
DIRECTOR'S ORDER UNDER SECTION 157

OF THE *FAIR TRADING ACT*

TO

HEATHER E. PHOTOGRAPHY AND HEATHER HARTLEN

AND

**ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF HEATHER E.
PHOTOGRAPHY OR HEATHER HARTLEN**

This Director's Order was issued under s. 157(1) of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157.1(1) of the *Fair Trading Act*, this Director's Order is part of the public record.

Albertans who have questions or concerns about this business are encouraged to contact the Service Alberta Consumer Contact Centre at 1-877-427-4088.

For more information on the *Fair Trading Act*, business licensing in Alberta or to search for a licensed business, please click here:

[Search for a Licensed Business, Charity or Fundraiser](#)

To view a tipsheet on this business licence category, please click here:

[Tipsheets](#)

Consumer Programs

3rd Floor, Commerce Place
10155 - 102 Street
Edmonton, Alberta
Canada T5J 4L4

DIRECTOR'S ORDER UNDER SECTION 157 OF THE FAIR TRADING ACT

TO

HEATHER E. PHOTOGRAPHY AND HEATHER HARTLEN

AND

**ANY EMPLOYEE, REPRESENTATIVE, OR AGENT OF HEATHER E. PHOTOGRAPHY
OR HEATHER HARTLEN**

ISSUE

Ms. Heather Hartlen, owner/operator of Heather E. Photography was advertising on a buy and sell wedding page on Facebook. She was looking for an engaged couple who had already set their wedding date and secured a venue for their wedding. The promotional product Ms. Hartlen was advertising to supply was "save the date" wedding announcement cards in the format of a video. The video is made up of a collection of photos arranged in chronological order from each partners' childhood up until the time the couple met. The couple would be responsible for supplying their childhood pictures and Ms. Hartlen would take photos of the couple to be included in the video. The package included one photo session of the couple, plus edited photos, 20 each announcement cards and the video image. The total package was valued at \$200. Additional packs of cards (25 each) could be purchased for \$25.

On or about June 11, 2015 a consumer contacted Ms. Hartlen via Facebook messenger and discussed the offer, as a result both parties entered into a contract over Facebook. Ms. Hartlen requested a 50% deposit up front. The following day, the consumer delivered to Ms. Hartlen \$100 cash to secure her appointment. Ms. Hartlen confirms receipt of deposit via Facebook. The consumer had discussed adding additional announcement cards to her order bringing the total cost of the package to \$275.

On June 15, 2015 the consumer and her fiancé met Ms. Hartlen at Whitemud Park in the city of Edmonton at 6:00 pm to have their photos taken for the video. The remaining balance of \$175 was paid in cash on this date, and childhood pictures were supplied.

The contract did not specify an exact delivery date for the product; however, the consumer was expecting a turnaround time of a few weeks. From June 25 to August 7, 2015, there were repeated requests made by the consumer about the status of the video:

- On June 25, 2015, the consumer contacted Ms. Hartlen to check on the progress of her product.
- On June 29, Ms. Hartlen advised she had food poisoning and was too sick.
- On July 12, the consumer checks again to see how the video was coming along.
- On July 14, Ms. Hartlen replies indicating that she still needs to edit photos and get the video made and then she would express ship the invitations so they would have them asap.
- On July 16, Ms. Hartlen sends a link for the consumer to access their photos so they can choose which ones they wanted for their video. The consumer replies back asking if Ms. Hartlen will be editing these photos, as this was not done.
- On July 16, Ms. Hartlen advised that she is sending out the video the following day, and confirms on July 22 that the video was sent off.
- On August 7, the consumer inquires about shipping of product as no product was received.
- On August 13, the consumer's fiancé emails Ms. Hartlen to provide notice of cancellation and requests a refund and their childhood pictures back.
- On August 22, Ms. Hartlen advises she would mail a cheque and photos.
- On August 29, the consumer's fiancé advises he does not want his cheque or pictures sent through regular mail, he suggested registered mail so it is traceable, or e-transfer the money and he would pick up the photos.
- The consumer's fiancé follows up with an email on September 13 and 24 but receives no response to either message.

