

COMPETITION COMMISSION OF PAKISTAN

ENQUIRY REPORT

(Under the provisions of Section 37(2) of the Competition Act, 2010)

**IN THE MATTER OF ENQUIRY CONDUCTED AGAINST M/S KAYMU FOR
DECEPTIVE MARKETING PRACTICES**

BY

Marryum Pervaiz/ Raiz Hussian/ Fatima Shah

Dated: 19/12/2016

A. BACKGROUND:

1. Mr. Umair Ali (hereinafter referred to as the "**Complainant**") filed a complaint with the Competition Commission of Pakistan (the "**Commission**"), against M/s Kaymu (hereinafter referred to as the "**Respondent**") for alleged violation of Section 10 of the Competition Act, 2010 (the "**Act**") i.e. Deceptive Marketing Practices.
2. The Complainant alleged that the Respondent is an undertaking involved in distribution of false and misleading information while dealing with customers which is not only capable of harming the business interest of other undertakings in the similar business but also lack a reasonable basis, related to character, properties, or quality of its services. It has been alleged that the conduct of the Respondent, *prima facie*, amounts to deceptive marketing practices in terms of Section 10 of the Act.
3. Keeping in view the above, the Commission initiated an enquiry in accordance with sub-section (2) of Section 37 of the Act by appointing Ms. Marryum Pervaiz, Deputy Director, Mr. Riaz Hussain, Assistant Director, and Ms. Fatima Shah, Management Executive, as the enquiry officers (hereinafter referred to as the "**Enquiry Committee**"). The Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and submit an enquiry report by giving findings and recommendations, *inter alia*, on the following:
 - (i) Whether the Respondent is disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, properties, or quality of services in violation of Section 10 in general and Section 10 (2) (b) of the Act in particular?
 - (ii) Whether the conduct of the Respondent is capable of harming the business interest of other undertakings in violation of Section 10(2)(a) of the Act?

B. COMPLAINT AND COMMENTS OF THE RESPONDENT:

4. In this Part of the report, for ease of reference, the complaint, comments/reply of the Respondent, and the rejoinder filed by the Complainant are discussed in brevity.

1. THE COMPLAINT:

5. The Complainant is a citizen of Pakistan who used the Respondent's website for online shopping for the first time. The Complainant stated that the Respondent is involved in unfair and deceptive trade practices by assuring the users of safe buying on their platform while allowing the suppliers on the website to commit fraud. According to the complaint, the Respondent affirms to be the mediator in case of arousal of dispute between buyers and sellers however, in the event of such a case, they withdraw from the responsibility of resolving the case appropriately.

6. It was reported that the Complainant, while using the Respondent's website, liked one of the products available on the platform, i.e., a wrist watch. Before placing the order for the chosen item, the Complainant collected details regarding it from the Respondent's call center and they were confirmed by the Respondent's representative. During the telephonic conversation, it was agreed that the item will be delivered in a wooden/leather case and the payment was due upon the delivery of the item.
7. According to the complainant, the confirmation of the product was made on the website following the aforementioned agreement. The detail of the order is as follows;
- i) Tag Heuer Carrera Calibre 17 Watch
 - ii) Current Price: Rs. 1499
 - iii) Order Number: 200668899
 - iv) Quantity: 01
 - v) Listing Ends: 2020-12-09 11:48:00
 - vi) Deliver: Home Delivery by Seller
 - vii) Payment: Cash on delivery
 - viii) Listing ID: OT013WAADAENPKBID-218093
8. The reserved order is provided below:

Dear Kaymu member,

The seller has been asked to reserve your item(s).

	<p>Tag Heuer Carrera Calibre 17 Watch</p> <p>Current price: 1,499</p> <p>Order number: 200668899</p> <p>Quantity: 1</p> <p>Listing ends: 2020-12-09 11:48:00</p> <p>Delivery: Home Delivery By Seller</p> <p>Payment: Cash on Delivery</p>
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Listing ID: OT013WAADAENPKBID-218093

We have asked the seller to reserve your item(s).

How to get your product:

- if you have chosen "Local pick-up" : please **contact the seller** on the details listed below to arrange for pick-up at the seller shop or another location.
- if you have chosen "House/Office Delivery": **you will be contacted** by the seller and/or the delivery company to arrange delivery details and notified of any shipping fees.

How to pay for your product:

You have chosen to pay on delivery: you will pay in cash when receiving the product.

Seller contact data	
User name	the-plaza.pk
Name/Surname	the plazapk
Phone	03212610526
Address	Karachi Karachi Karachi Pakistan
Your contact data	
User name	umairtari
Name/Surname	Umair Ali
Phone	03146565065
Address	65-W, Executive Height, Fazal-e-Haq Road, Islamabad Capital Territory Islamabad Pakistan

9. The Complainant alleged that upon the arrival of the package, he tried to open the package to attain satisfaction regarding the quality of the product, however, the courier (the '**Courier**') did not allow him to do so. The Complainant was guaranteed by the Courier that in case of any objections, the Respondent could be engaged who would arrange for the replacement of the item. The Courier further reassured the Complainant by showing him other replacement items of other buyers present in the carrier box.
10. The Complainant alleged that believing the Courier's claims, he accepted the item and made the payment, although, the amount paid was less than the amount stated on the product description.
11. According to the complaint, after receiving and paying for the item, the Complainant finally opened the package and discovered that the item delivered was in poor condition. The case of the watch was torn and the watch itself was very different as compared to the one showed in the product description on the website. The pictures of the received order are provided below:



12. The Complainant attested that he immediately called the Seller's number provided on the delivery package and he was guided to take the picture of the item in the received condition and to forward the complaint to *info@timesquare.pk*. Following

the instructions, the complaint was submitted to info@timesquare.pk on Tuesday, November 11, 2014.

13. The Complainant also sent an email to the Respondent's Customer Services email ID regarding the complaint and confirmation email was received from the Respondent's email address, cs@kaymu.pk on Wednesday, November 12, 2014, and a timeline of 12 days was given for the resolution of the complaint.
14. The Complainant alleged that several emails were sent to the Respondent regarding the status update on the complaint. The Respondent on November 19, 2014, informed the Complainant to send the product on the Seller's address while the consignment slip was to be sent to Kaymu.pk. It was stated by the Respondent that the complaint will be processed within 10 working days.
15. However, according to the complaint, when the Seller was contacted, its representative claimed that the address had changed and did not confirm the address during that conversation. Furthermore, the seller stopped responding to the Complainant afterwards.
16. The complaint exhibits that the Complainant then engaged the Respondent for assistance who undertook the responsibility to guide the Complainant through the process of replacement of the damaged product on November 25, 2014. The Complainant also registered a complaint on the website of the Respondent. Following these measures, status update of the complaint was sought by the Complainant several times where a slacked response was provided by the Respondent.
17. The complaint reveals that on January 23, 2015, the Complainant received a notification from the Respondent declaring closure of the case upon which the Complainant informed the Respondent that the case had not been resolved. After which the Complainant received an email from the Respondent asking for the return of the product to their address for the purpose of replacement.
18. According to the complaint, following the instructions, the Complainant sent the product to the address provided by the Respondent on March 20, 2015. However, the Respondent stopped responding to the Complainant's reminders without resolving the matter appropriately.
19. It was stated in the complaint that a friend of the Complainant had also undergone similar experience with the Respondent.
20. Therefore, according to the Complainant, the Respondent's conduct invokes Section 10 of the Act and that appropriate action may be taken against them.

2. REPLY BY THE RESPONDENT:

21. The Respondent is a renowned platform for online shopping in Pakistan. The variety of products available on their website includes electronics, shoes, clothes, jewelry, cameras, etc. Upon registration on the website, the Respondent allows the user to use the platform of Kaymu.pk for buying and selling. The Respondent's undertaking was launched in December 2012 by Africa Internet Group (AIG) which is an e-commerce company in Africa. AIG was founded in 2012 and is currently operating in 26 countries. AIG has been involved in creating 71 companies in 8 different verticals since its inception which includes online retail, food ordering platform, online marketplace, real estate marketplace, vehicle marketplace, taxi hailing, online travel agency and peer to peer (P2P) lending marketplace. AIG is supported by three global experts in e-commerce and African markets:

- Millicom: www.millicom.com
- MTN Group: www.mtn.com
- Rocket Internet: www.rocket-internet.com

22. The Respondent is a venture of Rocket Internet in Pakistan along with Carmudi, Lamudi, EasyTaxi and FoodPanda.

23. The complaint received by the Commission was forwarded to the Respondent for its remarks. Further a letter dated: 24-11-15 regarding the provision for information was also sent to the Seller in which she was asked to clarify her position regarding the complaint. The letter to the Seller was returned due to incorrect address although the address of the Seller was previously confirmed by the legal counsel of the Respondent.

24. The Respondent, however, through letter dated: October 31, 2015, submitted its reply which contained para wise comments to the complaint.

25. It was alleged by the Respondent that they hold the laws, rules, and regulations with utmost regard and resolute to facilitate trade of goods permitted by the law. It was also stated that the Respondent is involved in providing a platform that allows potential buyers and sellers to trade.

26. The Respondent submitted that it provides an online platform where buyers and sellers are enabled to engage and perform a transaction. On this online forum the sellers list their products under different categories and the buyers have the opportunity to opt for products of any of the various sellers.

27. It was further submitted that the Respondent is neither the manufacturer/seller of the product nor does it have the responsibility of ensuring the quality of the product. The obligation of the Respondent does not include distribution of the product, its development, designing, marketing or supplying. It was specified that while making

a purchase on the website, the buyer is entering into a contract with the seller directly rather than the Respondent. Whereas the buyer is bound to accept the terms and conditions set out by the Respondent on the website and this agreement includes but is not limited to any legal formalities, quality, specifications, genuineness, and delivery of the product, the responsibility of which lies on the buyer.

28. An excerpt of the relevant terms and conditions was submitted by the Respondent for ease;

"You will not hold Kaymu.pk responsible for other users' content, actions, or inactions, or items or information they list or post.

In particular:

Kaymu.pk is not responsible for any non-performance or breach of any contract entered into between users and does not transfer legal ownership of items from the seller to the buyer. The contract for sale of any item shall be a strictly bipartite contract between the seller and the buyer. At no time shall any right, title or interest over any item vest with Kaymu.pk nor shall Kaymu.pk have any obligations or liabilities in respect of such item or the contract between the buyer and seller;

- Kaymu.pk is not responsible for unsatisfactory or delayed performance, losses, damages or delays as a result of items which are unavailable;*
- Kaymu.pk has no control over and does not guarantee the quality, safety or legality of items advertised, the truth or accuracy of users' content or listings, the ability of sellers to sell items, or the ability of buyers to pay for items;*
- Kaymu.pk does not make any representation or warranty as to the attributes (including but not limited to quality, worth or marketability) of the items proposed to be sold or purchased on the site. In particular, Kaymu.pk does not implicitly or explicitly support or endorse the sale or purchase of any items on the Site, nor is Kaymu.pk a supplier or manufacturer of any items sold by users or purchased by users;*
- Kaymu.pk does not make any representation or warranty as to the attributes (including but not limited to legal title, creditworthiness, or identity) of any of its users."*

29. It was submitted that it was the responsibility of the Complainant to assure the presence of aforementioned characteristics pertaining to the product. It was repeated that the Respondent is only the provider of an online platform for buyers and sellers to connect. The Respondent is not engaged in making any representation or pledges, explicitly or implicitly, for any product listed on the website regarding its viability, suitability for a specified purpose, use or quality.

