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Auteur: Wilhelm Avocats | Le : 18 August 2019

What is the validity of a gift voucher issued for a limited period of time?

More and more often, we buy gift vouchers, to offer to our loved ones or to benefit from a promotional offer found on the Internet. Sites offering weekends in the mountains and dinners in gourmet restaurants at discounted prices are growing in number and competing with each other. The only problem is that these gift vouchers often have a limited duration. What happens then when the due date has passed? Can we claim the right to use this voucher again from the service provider? Is it simply lost?

The law of obligations does not contain any specific provisions concerning gift certificates. The doctrine generally considers them as contracts in favor of third parties; the contract is concluded between the buyer of the gift voucher and the seller, but it is generally a third party who will enjoy it.

Some gift vouchers simply represent the right to the performance of the contract or the conclusion of the contract, while other types of vouchers are equivalent to a simple substitute for the payment of a sum of money. Finally, for some other categories of vouchers, it is a combination of the two variants: the voucher represents the conclusion of a pre-contract for the subsequent conclusion of a main contract with presentation of the voucher instead of payment of a sum of money to the provider (e. g. hotel, restaurant, etc.).

The question of the period of validity of a gift voucher is also not regulated by law and that is why part of the doctrine considers that the general rules of prescription of articles 127 and 128 of the Swiss Code of Obligations (CO) are in principle applicable, i.e. that the period of validity of gift vouchers is always equivalent to the prescription period and cannot be shortened by contract (see article by Prof. Rusch, published in the Jusletter of 12 December 2011 on weblaw.ch).

Article 129 of the Swiss Code of Obligations prohibits the contractual amendment of the time limits provided for in Articles 114 to 142 of the Swiss Code of Obligations. This prohibition applies to both the extension and shortening of time limits. This would mean that a gift voucher for consumer goods should be valid for five years (Art. 128 CO), while a voucher for a service should be valid for ten years (Art. 127 CO).

However, this is rarely the case for gift vouchers or promotional coupons purchased on the Internet, whose validity is sometimes limited to a few months.

The question can therefore be asked whether in the case of a "good deal", i.e. in the case of a service or consumer good at an exceptional price, whether the contractual willingness of the parties to conclude a contract with a shorter term / validity is not nevertheless admissible. In this case, the warrant only embodies the claim of a fixed obligation based on the contractual will of the parties, the performance of which is excluded after the expiry of a generally short period of time, on the basis of an agreement between the parties.

In this case, in our opinion, it would be abusive to invoke a statute of limitation period of five or ten years for special promotions. Thus, the parties may agree by contract on a specific period of validity, provided that it is visible at the time of purchase and that it is not unfair. Shorter time limits that severely disadvantage the consumer may not be valid and may be considered an unfair commercial condition within the meaning of Art. 8 of the Unfair Competition Act.

The question also arises as to whether there should be a time limit within which the voucher is refundable if the customer does not wish to benefit from the service or goods he has thus purchased. In principle, Art. 129 of the Swiss Code of Obligations (respectively the five- and ten-year periods) also applies to the refund period of the voucher.

If consumers buy a “promotional action”, i. e. a service at a price lower than the usual price, it would be possible to provide for a validity period, an exchange period and a refund period shorter than the prescription periods of five or ten years provided for in Art. 127 ff. of the Swiss Code of Obligations. Users are therefore aware that they benefit from this offer under special conditions, which they accept.

For providers and sellers of such gift vouchers, the general conditions should be drafted in a clear and precise manner, so that the consumer is informed and aware of these conditions before concluding the contract, or before ordering the voucher/coupon. The seller should also provide for adequate display when purchasing online, with a clear indication of these deadlines, before the payment stage. The possibilities of exchange or refund or extension of the validity of the voucher should also be visible to the consumer before he makes his purchase.

Finally, if the coupon ordered over the Internet is transferable or can be ordered as a gift in favor of a third party, it should be stressed that the end user of the voucher – who has in principle not paid for the service himself – should be bound by the conditions of sale which were initially accepted by the buyer of the voucher, if the latter has been duly and validly informed and that these conditions are not unfair.

We therefore advise companies that offer such vouchers, particularly those that intend to offer promotional offers online, to ensure that they inform their customers of the specific conditions of their purchase and to be assisted in drafting their general terms and conditions of sale.

Source :

<https://www.wg-avocats.ch/en/news/contract-law/what-is-the-validity-of-a-gift-voucher-issued-for-a-limited-period-of-time/>