Ms. Hartlen failed to provide product to the consumer within 30 days from when the contract was entered into (June 11, 2015), and failed to issue a full refund within 15 days from when she received the notice of cancellation (August 13, 2015). The consumer has not received a refund or product to date.

LEGISLATION

The following sections are excerpts from the *Fair Trading Act*, Internet Sales Contract Regulation AR 81/2001.

Definition:

“Internet sales contract” means a consumer transaction that is a contract in which

- (i) the consideration for the goods or services exceeds \$50, and
- (ii) the contract is formed by text based Internet communications.

Cancellation of Internet sales contract:

6(1) A consumer may cancel an Internet sales contract in the following circumstances:

(3) If the delivery date or commencement date is not specified in the Internet sales contract, a consumer may cancel the contract at any time before the delivery of the goods or the commencement of the services under the contract if the supplier does not deliver the goods or begin the services within 30 days from the date the contract is entered into.

(4) For the purposes of subsections (2) and (3),

- (a) a supplier is considered to have delivered the goods under an Internet sales contract if
 - (i) delivery was attempted but was refused by the consumer at the time that delivery was attempted, or
 - (ii) delivery was attempted but not made because no person was available to accept delivery for the consumer on the day for which reasonable notice was given to the consumer that the goods were available to be delivered;

Notice of cancellation:

8(1) An Internet sales contract is cancelled under section 6 on the giving of a notice of cancellation in accordance with this section.

(2) A notice of cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the Internet sales contract.

(3) The notice of cancellation may be given to the supplier by any means, including, but not limited to, personal service, registered mail, telephone, courier, facsimile and e-mail.

(4) Where the notice of cancellation is given other than by personal service, the notice of cancellation is deemed to be given when sent.

Effect of cancellation:

9(1) A cancellation of an Internet sales contract under section 6 operates to cancel the contract as if the contract had never existed.

- (2) A cancellation of an Internet sales contract under section 6 also operates to cancel
- (a) any related consumer transaction,
 - (b) any guarantee given in respect of consideration payable under the contract, and
 - (c) any security given by the consumer or a guarantor in respect of consideration payable under the contract, as if the contract had never existed

Responsibilities on cancellation:

10(1) If an Internet sales contract is cancelled under section 6, the supplier must, within 15 days from the date of cancellation, refund to the consumer all consideration paid by the consumer under the contract and any related consumer transaction, whether paid to the supplier or another person.

ORDER

- Heather E. Photography must immediately:
 - cease soliciting business and entering into contracts by way of text-based Internet communication with consumers or potential consumers when the supplier knows or ought to know that the goods or services will not be supplied within a stated period of time.
 - ensure refunds are provided to consumers who cancel as allowed by the *Fair Trading Act* under the Internet Sales Contract Regulation.
- Ms. Heather Hartlen either in her own capacity or when acting on behalf of a business which she represents, or in which she has an interest must immediately:
 - cease soliciting business and entering into contracts by way of text-based Internet communication with consumers or potential consumers when the supplier knows or ought to know that the goods or services will not be supplied within a stated period of time.
 - ensure refunds are provided to consumers who cancel as allowed by the *Fair Trading Act*, under the Internet Sales Contract Regulation.
- Any employee, representative, agent or associate of Heather Hartlen or Heather E. Photography must immediately:
 - cease in soliciting business and entering into contracts by way of text-based Internet communication with consumers or potential consumers when the supplier knows or ought to know that the goods or services will not be supplied within a stated period of time.
 - ensure refunds are provided to consumers who cancel as allowed by the *Fair Trading Act*, under the Internet Sales Contract Regulation.

NON COMPLIANCE WITH ORDER

- **ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE *FAIR TRADING ACT* CONTRAVENES THIS ACT AND IS GUILTY OF AN OFFENCE AND MAY BE PROSECUTED PURSUANT TO SECTION 163 OF THE *FAIR TRADING ACT*.**

A handwritten signature in blue ink, appearing to read "Scott Hood", is written over a horizontal line.

Scott Hood
Director of Fair Trading (as delegated)
February 29, 2016