30. It was further submitted that the Respondent has developed a mechanism of rating the sellers to assist in evaluation of the seller's credibility by the buyers before they engage in a transaction. It was further alleged that there is a provision of the "Buyer Protection" scheme through which transparent and safe purchase of goods is facilitated.

31. The Respondent also pointed out that a choice of mode of delivery is given to the buyers at the time of order placement. Out of the two options of "Local pick-up" or "House/office Delivery" the Complainant opted for the latter. Therefore, it was pointed out that the Complainant was given the prospect of ensuring the viability and effectiveness of the product which was not availed by the Complainant himself. And hence, it was indicated, that the Respondent was not involved in deceptive marketing practices.
32. It was also highlighted by the Respondent that it provides the complete contact information of the seller, i.e., name, phone number and address to the buyers and the Respondent has in its full capacity provided sound resources to the Complainant to resolve his concerns. It was, therefore, submitted that the Respondent has numerous success stories pertaining to buyer experiences including submission of apt remarks and ratings in reference to their experiences while using the Respondent's platform.
33. The Respondent submitted that it only facilitates buyers and sellers to connect to each other via an online forum. That the Respondent allows both the parties to form independently a mutual agreement regarding the viability of the exchange that is to take place. And that in the process, the Respondent is incessantly involved in supporting both the parties to reach a favorable transaction.
34. It was presented that considering the nature of the service provided by the Respondent, it should not be regarded the same as a distributor, manufacturer, representative of a manufacturer, or a stockiest.
35. It was hence concluded in the response, that the Respondent had never indulged in deceptive marketing practices and that it only aims to provide a progressive and innovative service for the evolving needs of the market. Therefore, it was claimed that the complaint was in fact frivolous and vexatious and so may be discarded.
36. It was therefore requested for the recollection of the notices served by the Commission and that the Respondent holds the Commission and its goals in high respect and is keen to cooperate in any way required.

3. FURTHER CLARIFICATIONS FROM THE COMPLAINANT:

37. Upon evaluation of the case, Respondent's website and its reply, further clarifications were demanded from the Complainant pertaining to his side of obligations while operating on Kaymu.pk. The Complainant was asked a few questions on November 19, 2015. The questions and their answers are provided below:

- i. What was the Seller's rating at the time of your purchase?
Reply: The Complainant did not check the Seller's ratings.

- ii. What was the Seller's return policy for the product you ordered?
Reply: The Complainant did not check the Seller's return policy but informed the Seller about the faulty product as soon as he opened the box. Upon which the Seller told the Complainant to return the defective item and that it would be replaced in a week's time.
- iii. Who did you call to get details regarding the watch before placing the order (the Respondent or the Seller)?
Reply: The Respondent was contacted by the Complainant for product detail confirmation.
- iv. What details were shared regarding the product?
Reply: The Respondent confirmed that the product is the same as shown in the picture. It has a leather strip, working chronograph, and it would be packed in a good leather and wooden box. The confirmation by the Respondent encouraged the Complainant to place the order.
- v. What price was paid to the delivery man and why was the amount paid lesser than the price mentioned on the website?
Reply: The Courier displayed the invoice amounting to Rs. 999. The Complainant claims that he was surprised at the low amount on the invoice and inquired the Courier regarding the different price, however, the Courier confirmed that that was the right amount.
- vi. Who did you call when you discovered that the item was damaged?
Reply: The Complainant first called the Seller on the contact number mentioned on the envelope and then called the Respondent.
- vii. When was Kaymu.pk involved (in how many hours) in the procedure or product return?
Reply: Kaymu.pk was involved immediately, however, their response was infrequent and the Complainant had to send them several reminders for a reply.

C. ANALYSIS:

38. As mentioned in Para 3. *ibid* the undersigned Enquiry Committee was directed to conduct the enquiry on the issues raised in the complaint and submit the enquiry report by giving their findings and recommendations on the violation of Section 10 of the Act.

39. Since Section 10 of the Act prohibits deceptive marketing practices, therefore, the relevant provision is hereby reproduced for ease of reference:¹

"Deceptive marketing practices.

(1) No undertaking shall enter into deceptive marketing practices.

(2) The deceptive marketing practices shall be deemed to have been resorted to or continued if an undertaking resorts to:

(a) the distribution of false and misleading information that is capable of harming the business interests of another undertaking

(b) the distribution of false or misleading information to consumers, including the distribution of information lacking a reasonable basis, related to the price, character, method or place of production, properties, suitability for use, or quality of goods;"

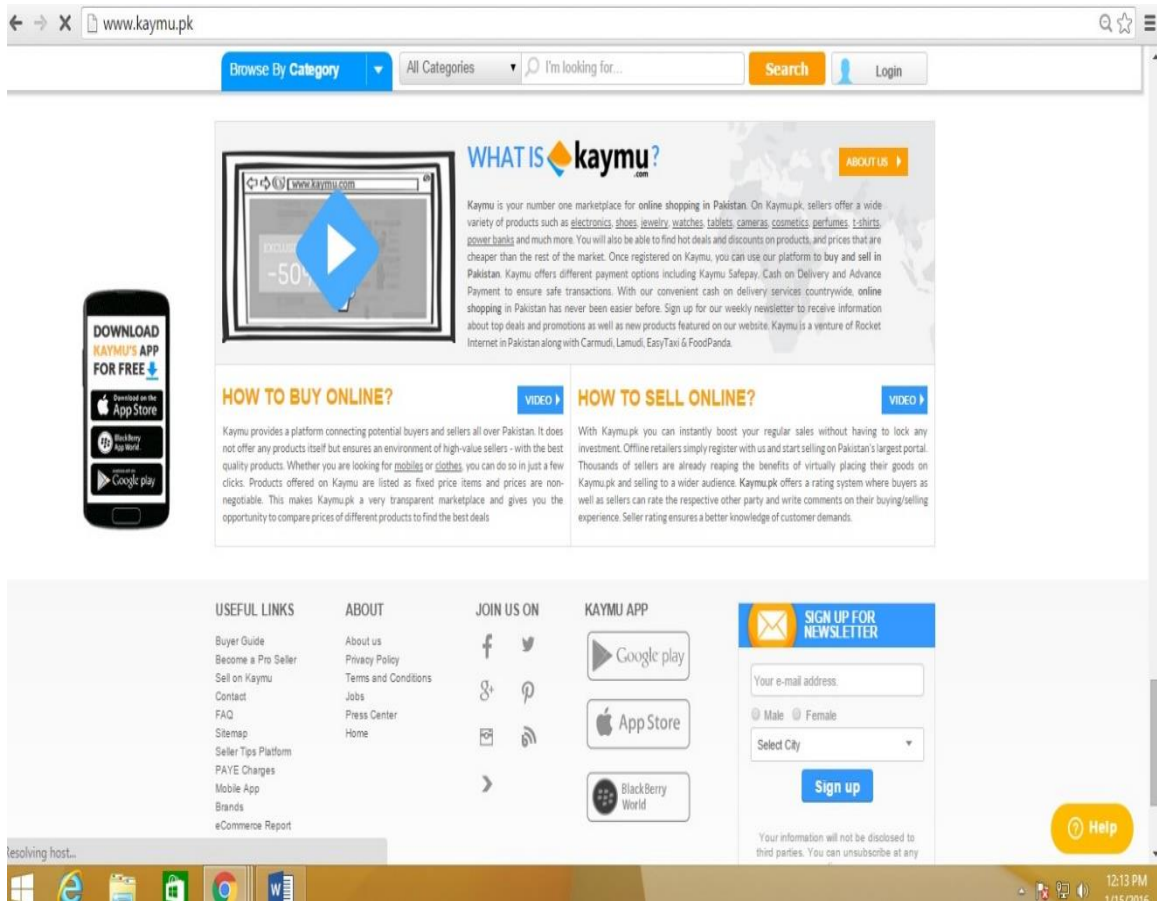
40. Innovating markets have brought with them immense benefits necessary for catering to evolving markets of the 21st century. However, these developments have also opened doors to increasing and novel issues that require induction of innovative approaches to problem solving on our behalf. This case has also posed many challenges deeming it necessary for us to clearly evaluate and identify rights and responsibilities of each party involved in the complex process of conducting a transaction on the internet before reaching the final conclusion.

41. **Overall Net Impression of the Website:** The allegation made in the complaint suggests that the Respondent is involved in unfair and deceptive trade practices whereby it assures the users of safe buying on the platform provided by its website, Kaymu.pk, whereas it has no intention to fulfill its promises. That it allows the sellers on the website to deceive buyers. Furthermore, the complaint states that the Respondent asserts to be the mediator upon necessity of dispute settlement between the buyers and sellers, however, in case of occurrence of such an event, the Respondent failed to perform as promised.

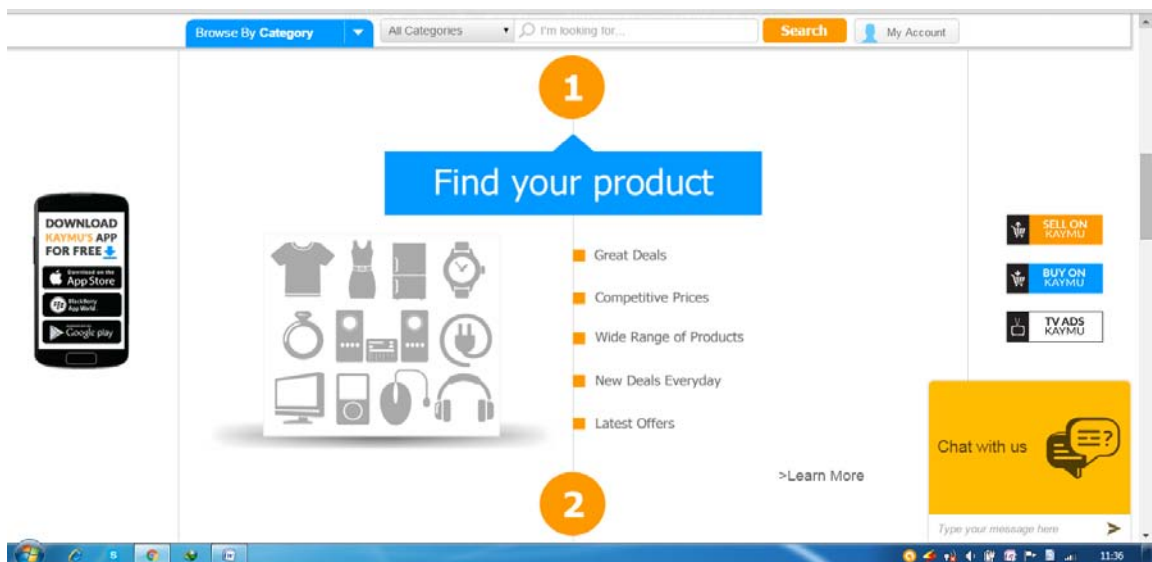
42. In order to evaluate the allegations made by the Complainant, it is necessary to analyze the overall message disseminated by the website regarding the operations of the online forum, Kaymu.pk. The first interaction a user has with the Respondent's online platform is provided below:²

