

# アメリカの訪問販売取引におけるクーリング・オフ期間法制度の概要

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## An Overview of the Cooling-Off Period Laws for Door-to-Door Sales in the USA

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### Abstract

This article attempts to give an introductory overview of the American cooling-off period laws for door-to-door sales. The Federal Trade Commission in the USA promulgated the Cooling-Off Rule in 1972, although the law regulating door-to-door sales differ for each state. Under this federal ruling, the cooling-off period gives the consumer the right to cancel any sale resulting from a door-to-door transaction without any penalty or obligation within three business days from the date on which the contract was signed. Sellers are also obliged to inform the consumer of this right. However, many of them fail to do so and this is considered an unfair and deceptive act or practice under 16 C.F.R. §429.1(a) to (i). In such cases, the consumer can cancel the sale at any time. There has been some controversy about the length of the cooling-off period, and this article hereby presents a remarkable case about this controversy that is largely unheard of in Japan.

*Keywords: cooling-off period, door-to-door transactions*

### 1. Introduction

Unlike the USA where there are federal and state laws, Japan is a unitary state in which the all the powers rest with the central government. Most Japanese people are not familiar with the idea of separate federal and state laws, and even fewer have read or understand the original text of the statutes of each state in the USA. Therefore, the consumer's understanding of the cooling-off period in Japan is likely to be slightly different from that of in the USA, especially with regards to its length and the application of the laws. In this article, I will introduce several important statutes of some states and the Code of Federal Regulations (C.F.R.) in the USA, with the focus on the regulations, as well as the case laws with respect to the length of the cooling-off period.

### 2. The Nature of Door-to-Door Sales

First of all, why are cooling-off period laws for door-to-door sales needed? The main reason behind the introduction of these laws is due to the risk of deception that accompanies the nature of door-to-door sales. In general, there are three broad aspects to the nature of door-to-door sales. 'First, the salesperson typically approaches a consumer at his home, a place where he is vulnerable and cannot easily leave.'<sup>1</sup> Most consumers are not the expert on the goods sold by the salesperson, and not skilled in negotiations either. The elderly is particularly vulnerable to such impromptu sales presentations. While consumers can physically go to another store of their choice

during shopping, they cannot easily leave their home with the salesperson standing at their door. 'Secondly, the salesperson generally uses high pressure tactics to induce the consumer to purchase the goods or a service.'<sup>2</sup> Salespeople are trained to sell their goods, and their sales pitches may intimidate consumers to their advantage. 'Third, the consumer, who is usually not psychologically prepared for a sales pitch, will feel compelled to purchase something just to end the encounter.'<sup>3</sup> This also exerts negative psychological effects on the consumers. The sudden visit posed by the salesperson not only confuses the consumers, they are also uncomfortable about the sales negotiation, and most would like the salesperson to leave earlier.

The Federal Trade Commission (FTC) therefore promulgated the Cooling-Off Rule in 1972 to protect American consumers from such high-pressure selling tactics often seen in door-to-door sales. 16 C.F.R. Part 429.<sup>4</sup>

### 3. Cooling-Off Rule (16 C.F.R. §429)

The cooling-off period under the federal rule (16 C.F.R. §429) gives the consumer the right to cancel any sale resulting from a door-to-door transaction, without any penalty or obligation, for three business days from the date on which the contract was signed.<sup>5</sup> However, the cooling-off period does not always start from the date on which the contract was signed. The seller must provide the buyer with a written copy of the contract and attach the notice of cancellation form that explains the buyer's right to cancel.<sup>6</sup>

<sup>1</sup> Dee Pridgen & Gene A. Marsh, *Consumer Protection Law in a Nutshell* 4<sup>th</sup> ed., (West Academic Publishing, 2016), p. 69.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> 16 C.F.R. §429.1.

<sup>6</sup> 16 C.F.R. §429.1(a).

Moreover, the seller must orally inform the buyer of the right to cancel.<sup>7</sup> The failure of the seller's obligation to inform the consumer of this right stated in 16 C.F.R. §429.1(a) to (i) is considered an unfair and deceptive act or practice<sup>8</sup> under 15 United States Code (U.S.C.) §45.<sup>9,10</sup>

#### 4. The Delaware Statute and the Case Law

However, sellers may find it difficult to comply with the different state and federal rules.<sup>11</sup> If they fail to attach the notice of cancellation form to explain the buyer's right to cancel, it is considered an unfair and deceptive act or practice under the federal law and consumers can cancel the sale at any time. In such cases, the length of the cooling-off period may be open to dispute, as seen in the Delaware case of Pinnacle Energy, L.L.C. v. Price analyzed by Porter.<sup>12</sup> This article will briefly describe this dispute and the Delaware statute ("the Home Solicitation Sales Act": 6 Del. C. §4401-4407).

