Express warranties can arise through the seller’s or manufacturer’s affirmation of fact or promise, description of the goods, or a sample or model. The express warranty is that the product will meet these representations.

The affirmation of fact or description may be oral or written. A written warranty certificate is obviously an express warranty. Advertising, oral statements volunteered by the seller, and the seller’s statements in response to the buyer’s questions can create warranties. Labeling or the product itself can constitute an express warranty, as can the bill of sale, the contract, the purchase order, or other material the seller shows or provides to the buyer.

To create an express warranty, these representations must become part of the basis of the bargain between the seller and the consumer, and must be made by the seller to the consumer. “Bargain” encompasses the entire transaction, and is not limited to the written contract and face-to-face negotiations. Statements made after the deal is completed can become part of the basis of the bargain, as can statements not actually bargained for. There is a strong presumption that the seller’s statements are part of the basis of the bargain. Reliance by the buyer is not necessary.

Express warranties created by oral statements can be particularly important to the consumer, because these may reflect the true understanding between consumer and seller, better than the boilerplate warranty created solely by the seller and often not even read by the consumer. An important issue in the creation of oral express warranties is whether a contract clause disclaiming responsibility for oral promises by salespersons affects whether the buyer could reasonably believe that such statements are part of the basis of the bargain. Similarly, the parol evidence rule may limit evidence of oral express warranties. Nevertheless, the consumer buyer has a number of approaches to argue that oral statements are part of the basis of the bargain and create express warranties.

Footnotes

423 [390] See Ch. 3 [1], infra.

424 [391] See § 3.2.2.5 [2], infra.

425 [392] See § 3.2.2.6 [3], infra.

426 [393] See § 3.5 [4], infra.

427 [394] See § 3.6 [5], infra.

428 [395] See § 3.5 [4], infra.

429 [396] See § 3.5.2 [6], infra.

430 [397] See § 3.5.1 [7], infra.

431 [398] See § 3.7.2.1 [8], infra.

432 [399] See § 3.7 [9], infra.