¹ http://www.cc.gov.pk/images/Downloads/competitionn_act_2010.pdf

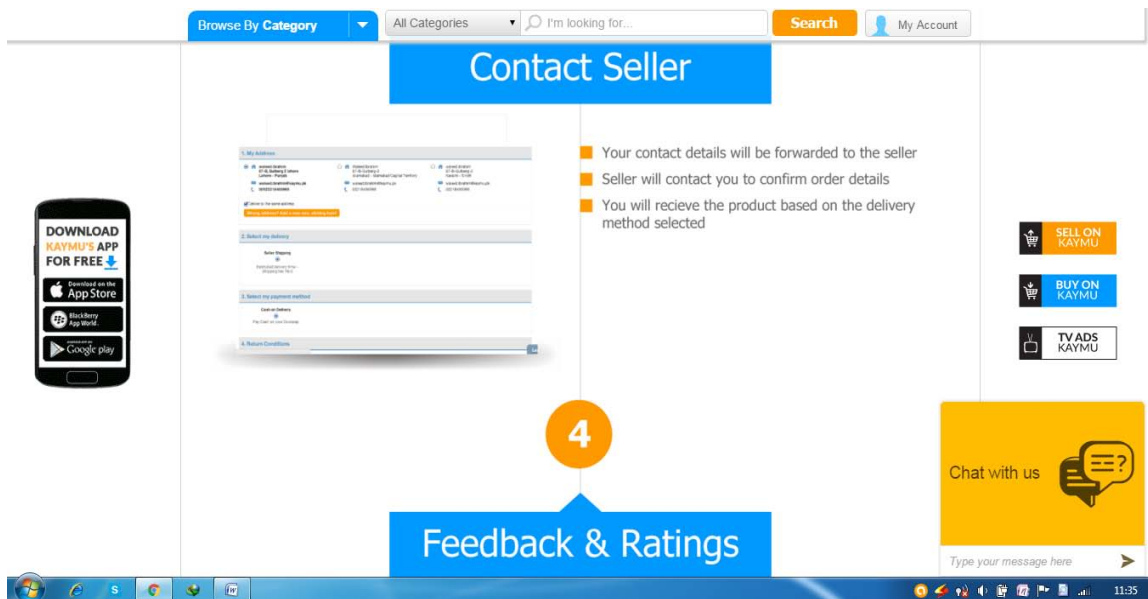
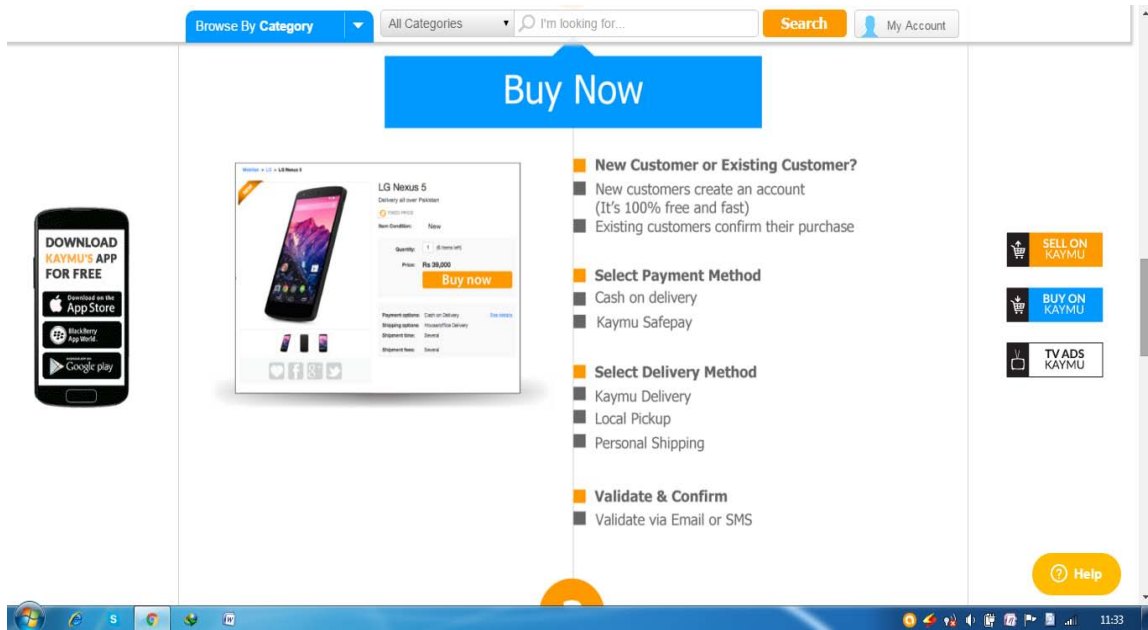
² <http://www.kaymu.pk/>



In order to explore the buying process the potential buyer has to click the option of "HOW TO BUY ONLINE?" following which the user is taken to the "How to Buy on Kaymu"³ section which explains the buying process in the following manner:

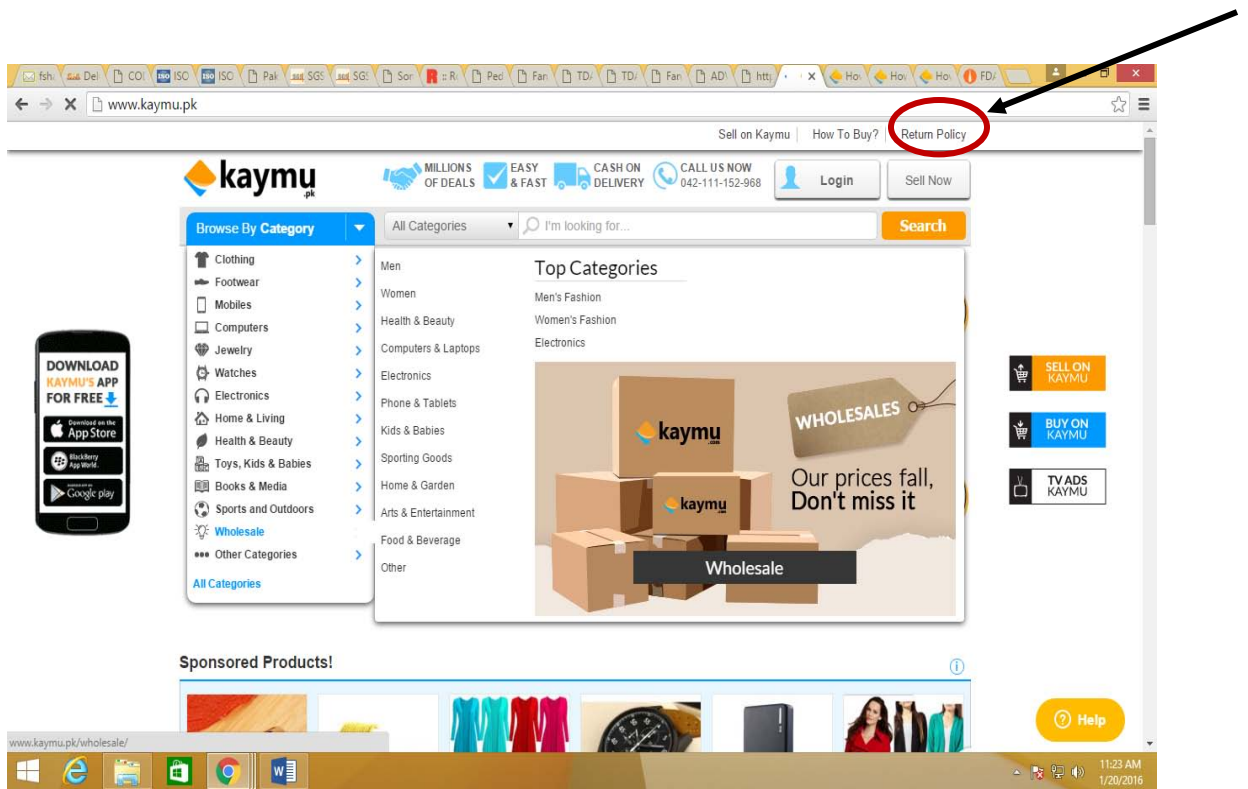


³ http://www.kaymu.pk/how_to_buy/ (several changes have been made to the website)

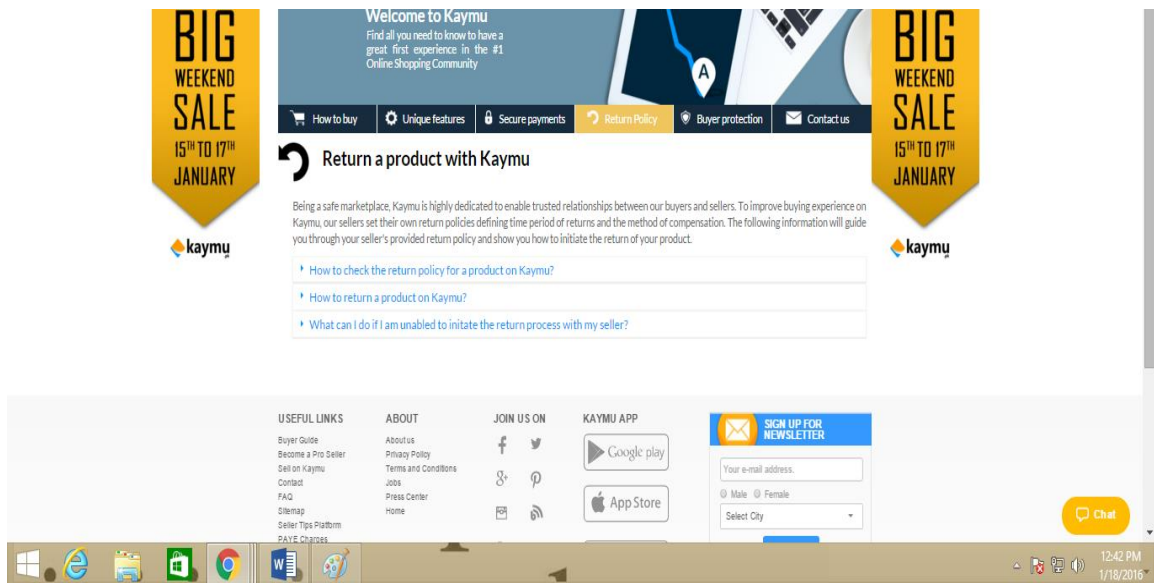


43. The above screenshots demonstrate to the users how to carry out a buying process. At the end of the transaction, the Respondent provides a "Rate & Review" option which encourages the buyers to rate the seller in reference to the quality of the product and the overall transaction. The Respondent also encourages the users to use the customer service including the returns process in case of an issue. This is a useful and a crucial option which enables all the future buyers to determine effectively whether to opt for a transaction with a certain seller or not.

44. To ensure safe buying, the user is expected to explore the "Return Policy" section, the tab of which is on the top right corner of the main page. The image is exhibited below:



When the user opts for this option, the following page opens:⁴



According to this page, the Respondent gives several suggestions with respect to the process of returning a product when it is either damaged/broken or does not match the product description. To provide a fair and honest buying experience for the buyer, the Respondent has a system where the sellers are required to make their own return policies.

⁴ <http://www.kaymu.pk/return-policy/>

45. In this section, the Respondent clearly declares that it will only facilitate the return process and will only act as a mediator. It also submits that it cannot guarantee the return of the product by the Seller. It further affirms the users to know that the Respondent only connects buyers to sellers and that the buyer will not be buying directly from the Respondent but rather from the seller.