Pinnacle Energy, L.L.C. (a seller of custom fit windows and doors) in Delaware brought a lawsuit against Catherine Price and Otis Price (the consumer) for breach of contract.<sup>13</sup> The defendants (consumer) then argued that the contract did not comply with the Home Solicitation and Sales Act; the seller did not attach the notice of cancellation form, and the consumers did try to contact the seller several times via phone to cancel their order due to disagreement on the date of delivery of the products. The Court eventually concluded the case against the sellers as they failed to comply with §4404(1) of the Home Solicitation Sales Act which 'provides the language of how a buyer may cancel the contract be "printed in an ink of conspicuous color other than that used for the rest of the contract and/or receipt."<sup>14</sup> The Court also concluded that the sellers could

not prove that they attached the notice of cancellation form as required under §4404(2) and (3) to the contract to the consumers.

#### 5. Concept of a Reasonable Cooling-Off Period

In the Delaware case, the defendant's lawyers raised a comparison with another two cases to address the testimony posed by the plaintiff that there was no specific countermeasure regarding the seller's failure to comply with notice requirements. The first was the *Swiss v. Williams*, 445 A. 2d 486, 489-490 (1982) in New Jersey where 'the consumer has a "continuing right to rescind until such time as the home repair contractor complies with the statutory requirements by providing [the buyer] with receipt complying with the form set forth in the act."<sup>15</sup> Simply put, the rationale behind the 'continuing right to rescind' proposed in the New Jersey case is based on the state of compliance (or specifically, the non-compliance) of the seller, and the consumer is given the right to cancel the transaction or sale with no limits on the cooling-off period. The second case raised was the *Crystal v. West & Callahan*, 614 A.2d 560, 571 (1992), in Maryland, where the consumer has the right to 'cancel for a reasonable amount of time after the contract date' if the seller fails to comply with the statutory notice.<sup>16</sup> The rationale behind the consumer's 'continuing right to cancel' is the reasonableness of the length of the cooling-off period.

The dispute concerning the consumer's continuing right to cancel thus revolves around two important axes: non-compliance of the seller, and reasonableness of the length of the cooling-off period. In the Delaware case, the Court eventually concluded that the Prices (the consumer) gave their notice of cancellation 'within a reasonable period of time'.<sup>17</sup>

<sup>7</sup> 16 C.F.R. §429.1(e).

<sup>8</sup> 16 C.F.R. §429.1.

<sup>9</sup> 15 U.S.C. §45 - Unfair methods of competition unlawful; prevention by Commission. 15 U.S.C. For example, §45(a)(1) provides as follows: 'Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful.'

<sup>10</sup> Katherine Porter, *Modern Consumer Law*, (Wolters Kluwer, 2016), p. 50.

<sup>11</sup> Porter, n10 above, p. 50. Porter noted as follows: 'Every state also has a law regulating door-to-door sales. See National Consumer Law Center, *Federal Deception Law*, §2.5, n. 220 (2012). State laws that are not "directly inconsistent" with the federal rule are not preempted. 16 C.F.R. §429.2(b). While the state and federal rules may seem straightforward enough, compliance seems to be difficult in practice.'

<sup>12</sup> Porter, n10 above, p. 50-52. 2001 Del. C.P. LEXIS 28 (March 21, 2001).

<sup>13</sup> Porter, n10 above, p. 50-51. Both arguments were as follows: 'Carlo Pinto, co-owner and president of Pinnacle, testified an appointment was scheduled through the Prices' grandson. Pinto stated he called to confirm the sales appointment twice before he went to the Prices' house. The Prices, however, testified their first contact with Pinto occurred when he appeared at their house on the

morning of April 17, 1999. They concede they were in the market for new windows and doors, and after negotiations agreed to purchase five new windows and three new doors, to be installed by agents of Pinnacle. A contract was signed between the Prices and Pinnacle, which provided for the purchase and installation of the windows and doors. Pinto testified their manufacturer, Mid South, went to the Prices' house on April 22, 1999, re-measured the windows, and they were ordered May 3, 1999. The installation was scheduled for June 4, 1999. The installation of the windows and doors was not completed due to the refusal of the Prices on the date of delivery. The Prices testified that no one from Mid South came to measure the windows and the next contact they had with Pinnacle was when they appeared to install the windows and doors. The Prices also testified they made numerous attempts to contact Pinto at Pinnacle to inform him of their desire to cancel the agreement.'

<sup>14</sup> Porter, n10 above, p. 51.

<sup>15</sup> Porter, n10 above, p. 51.

<sup>16</sup> Porter, n10 above, p. 51-52.

