might result fair in this case, or unless the drafter, in this case Sephora Canada clears up all such ambiguities, which in my opinion are in the following clauses:

- i) **Clause 5 – Errors:** *"If we make an error with regard to your order, we may correct or cancel an order at any time, and/or edit an order to reflect the correction (you will have the right to approve or confirm any increase in price or shipping charges)."*

So basically this clause is only in favor of Sephora Canada, the customer has the option to get the order changed or corrected but this may or may not happen, and also the price could increase, that means, if I bought a lipstick today for \$10 and the store makes a mistake then they may change the order and then maybe the product will be in \$15 for which I would have to pay but since it's not fair I can choose between buying for the new price or just not buying the product at all, then how would that be fair to the party that did not make the mistake?