46. Further tips are given to the buyers in this section which are reproduced below:⁵

Returns Tips for Buyers

- *Do not accept packages that are damaged, ripped, opened or in bad condition upon delivery. You can always refuse delivery without paying the delivery fees*
- *If the product is broken or does not match the product description/pictures on the website, contact the seller as soon as possible*
- *While returning a product, make sure to keep the tracking number that you received from the delivery company. This will help you prove that you actually returned the product*
- *Share your experience with us: Rate your seller and write a review. This is a very powerful way to promote good and reliable sellers, while raising awareness within the Kaymu Community on unreliable sellers. Future Kaymu buyers will thank you*
- *Kaymu cannot guarantee that all sellers will actually perform the requested refund or replacement. We therefore strongly recommend to buy from sellers with high ratings and positive comments*

These tips could be very useful while dealing in e-commerce. This section explains to the buyers how they can avoid fraud. It also reminds the buyers to always check the seller's ratings before making any purchase as it is a vital indicator of whether the seller is a trustworthy entity or not.

47. Business ethics on part of the firms are extremely necessary. However, this responsibility does not liberate consumers from their obligations either. While processing a transaction, unless clearly hidden or deluded by the good and/or service provider, there is a responsibility on the consumers as well to educate themselves regarding all the aspects of the contract they are agreeing to before confirming the transaction. Such vigilance is especially necessary while dealing with innovating and evolving markets and products.

48. In case of the Respondent, the very first page of the website introduces the platform as a market place where buyers and sellers meet. On the main page as well as the rest of the website, the display of "Return Policy" tab is available on the top bar of

⁵ Several changes have been made to the website

various pages, however, the tab has currently been removed. It should also be noted that the website has been changed a more than once during the process of enquiry. As mentioned earlier, while operating on such a forum where there is no direct interaction with the product/service provider, the buyers also have the responsibility to fully inspect the mechanism of that forum, understand the level of commitments they are about to make, and acknowledge the distribution of rights and responsibilities, before agreeing to proceed with the transaction.

49. It then also obligates the product/service provider to present clearly and conspicuously all the aspects of a transaction including but not limited to the character, price, properties, usefulness, warranties, return policies, terms and conditions, etc., in order to minimize disputes in the future. Furthermore, it also requires the product/service provider to follow all the claims and promises made by them through all mediums of communication they adopt to inform the existing and potential buyers.
50. Therefore, it should now be evaluated whether the Seller, Complainant, and the Respondent carried out their responsibilities as required after agreeing to use the forum of Kaymu.pk.

I. Negligence on Complainant's Behalf:

51. As mentioned in Para 44, 46, and 47 *ibid*, the buyer is advised by the Respondent's website to examine the sellers' rating and their return policies before confirming the purchase. Whereas, when interrogated, the Complainant neither checked the Seller's rating nor its return policy before making the transaction. The Respondent has also mentioned on its website that in case of a dispute, its duty is limited to acting as a mediator, whereas it cannot guarantee the compliance of the seller.
52. Furthermore, such disclaimers were also made in "Terms & Conditions" laid out by the Respondent according to which;

None of the products listed on the Site are owned or sold by Kaymu.pk, neither is Kaymu.pk involved in the actual sale transaction between the buyers and sellers on its Site.

By accessing the Site, you confirm your understanding of the Terms and Conditions and agree to comply with these Terms and Conditions. If you do not agree to these Terms and Conditions of use, please do not access, register with or use this Site.

All sales and purchases on the Site continue to be bipartite contracts between the buyer and the seller of an item(s) and Kaymu.pk is not responsible for any non-performance, breach or any other claim relating to or arising out of any contract entered into between any buyers and sellers, nor does Kaymu.pk have any fiduciary duty to any

user. You acknowledge and agree that Kaymu.pk will hold your funds at your own risk.

Any disputes between the buyer and third parties including sellers shall not extend to or incur liability of the Company. We shall not act as the agent, negotiator, umpire, arbitrator or judge in connection with resolving any disputes between participants related to or arising out of any transaction from the Services.

Above excerpts are taken from different sub-sections of "Terms & Conditions" set out by the Respondent.⁶ Similar disclosures can be found in many other sub-sections of the contract, such as in Platform for Communications, Relationship and Notice, and Miscellaneous, etc., provisions. This displays that the Respondent, in its "Terms & Conditions" section, has repeatedly made the users cognizant of the fact that disputes may arise; that the responsibilities pertaining to a purchase agreement fall exclusively upon the buyer and the seller; and that in case of a dispute, the Respondent has no obligations to ensure an exchange or a refund or a resolution of dispute.

53. Therefore, while using such a forum, the buyers also have the onus to explore the guidelines and requirements of the platform and the need to fully comprehend information available on the website before making any commitments. In this reference, several guidelines have been laid out by the Commerce Commission New Zealand for buyers to consider while shopping online.⁷

Online shopping – quick tips for buying online

- *Be savvy: if you have any doubts or the offer seems too good to be true, don't proceed.*
- *Know who you're dealing with: search the seller online, look at their online auction feedback, check review sites, social media, Scam watch and similar to see what other customers have experienced. Check where the business is based and that it provides its name, street address, and phone and email details. Don't assume that just because the website ends .co.nz it is a New Zealand-based business.*
- *Know what you're buying: read the description of the goods or services closely, especially any fine print. Read the terms and conditions, including what happens if there's a problem.*
- *Work out what it will cost: factor in shipping, exchange rates, insurance or any applicable extra charges, such as customs duty.*
- *Shop around: search online and compare prices, terms and conditions.*
- *Protect yourself: only buy if you are comfortable with the payment method and keep a record of the transaction details. Purchasing by*

⁶ <http://www.kaymu.pk/terms-and-conditions/>

⁷ <http://www.comcom.govt.nz/fair-trading/fair-trading-act-fact-sheets/buying-and-selling-online/>

credit card or a secure payment system like PayPal should give you more protection than a cash transfer.

Presented above are tips for online buyers which highlight the necessity to conduct research before proceeding with a transaction on online shopping websites. As mentioned before, the Complainant failed to follow the abovementioned guidelines and did not perform his part of the responsibility through which he might have been able to avoid the actual injury.

II. Negligence on Respondent's Behalf:

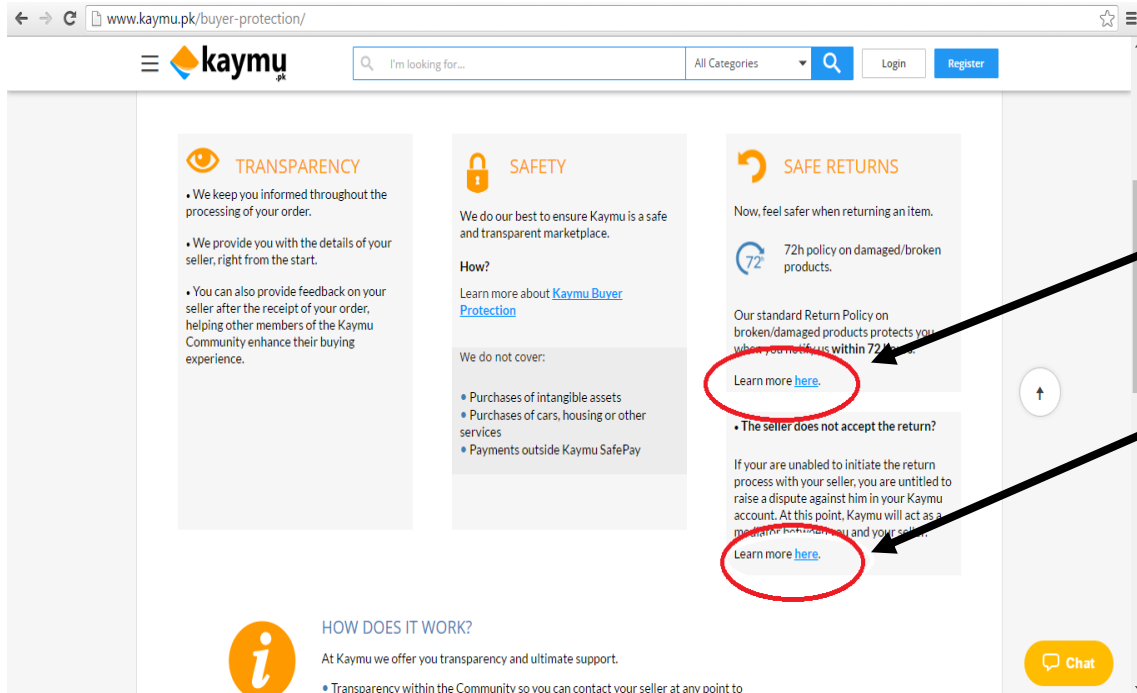
54. However, as mentioned earlier, service providers, like the Respondent, also have the absolute compulsion to make clear and conspicuous disclosures pertaining to the terms and conditions and other necessary information that may impact the decision making process of a buyer. The Federal Trade Commission (FTC) has presented a comprehensive set of guidelines for online shopping websites regarding disclosures titled, *".com Disclosures: How to Make Effective Disclosures in Digital Advertising"*⁸, an excerpt of which is reproduced below:

To evaluate whether a particular disclosure is clear and conspicuous, consider:

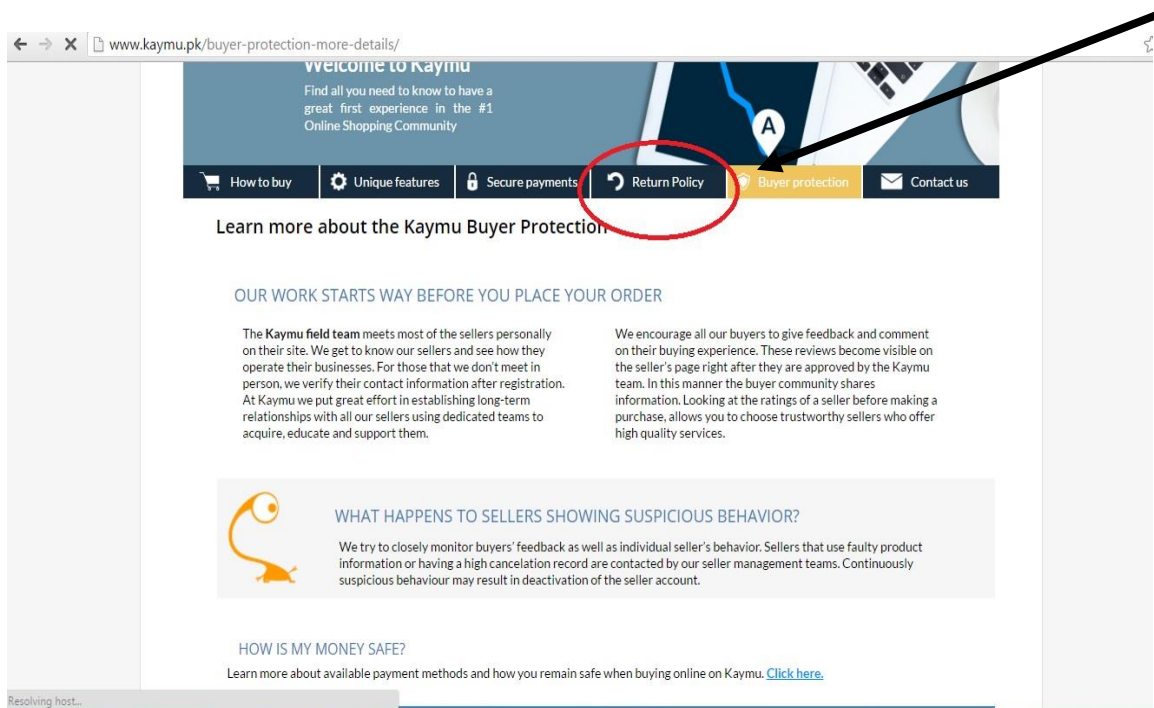
- *the placement of the disclosure in the advertisement and its proximity to the claim it is qualifying;*
- *the prominence of the disclosure;*
- *whether the disclosure is unavoidable;*
- *the extent to which items in other parts of the advertisement might distract attention from the disclosure;*
- *whether the disclosure needs to be repeated several times in order to be effectively communicated, or because consumers may enter the site at different locations or travel through the site on paths that cause them to miss the disclosure;*
- *whether disclosures in audio messages are presented in an adequate volume and cadence and visual disclosures appear for a sufficient duration; and*
- *whether the language of the disclosure is understandable to the intended audience. If there are indications that a significant proportion of reasonable consumers are not noticing or comprehending a necessary disclosure, the disclosure should be improved*

55. While evaluating the website on the basis of guidelines outlined above, the Respondent can be said to have followed the guidelines as far the reminders for checking the seller's ratings is concerned.