<sup>17</sup> Porter, n10 above, p. 52. The chief judge noted as follows: 'During their case-in-chief, both Mr. and Mrs. Price testified that they called Pinnacle and Mr. Pinto to cancel the sale. Further, it is undisputed that on the date Pinnacle scheduled for delivery, the Prices refused delivery and cancelled the contract. Pinnacle alleged, but has not produced an acknowledged copy of the notice of right to

## 6. Summary

The FTC promulgated the federal Cooling-Off Rule in 1972 to protect the American consumer from deceitful or fraudulent door-to-door sales, although the law regulating door-to-door sales differ in each state. The federal ruling also requires sellers to inform the consumer of their right to cancel the sale within three business days. Failure to comply with this is deemed as an unfair and deceptive act or practice. 16 C.F.R. §429.1(a) to (i). In such cases, the consumer can cancel the sale at any time. However, the consumer's right to cancel has been opened to dispute in several states, of which one of them recently happened in the state of Delaware. The dispute revolved around two concepts: non-compliance of the seller, and reasonableness of the length of the cooling-off period. Porter in her analysis on the cooling-off period in this particular case revealed that the consumer's right to cancel the sale can last for a very long period of time, extending to months or even years after the sale or transaction was concluded. The pivotal key behind this long cooling-off period lies in whether the consumer can prove that the seller was non-compliant during the deal. Porter argued that 'the premise of this extended liability is a theme that will recur in consumer law – people cannot exercise rights that they do not know that they have.'<sup>18</sup> In such cases, many consumers are unaware of their rights and therefore unable to exercise it. On the other hand, a few consumers who know their right must not abuse the cooling-off period.

The argument that consumers cannot exercise rights that they do not know they have is one of the basic and important tenets of consumer protection. I hope that the brief introduction of the Cooling-Off Rule in the USA will serve as a comparison against the Cooling-Off System in Japan. It would be interesting and beneficial to study in-depth the cooling-off period laws in the USA for the advancement of consumer protection laws in Japan through behavioral economics.

### Materials

16 C.F.R. §429.1 is as follows:

#### §429.1 The Rule.

In connection with any door-to-door sale, it constitutes an unfair and deceptive act or practice for any seller to:

(a) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the

cancel, as required by the statute. It is clear that one may not accept products under the contract where there are no complaints regarding quality, and later refuses to pay the cost thereof on the basis of the statute. However, that is not the case in these proceedings. Here, there is evidence of the buyers' efforts to cancel prior to delivery. Therefore, based upon the facts herein and the language set forth in

date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

The seller may select the method of providing the buyer with the duplicate notice of cancellation form set forth in paragraph (b) of this section, *provided however*, that in the event of cancellation the buyer must be able to retain a complete copy of the contract or receipt. Furthermore, if both forms are not attached to the contract or receipt, the seller is required to alter the last sentence in the statement above to conform to the actual location of the forms.

(b) Fail to furnish each buyer, at the time the buyer signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION," which shall (where applicable) contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract.

#### NOTICE OF CANCELLATION

[enter date of transaction]

(Date)

You may CANCEL this transaction, without any Penalty or Obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale, or you may, if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the

statute, I hereby find the Prices gave notice of cancellation within a reasonable period, and Pinnacle may not collect under the terms of the contract.<sup>7</sup>

<sup>18</sup> Porter, n10 above, p. 52.

seller, or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send a telegram, to [Name of seller], at [address of seller's place of business] NOT LATER THAN MIDNIGHT OF [date].

I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's signature)

(c) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

(d) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this section including specifically the buyer's right to cancel the sale in accordance with the provisions of this section.

(e) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the buyer's right to cancel.

(f) Misrepresent in any manner the buyer's right to cancel.

(g) Fail or refuse to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to: (i) Refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(h) Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(i) Fail, within 10 business days of receipt of the buyer's notice of cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

[37 FR 22934, Oct. 26, 1972, as amended at 38 FR 30105, Nov. 1, 1973; 38 FR 31828, Nov. 19, 1973; 53 FR 45459, Nov. 10, 1988; 60 FR 54186, Oct. 20, 1995]

6 Del. C. §4404 is as follows:

§ 4404 Unlawful practices.

Section 2513(b)(2) of this title notwithstanding, in connection with any door-to-door sale, it is an unlawful practice within the meaning of §2513 of this title for any seller to:

(1) Fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold-faced type of a minimum size of 10-point, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."

Beginning 1 year after the effective date of this section, such statement shall be printed in an ink of a conspicuous color other than that used for the rest of the contract and/or receipt.

(2) Fail to furnish each buyer, when signing the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "Notice of Cancellation," which shall be attached to the contract or receipt and easily detachable, and which shall contain in 10-point, bold-faced type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

"NOTICE OF CANCELLATION

(Enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do not agree to return the goods to the seller or if the seller does not pick them up within 20 days of the date of your Notice of Cancellation, you may retain or dispose of the goods without any further obligation.

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to....., at

(Name of seller)

(Address at

\_\_\_\_\_ not later than  
midnight of..... seller's place of business) (Date)

I hereby cancel this transaction.

.....

(Date) "

(Buyer's signature)

(3) Fail, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give the Notice of Cancellation.

(4) Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this chapter including specifically the right to cancel the sale in accordance with this chapter.

(5) Fail to inform each buyer orally, at the time the buyer signs the contract or purchases the goods or services, of the right to cancel.

(6) Misrepresent in any manner the buyer's right to cancel.

(7) Fail or refuse to honor any valid Notice of Cancellation by a buyer and within 10 business days after the receipt of such Notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

(8) Negotiate, transfer, sell or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

(9) Fail, within 10 business days of receipt of the buyer's Notice of Cancellation, to notify the buyer whether the seller intends to repossess or to abandon any shipped or delivered goods.

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