⁸ <https://www.ftc.gov/system/files/documents/plain-language/bus41-dot-com-disclosures-information-about-online-advertising.pdf>

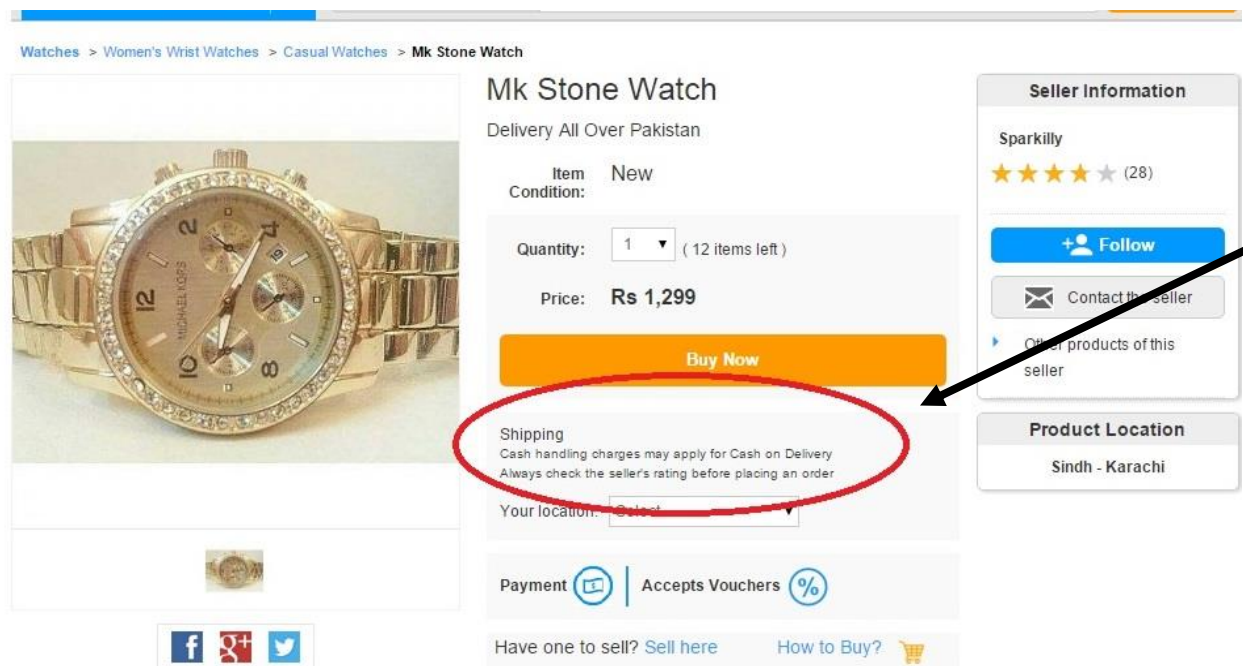


Along with the previously displayed screenshots, the above image also shows that certain pages of the website has exhibited the presence of and the need to explore the tabs covering returns policies⁹. Such hyperlinks and tabs are also placed in close proximity of the claims made by the Respondent, i.e., safe returns, kaymu buyer protection, etc., as required by the guidelines, further shown below.



⁹ <http://www.kaymu.pk/buyer-protection/>

56. The Respondent highlights the need to check the ratings of the seller right before the buyer is making the final confirmation of the purchase as it is a fundamental indicator of seller's reliability. Which, in this case, the Complainant failed to do. The relevant reminder can be seen below. Before clicking the "Buy Now" tab, the potential buyer is reminded to "Always check the seller's rating before placing an order" (highlighted below)¹⁰. Hence, it can be observed that the Respondent at various locations has made disclosures of information necessary for buyers to know so that they may avoid deception and take all the factors into consideration before making a decision.



57. However, it is pertinent to note that links to return policy were present only on a few pages. Since return policy is one of the most decisive aspects of the website's rules, instead of being written in narrow font on the top right corner of a few pages that could be easily ignored, its presentation around the website should have been more prominent. It should be noted that even though relevant option is present on various pages of the website, but it has to be prominent enough to catch the potential buyer's attention. Furthermore, in the section where the buyers are guided on how to buy on the Respondents website, a prominent tab or reminder should have been provided on return policy.

58. In addition to above, the Respondent declares itself as a "mediator" on its website in case a dispute arises.

¹⁰ Several changes have been made to the website.

www.kaymu.pk/buyer-protection/

kaymu .pk

I'm looking for... Search

Login | Register My Kaymu

Cart

helping other members of the Kaymu Community enhance their buying experience.

Protection

We do not cover:

- Purchases of intangible assets
- Purchases of cars, housing or other services
- Payments outside Kaymu SafePay

Our standard Return Policy on broken/damaged products protects you when you notify us **within 72 hours**.

Learn more [here](#).

• The seller does not accept the return?

If you are unable to initiate the return process with your seller, you are entitled to raise a dispute against him in your Kaymu account. At this point, Kaymu will act as a mediator between you and your seller.

Learn more [here](#).



HOW DOES IT WORK?

At Kaymu we offer you transparency and ultimate support.

- Transparency within the Community so you can contact your seller at any point to enquire about your order or make a return.

www.kaymu.pk/return-policy/

kaymu .pk

I'm looking for... Search

Login | Register My Kaymu

Cart

Being a safe marketplace, Kaymu is highly dedicated to enable trusted relationships between our buyers and sellers. To improve buying experience on Kaymu, our sellers set their own return policies defining time period of returns and the method of compensation. The following information will guide you through your seller's provided return policy and show you how to initiate the return of your product.

- ▶ [How to check the return policy for a product on Kaymu?](#)
- ▶ [How to return a product on Kaymu?](#)
- ▼ **What can I do if I am unable to initiate the return process with my seller?**

If you are unable to initiate the return process you are entitled to raise a dispute against your seller in your Kaymu account.

If you have already clicked on "Ask for refund" or "Ask for replacement", after 8 days you should be able to open a dispute directly in your Kaymu account.

Into "**Pending Transactions**", you should click on "Open a dispute against the seller", above the "Contact Seller" box below the product you want to return. At this point, Kaymu will act as a mediator between you and your seller.

Here are some examples of situations where you should raise a dispute against the seller:

- I am not able to reach the seller
- The seller disagreed to provide replacement/refund
- I shipped my product back to the seller but didn't get any compensation
- I received a different compensation than the one I requested

Again, make sure to confirm refund or replacement or refund in "**My Account**" > "**My Purchases**" > "**Pending Transactions**" once you receive the compensation. Click on "confirm replacement" or "confirm return" depending on the compensation that you have received.



Whereas Oxford dictionary defines the term "mediator as below:

A person who attempts to make people involved in a conflict come to an agreement; a go-between

Example: the government appointed a mediator to assist in finding a resolution to the dispute ¹¹

Hence, it is the responsibility of the mediator to conclude a dispute, which in this case was not done. Even if the Seller was not ready to comply, the Respondent should have apologized to the Complainant and should have formally closed the complaint rather than firstly ignoring, followed by asking the Complainant to send the product to the Respondent, and then disappearing, again, afterwards.

59. Moreover, the buyer reads the terms and conditions later. Since there is no compulsion to read them before signing up, the first interaction a user has with the Respondent is on its home page, followed by the sections such as "how to buy on Kaymu", "buyer protection", etc. On these pages, although, the Respondent presents a very different perception of itself. Below are some relevant portions extracted from the "Buyer Protection" page:¹²

SAFE RETURNS

Now, feel safer when returning an item.

You received a damaged/broken product?

*Our standard Return Policy on broken/damaged products protects you when you notify us **within 72 hours.***

CONTACT KAYMU

If you are not satisfied with the response from the seller, Kaymu is always here to help you. We are just a step away, give us a call or drop us an email. Our dedicated team is here to help you every step of the way.

*Contact our **Customer Service** with a question or a complaint.*

The above extract suggests that Kaymu.pk is a safe market place which is highly cooperative and in service of the buyers. It proposes that the Respondent will take all necessary measures to ensure customer satisfaction.

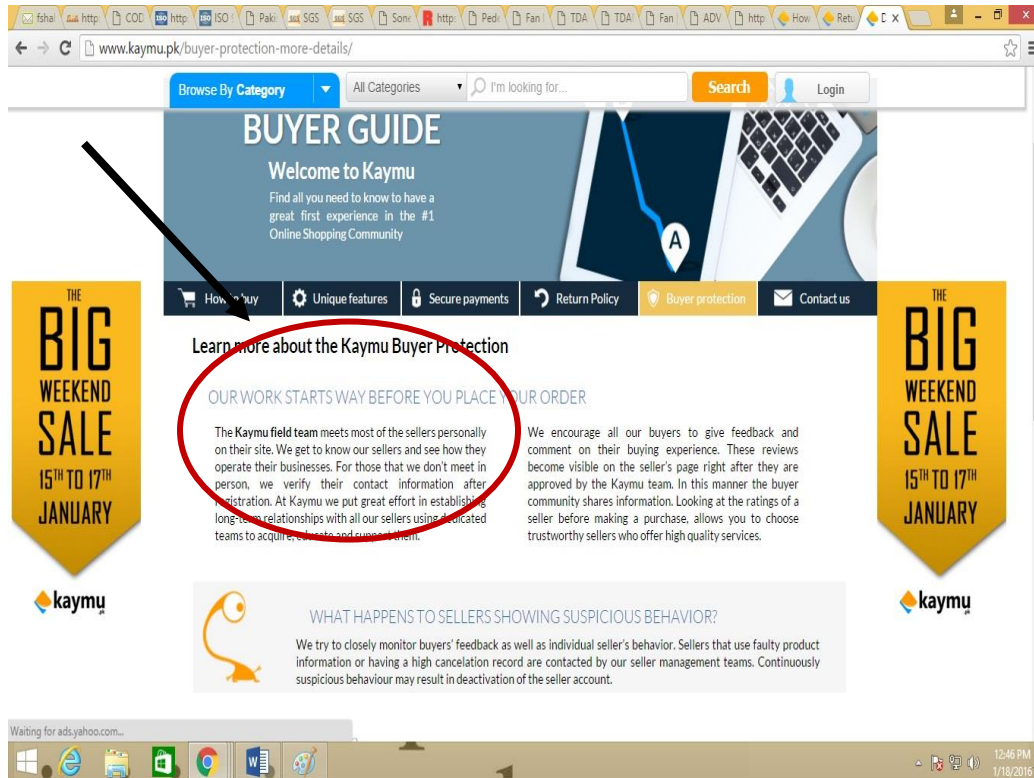
OUR WORK STARTS WAY BEFORE YOU PLACE YOUR ORDER

*The **Kaymu field team** meets most of the sellers personally on their site. We get to know our sellers and see how they operate their businesses. For those that we don't meet in person, we verify their contact information after registration. At Kaymu we put great effort in*

¹¹ <http://www.oxforddictionaries.com/definition/english/mediator>

¹² <http://www.kaymu.pk/buyer-protection/>

establishing long-term relationships with all our sellers using dedicated teams to acquire, educate and support them.



60. The above passage further suggests that the Respondent invests significant time and energy into ensuring presence of quality sellers on the website. Whereas there is no proof of whether it actually investigates the validity of the sellers and their services as opposed to the claims it makes to convince the users to trust Kaymu.pk as a safe platform. However, when the Complainant and the Enquiry Committee requested for Seller's contact information, the Respondent failed to provide it.

61. The fact that the Respondent failed to provide us with the Seller's valid contact information proves that the Respondent is involved in deception. The Respondent on its website has stated¹³:

TRANSPARENCY

- *We keep you informed throughout the processing of your order.*
- *We provide you with the details of your seller, right from the start.*
- *You can also provide feedback on your seller after the receipt of your order, helping other members of the kaymu community enhance their buying experience.*

¹³ <http://www.kaymu.pk/buyer-protection/>

WHAT HAPPENS TO SELLERS SHOWING SUSPICIOUS BEHAVIOR?

We try to closely monitor buyers' feedback as well as individual seller's behavior. Sellers that use faulty product information or having a high cancelation record are contacted by our seller management teams. Continuously suspicious behaviour may result in deactivation of the seller account.¹⁴

62. The citation above also gives the impression that the Respondent has a strict monitoring system and majority of the sellers operating on this forum are trustworthy. The extract suggests that since the Respondent monitors performance of each seller, a fraudulent seller is unlikely to be present on this forum.

HOW TO REPORT A SELLER?

If you suspect fraudulent behavior from a seller on Kaymu, please contact our Customer Service, via email cs@kaymu.pk or telephone 042-111-152-968. Rest assured that we will take all necessary actions to ensure your transactions.

Again, the Respondent promises the buyers that in case of a misconduct by a seller, the Respondent will exhaust all possible options to resolve the customers' concerns.

63. All above excerpts refer to the initial interaction a regular customer has with the Respondent's website, Kaymu.pk. It can be clearly observed that the first impression the Respondent gives to its users is that Kaymu.pk is a highly safe, protected, trustworthy and more importantly, a helpful and cooperative platform. These promises made by the Respondent on the webpage forms an opinion in the minds of consumers that the Respondent is a safe and cooperative forum before they reach the "Terms and Conditions" section, **if** they choose to go through them. It may also be noted that while signing up, the Respondent does not make it necessary for the user to "read and accept" its terms and conditions which makes it highly improbable for the users to browse through them on their own.

64. It is also crucial to note that unlike the rest of the information given on the webpage, the tone of the Respondent and the conditions it has set change completely in the "Terms and Conditions" section. There is stark contradiction between the statements used on the website in general as compared to the statements made in the Terms and Conditions section. On the webpage, as mentioned before, the Respondent gives constant surety to the user regarding safe buying on its website, whereas in the terms and conditions section, it withdraws itself of all responsibility.

¹⁴ <http://www.kaymu.pk/buyer-protection-more-details/>

65. In this regard, Regulation 5 of the Consumer Protection from Unfair Trading Regulations 2008 of UK elaborates the domain of misleading actions. The relevant portion is reproduced below.¹⁵

"Misleading actions

(1) A commercial practice is a misleading action if it satisfies the conditions in either paragraph (2) or paragraph (3).

(2) A commercial practice satisfies the conditions of this paragraph—

(b) it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.

(3) A commercial practice satisfies the conditions of this paragraph if—

(b) it concerns any failure by a trader to comply with a commitment contained in a code of conduct which the trader has undertaken to comply with, if—

(ii) the commitment is firm and capable of being verified and is not aspirational, and it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise, taking account of its factual context and of all its features and circumstances.

(4) The matters referred to in paragraph (2)(a) are—

(b) the main characteristics of the product (as defined in paragraph 5);.....

(c) the extent of the trader's commitments;

(d) the motives for the commercial practice;

(e) the nature of the sales process;

(g) the price or the manner in which the price is calculated;

(h) the existence of a specific price advantage;

(i) the need for a service, part, replacement or repair;

(j) the nature, attributes and rights of the trader (as defined in paragraph 6);

(k) the consumer's rights or the risks he may face.

(5) In paragraph (4)(b), the "main characteristics of the product" include—

(g) after-sale customer assistance concerning the product;

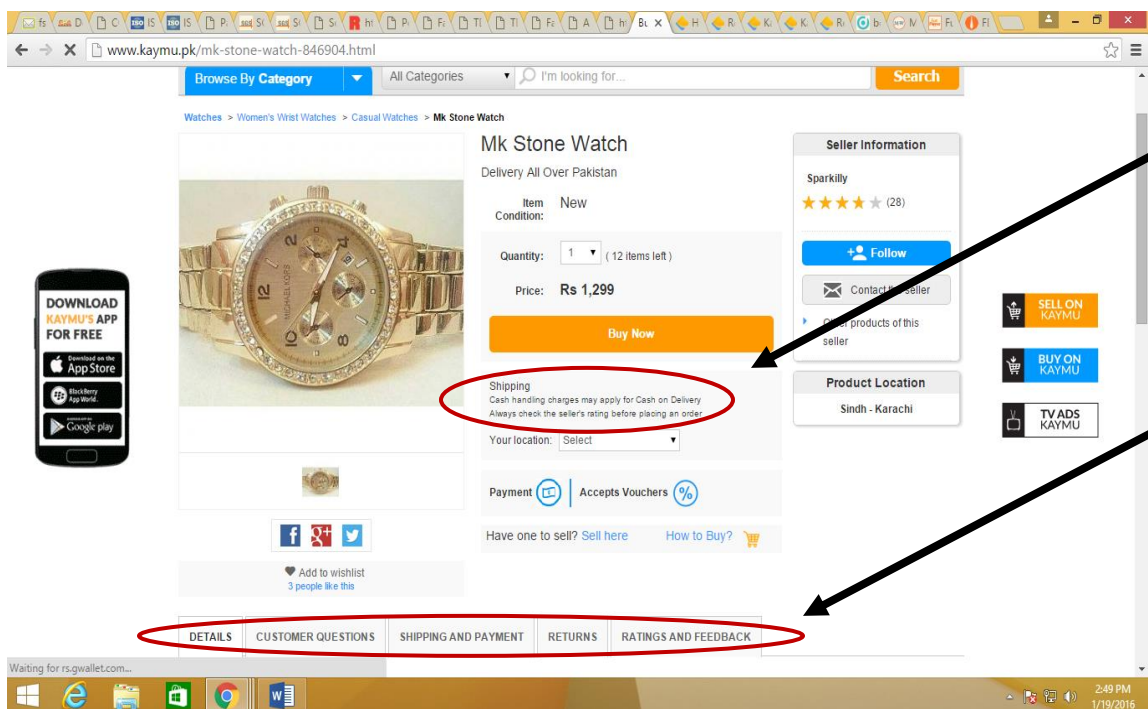
(h) the handling of complaints about the product;

In light of above reference, if the Respondent did not have the intention of resolving a dispute, this information should have been presented clearly around the website instead of presenting itself as a helpful website in the first interaction and hiding the real information in the dense text of "Terms & Conditions". This conduct of the Respondent, according to the definition above, along with clear contradiction of promises made by it, can be evidently established as a misleading action.

¹⁵ http://www.legislation.gov.uk/ukdsi/2008/9780110811574/pdfs/ukdsi_9780110811574_en.pdf

66. In addition to above, the user should have been reminded to check the return policy of the Respondent during the buying process as well which was not done sufficiently. During the buying process, emphasis has been made on checking the seller's rating, delivery method, shipping method, payment method, and "seller's" return policy. However, there is no reminder to check the return policy of the Respondent, evaluating which, the potential buyer may withdraw from making the decision of performing a purchase.

67. Hence, there should have been repeated reminders given to check the Respondent's return policy as well before the buyer commits to make the purchase. An exhibit of the page that appears after selecting an item is provided below, which shows there is emphasis on aforementioned aspects but none on checking the Respondent's return policy¹⁶.



68. Moreover, considering the use of the term "mediator" for itself along with suggesting itself as a cooperative entity, the Respondent is expected to fulfill such commitments. In case, considering the nature of the service it provides, the Respondent believes that it is unable to do so, it should not have projected itself as such an entity either. This action of the Respondent, according to the passage shared above, qualifies to be a misleading action which, in light of the provisions of the Act is prohibited.

¹⁶ Several changes have been made to the website

69. Pertinent to this matter the FTC through Sections 12 and 15 of the FTC Act proclaims unfair or deceptive acts or practices as illegal which have been termed “*misleading in a material respect*”. The ‘materiality’ of a false ad has been summarized in the “*FTC Policy Statement on Deception*” published in 1983 in the following manner.

*Third, the representation, omission, or practice must be a "material" one. The basic question is whether the act or practice is likely to affect the consumer's conduct or decision with regard to a product or service. If so, the practice is material, and consumer injury is likely, because consumers are likely to have chosen differently but for the deception. In many instances, materiality, and hence injury, can be presumed from the nature of the practice. In other instances, evidence of materiality may be necessary. Thus, the Commission will find deception if there is a representation, omission or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment.*¹⁷

70. As cited before, considering the nature of the service provided by the Respondent, the only interaction a buyer has with the service provider is through the information provided on the website. Everything that is stated there is likely to influence the decision making process of the user. The Respondent asserts itself as a safe market place and a cooperative and helpful mediator. The reminders regarding the seller’s rating have been frequently displayed, however, the return policy has not been placed clearly and conspicuously around the website. As these recurring reassurances by the Respondent are most likely to induce the buyer to proceed with a purchase which may result in an injury, the actions of the Respondent prove to be misleading in a material respect. The FTC in another set of tips for online retailers titled “Cyber Monday success: Five tips for online retailers” has stated:

4. Be transparent about your return policies. *Explain your rules on returns and exchanges up front. That’s good advice year-round, but especially during gift-giving time. It’s unwise to bury material information behind vaguely-labeled hyperlinks or on dense “Terms and Conditions” pages that are more snooze-inducing than a second helping of Thanksgiving Turkey.*¹⁸

Whereas compared with the FTC guidelines, the Respondent has nearly done the opposite. On the façade, the Respondent is claiming to be accommodating and supportive, however, it retires itself of all responsibility clearly majorly in the “*Terms and Conditions*” section which the users are most likely to ignore or only scan through hurriedly, especially since there is no compulsion to agree to the terms and conditions of this website before using it.

¹⁷ https://www.ftc.gov/system/files/documents/public_statements/410531/831014deceptionstmt.pdf

¹⁸ <https://www.ftc.gov/news-events/blogs/business-blog/2015/11/cyber-monday-success-five-tips-online-retailers>

71. Subsequently, "How to Buy on Kaymu" page teaches the user the purchasing procedure according to which the Respondent gives following options to the buyer¹⁹;

HOW TO BUY ON KAYMU

Select Payment Method

- Cash on Delivery
- Kaymu Safepay

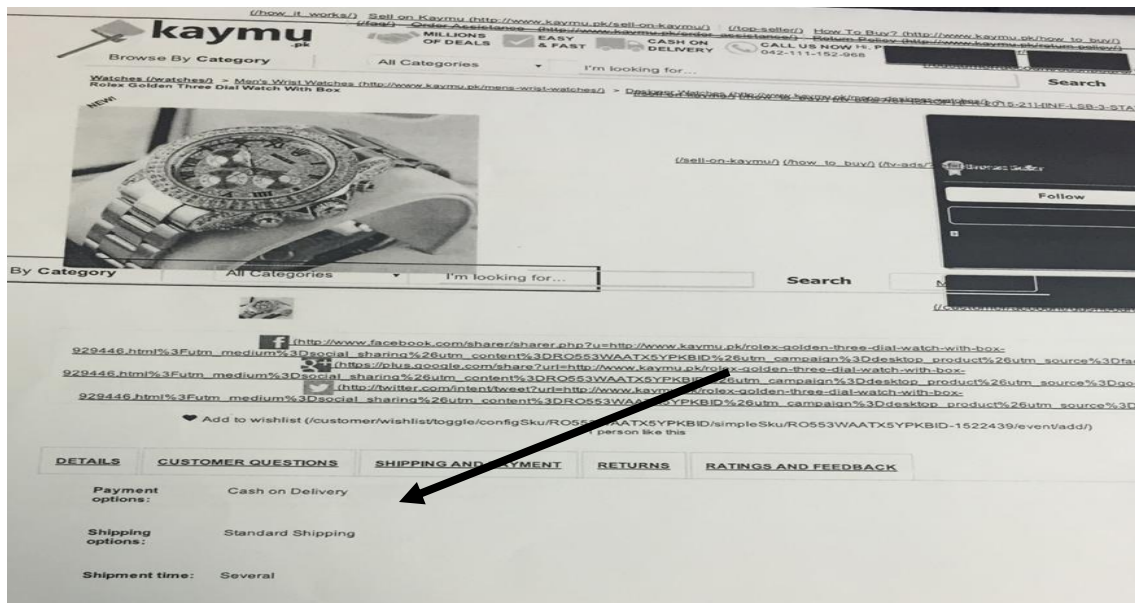
Select Delivery Method

- Kaymu Delivery
- Local Pickup
- Personal Shipping

Additionally, The Respondent's reply when inquired by the Commission also stated;

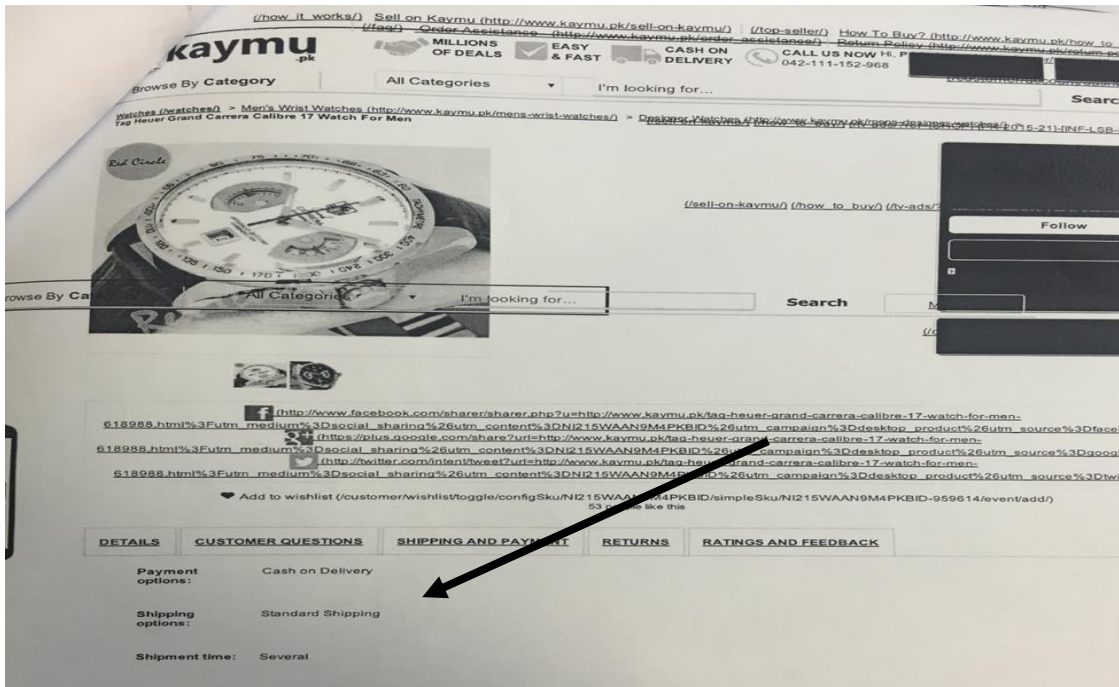
that the Complainant was given the option of Local Pickup or House/Office Delivery, and the Complainant chose the latter option. That, by choosing the former option, the Complainant had an opportunity to detect the shortcomings in the product and the same could have been resolved between the Complainant/buyer and the seller."

72. However, it is necessary to note that once a product is opted for, the Respondent does not give the buyer any payment option. It only provides a standard payment option, i.e., "cash on delivery" and shipping options, i.e., "standard shipping". Relevant sections for the purchase of two different products are shown below²⁰:



¹⁹ Changes have been made to the website and it does not contain this section. However, older options can be found in screenshots present in *ibid.* para 41.

²⁰ The website has been currently changed



73. This, therefore, proves that the assertion made by the Respondent in the reply is invalid. No options were given to the Complainant regarding the payment or delivery methods which further proves to be clear deception and misrepresentation of evidence by the Respondent not only on its website but also in its reply to the Commission. It thus verifies that the Respondent has committed obvious deception, evident in the contradiction of its claims and promises on the website while promoting the services it offers. In reality, no options are available to the buyers. It may also be noted that the Respondent also advertises a mode of payment, "Kaymu Safe Payments", according to which;

Kaymu will keep your money safe for you until you have received the product. If you are satisfied with the item received, you confirm this with our service team. That will then transfer the amount to the seller's bank account. Kaymu Safe Payments serves to provide comfort and trust for both buyer and seller.

Whereas, none of these options are available in reality. The presentation of the services provided by the Respondent creates confidence and trust within buyers in Kaymu.pk, who then choose to use this platform to make purchases. By the time the user reaches the "Terms & Conditions" section or decides to make a purchase, the perception about the Respondent has already been made in its favor due to these assertions. And so, the user is misled to perceive Kaymu.pk as a safe market place and a cooperative service provider.

74. Another reference of policies in the "Terms and Conditions" section is shown below²¹:

Selling

(ii) The listing description of the item must not be misleading and must describe the actual current condition of the item. If the item description does not match the actual current condition of the item, you agree to refund any amounts in relation to that item that you may have received from the buyer.

This also depicts that even the seller undergoes a strict command and control policy while using this platform which gives the impression of Kaymu.pk being a safe platform for buying. Therefore, misleading conduct of the Respondent around its website is evident and it can be concluded without a doubt that the Respondent has involved in deceptive marketing practices.

75. **Unfair Trade Contracts:** Another necessary aspect to consider in this case is the nature of terms and condition set out by the Respondent. It is true that the Respondent did, clearly and repeatedly, declare itself free of any kind of responsibility in case a dispute arises. However, it is essential to determine whether any entity has the right to do so? Several conditions put forth by the Respondent would be considered highly unreasonable, references are provided below²²:

Amendments to these Terms and conditions

You acknowledge and agree that Kaymu.pk shall endeavor to give you notice for any amendment to these Terms and Conditions that materially increases your obligations or decreases your rights under these Terms and Conditions ("Substantial Amendment") in accordance with the terms of these Terms and Conditions. You acknowledge and agree that Kaymu.pk at its sole discretion and without liability may make amendments that are not Substantial Amendments without your any specific agreement at any time with immediate effect by posting a notice of the amendment on the Site or an area of the Site that is publicly accessible without charge.

76. Commerce Commission New Zealand published Unfair Contract Terms Guidelines in February 2015²³ which provides guidelines for determination of and differentiation between fair and unfair contract terms. An excerpt of the document is exhibited below which can be used to examine different terms of the contracts set out by the Respondent.

²¹ <http://www.kaymu.pk/terms-and-conditions/>

²² <http://www.kaymu.pk/terms-and-conditions/>

²³ [file:///C:/Users/fshah/Downloads/Unfair-Contract-Terms-Guidelines-February-2015%20\(1\).pdf](file:///C:/Users/fshah/Downloads/Unfair-Contract-Terms-Guidelines-February-2015%20(1).pdf)

47 A term can be declared unfair only if the court is satisfied that all of the following three requirements are met:

47.1 the term would cause a significant imbalance in the parties' rights and obligations arising under the contract; and

47.2 the term is not reasonably necessary to protect the legitimate interests of the party who would be advantaged by the term; and

47.3 the term would cause detriment (whether financial or otherwise) to a party if the term were applied, relied on or enforced.

77. Some clauses of the Respondent's contract are present below²⁴:

Disputes

3. Any disputes between the seller and third parties including buyers shall not extend to or incur liability of the Company. We shall not act as the agent, negotiator, umpire, arbitrator or judge in connection with resolving any disputes between participants related to or arising out of any transaction from the Services.
4. Any disputes between the buyer and third parties including sellers shall not extend to or incur liability of the Company. We shall not act as the agent, negotiator, umpire, arbitrator or judge in connection with resolving any disputes between participants related to or arising out of any transaction from the Services.

Transfer of Rights and Obligations

You hereby grant Kaymu.pk the right to, and irrevocably acknowledge and agree that Kaymu.pk may at any time, transfer all or any part of its rights, benefits, obligations or liabilities (whether express or assumed) under these Terms and conditions to any of its affiliates without requiring your further specific agreement. Kaymu.pk agrees to use all reasonable endeavors to provide notice to you of any transfer by way of a posting on the Site. You may not at any time, without the prior written consent of Kaymu.pk, transfer all or any part of your rights, benefits, obligations or liabilities (whether express or assumed) under these Terms and conditions without the prior written consent of Kaymu.pk.

Hence, comparing with the Unfair Contract Terms Guidelines, the conditions laid out by the Respondent fulfill all three conditions of a contract term to qualify it as being unfair and can, therefore, be declared discriminating. It is thus clear that putting such conditions forward in the first place is objectionable.

²⁴ <http://www.kaymu.pk/terms-and-conditions/>

78. Consequently, owing to the nature of the service provided by the Respondent, if it is established that it is not possible for the Respondent to ensure validity of all sellers and buyers that use its forum, thus binds the Respondent to provide information pertinent to its return policy clearly and conspicuously around the website, which it failed to do. Subsequently, if the Respondent wants to remain separated from disputes, it should, firstly, not suggest otherwise anywhere around the website. Secondly, it should not advertise the product in any way which might result in the responsibility of ensuring a proper transaction falling on the Respondent as well. Whereas, according to the Complainant, he got the confirmation regarding the properties of the watch from the Respondent before making confirmation of the transaction.

79. Furthermore, on "how to sell on Kaymu" page, it states;

SELLING FEES

Listing on Kaymu is free! However, when one of your products is sold, you will be charged a fee, depending on the category of your item.

Therefore, if the Respondent is getting a share of profit from sales, it should not be allowed to separate itself completely from the responsibility of who sells what on its platform.

80. Likewise, as mentioned before, notice should also be taken of the fact that at the time of signing up on the website, the user is not compelled to go through the terms and conditions of the website and is not asked to "agree" to them before signing up as is done on most websites. This practice might induce the users to evaluate the terms and conditions of the website thoroughly and also make them aware of the clauses regarding the return policy as well as disputes, before they agree to use the website.

81. The notification and compulsion to examine and accept the terms and conditions is a crucial aspect of online service providers of any nature. This also demonstrates that the service provider has taken all necessary measures to intimate the potential users regarding the risks involved in the use of that service. This further assists in lessening the burden of dispute from the service providers. Generally speaking, it is highly unlikely that a regular user would explore the terms and conditions of a service provider voluntarily, unless he or she is guided to do so. Failure in this regard helps us conclude that the Respondent made inadequate efforts to create awareness amongst the users concerning the risks associated with the use of its website. This, therefore, also makes it liable for any fraud that may take place on its platform.

82. The FTC in its order against Clickbooth.com, LLC, IntegraClick, LLC, and John Daniel Lemp held that;

I.

PROHIBITED BUSINESS ACTIVITIES

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees and attorneys, and all other Persons in active concert or participation with any of them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, in connection with the advertising, marketing, promotion, offering for sale, or sale of any product, service, or program, are hereby permanently restrained and enjoined from:

- A. **Misrepresenting, or Assisting Others in misrepresenting**, any material fact, expressly or by implication, including, but not limited to:.....

6. "Assisting Others" includes, but is not limited to: (a) arranging for the dissemination or publication of advertisements; (b) assisting in the formulation, drafting, or revision of advertisements; (c) creating, hosting, or maintaining websites; (d) recruiting third parties to advertise or market products, services, or programs; (e) obtaining or generating customer leads; (f) performing or providing marketing, billing, or collection services of any kind; (g) verifying, processing, fulfilling, or arranging for the fulfillment of orders; or (b) acting as an officer or director of a business entity.²⁵

Consequently, in light of the definition of "Assisting Others", there lies full responsibility on the Respondent to ensure a safe environment for buyers and sellers as it assists the two parties in carrying out a transaction by providing its platform. Furthermore, as mentioned in paragraph 37, clauses iii and iv, while inquiring regarding the product, it was the Respondent who gave clarifications and confirmations regarding the quality and features of the product, further obliging it to carry the onus of ensuring a safe transaction as it was involved in disseminating information regarding the product as well. Henceforth, it can be undoubtedly concluded that the Respondent does not have the right to retire itself from the responsibility of resolving a dispute appropriately.

83. A reference was taken from UK's website of OFT in Zong Order by CCP according to which "misleading advertisement" can also be defined as below:²⁶

"A misleading advertisement can be a spoken statement – e.g., given by a sales representative, in person or over the phone. It does not have to be in writing. An advert can be deceptive in various ways, for example, if it: contains a false statement of fact - this may be possible to prove or disprove by evidence conceals or leaves out important

²⁵ <https://www.ftc.gov/sites/default/files/documents/cases/2012/11/121114clickboothstip.pdf>

²⁶ <http://www.cc.gov.pk/images/Downloads/ZONG%20-%20Order%20-%202029-09-09%20.pdf>

facts promises to do something but there is no intention of carrying it out creates a false impression, even if everything stated in it may be literally true.

Therefore, the Respondent, by giving confirmation to the Complainant regarding qualities and specifications of the product either without knowing the truth or by lying intentionally, clearly comes in the ambit of misleading advertisement.

84. Furthermore, as mentioned before, this also proves that the Respondent has been evidently involved in "assisting" the Seller to make a sale either without knowing the product details or by lying about it. Moreover, presenting itself as willing to assist the buyers in case of a dispute with no intention of doing so also falls in the category of misleading marketing practices. It is pertinent to mention here again that the Respondent took the product from the complainant and stopped responding to his emails afterwards. Participation in the conduct of misleading marketing practices and the resultant transaction puts the onus of this fraud on the Respondent as well, hence, rendering it to be in, *prima facie*, violation of Section 10 of the Act which is actionable under the law.

85. **Dispute Resolution:** One of the most crucial aspects of this case is the way the complaint was handled by the Respondent after it was intimated by the Complainant. It should be recognized that the Respondent did mention in several places around the website about separation from liability in case a dispute arises, however, it must also be acknowledged that the Respondent does encourage buyers to involve it in the process of dispute resolution. Extracts shown in Para 59 *ibid* verify that the users are guided by the Respondent to involve Kaymu.pk team if a dispute arises which not only builds trust within the users to rely on the Respondent but also places great responsibility on it to follow through with its promises.

86. Online dispute resolution is a vital element of e-commerce. In this regard, the service providers have a major obligation to conduct the dispute resolution process professionally and appropriately. It should also be recognized by mediators, arbitrators, or the service providers that complaint management and dispute resolution processes are substantial features of any product or service available in the market. These aspects have a significant influence on decision making process of consumers, the quality of which could either induce the consumers to carry out a transaction or discourage them from doing so. Moreover, it should be noted that in most disputes in general, it has been observed that the major concern of the disputing parties is not the final decision of the dispute but rather how was the complaint/dispute dealt with. This factor then creates a sentiment of fairness in the final decision that is made in the process of dispute resolution.

87. In this reference, a useful research conducted by Janice Nadler, the Assistant Professor of Law at the Northwestern University School of Law, advises online mediators and dispute resolvers pertaining to the nature of online disputes in her

paper, "Electronically-Mediated Dispute Resolution and E-Commerce" ²⁷, according to which,

Procedural Justice and Dispute Resolution

Generally speaking, in most conflict situations the disputants are more concerned with issues of exoneration, with obtaining an adequate hearing, and with being treated respectfully than they are with the actual award that they obtain (MacCoun et al. 1992). Such judgments about the adequacy and fairness of the procedure by which the dispute is resolved can have profound effects on obedience to the third-party neutral's authority and on the acceptance of rulings and settlements.

88. Accordingly, if the Respondent was unable to assist the Complainant in resolving this dispute then it was its obligation to formally and appropriately conclude the complaint. Even if the Complainant was being persistent and aggressive, the Respondent should not have guided the Complainant to send the product to it. Consequently, once the product reached the Respondent, the sole responsibility of complaint resolution transferred to the Respondent. By calling for the product to be sent to its address, the Respondent violated its own terms and conditions which established Kaymu.pk as an impartial party and lost the right to withdraw itself from such responsibilities, even if it were accepted as a justified term of the contract.
89. Therefore, the Respondent not only dealt with the Complainant poorly, it also legally transferred the responsibility of resolving this case upon itself when it directed the Complainant to send the damaged product to its office, hence, compelling itself to be legally liable. Additionally, as opposed to the advice given by Janice Nadler, the conduct of the Respondent while handling this complaint was also highly objectionable.
90. The Respondent on its website provides the following steps to be followed for return of a product²⁸:

➤ *How to initiate the return process?*

- ***Check the return policy of the product you want to return:***
- ***Register your complaint, if your issue is covered by the seller's return policy:***
Visit http://www.kaymu.pk/order_assistance/ and lodge your complaint by filling the relevant fields. Our dedicated Complaint Management Team will contact you within 24 hours.

Returns Tips for Buyers

²⁷ http://www.law.northwestern.edu/faculty/fulltime/nadler/Nadler_ElectronicDisputeResolution.pdf

²⁸ The options are not currently available as the website has been updated

- *Do not accept packages that are damaged, ripped, opened or in bad condition upon delivery. You can always refuse delivery without paying the delivery fees*
- *If the product is broken or does not match the product description/pictures on the website, contact the Kaymu Complaint Management Team as soon as possible*
- *While returning a product, make sure to share the tracking number that you received with Kaymu Complaint Management Team from the delivery company. This will help you prove that you actually returned the product*

In addition to aforesaid arguments, the Complainant also followed the procedure as prescribed by the Respondent but nevertheless, no appropriate response was given to the Complainant. This further displays the ineffective and inappropriate conduct of the Respondent pertinent to dispute resolution along with falsity of information distributed by it which is a highly objectionable behavior.

D. CONCLUSION AND RECOMMENDATIONS:

91. Consequently, in light of the above discussion, various observations have been made. It was observed that the Respondent had presented sufficient reminders pertinent to importance of 'Seller Ratings' around the website. However, the Complainant did not exert this option.
92. It was, however, observed that 'Return Policy' is one of the most crucial aspects of online buying, whereas the Respondent's website lacked sufficient and appropriate reminders pertinent to it. Due to this, the probability of buyers not being aware of the risks that are associated with online buying increases.
93. Furthermore, the Respondent has termed itself as a "mediator" in case a dispute arises. A mediator, by definition, has to ensure that an agreement is reached and a conclusion is made when a dispute arises. However, in case a dispute arises, the Respondent withdraws itself from all responsibilities.
94. Moreover, the Respondent repeatedly asserted itself as a safe market place and a cooperative and helpful mediator, however, it failed to act accordingly. The Respondent has contradicted itself on many occasions and failed to provide appropriate and promised customer service. The Respondent gives constant surety to the user regarding safe buying on its website, whereas in the terms and conditions section, it withdraws itself from all responsibility. It may also be noted that while signing up, the Respondent does not make it necessary for the user to 'read and accept' its terms and conditions. This further increases the probability of user deception.
95. Furthermore, the Respondent also asserts that it keeps a strong monitoring system pertinent to the sellers on the website and that it strictly scrutinizes sellers before

allowing them to use the Respondent's platform. Due to these reasons, a user through its first interaction with the Respondent's website would assume it to be a safe market place with a strong buyer protection policy. However, this is not a true depiction of the reality as high risks are associated with online buying which the user should be clearly made aware of.

96. In addition to above, around the website, the Respondent claims that it has provision of abundant options that can be employed by a user pertinent to payments and shipping methods while carrying out a transaction. However, only one standard option is available to the customers regarding each category, i.e., cash on delivery and standard shipping.
97. Furthermore, as discussed earlier, the fact that the Respondent gave confirmations to the Complainant pertinent to the characteristics and quality of the product and that the Respondent directed the Complainant to send the defaulted product to its address against its own terms and conditions, this conduct clearly falls in the definition of "Assisting Others" as discussed in para 79 *ibid*. Hence, the onus of appropriate dispute resolution remains on the Respondent.
98. Furthermore, it has been established that dispute resolution is also a vital aspect of online marketing, which in this case, was handled poorly. Such behavior is not only objectionable but it is also in contrast to the friendly and supportive impression the Respondent imparts on its website.
99. The Respondent, thus, is not only involved in disseminating false/misleading information to the consumers that is lacking a reasonable basis, related to character, properties, and quality of its services but these actions also give it a competitive advantage over other undertakings in the same line of business leading it to *prima facie* violation of Section 10 (1) in terms of Section 10 2 (a) & (b) of the Act.
100. Therefore, it is recommended that in the interest of the public at large, proceedings may be initiated against the Respondent under provisions of Section 30 of the Act for, *prima facie*, violation of Section 10 of the Act, in accordance with law.

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