

Short notes on:

AN INTRODUCTION TO AND THE GENERAL APPLICATION OF THE CONSUMER PROTECTION ACT



Introduction

The Consumer Protection Act 68 of 2008 (hereafter referred to as the “CPA”) has been the topic of much discussion lately. This piece of legislation will introduce and set both standards and measures of enforcement related to consumer rights, a new concept to the South African legal system.

Although the general effective date of the Act has been deferred from October 2010 to March 2011, the CPA will find application in every industry. Therefore understanding the theory and implications thereof in anticipation of the effective date is very important for every South African supplier and consumer alike.

Supplier and consumer

The CPA applies to any transaction within the Republic, save for transactions where government is a consumer and any gazetted exclusion.¹ According to section 1 of the CPA:

1. A supplier is a person who markets any goods or services and to supply means:
 - a) *“in relation to goods, includes sell, rent, exchange and hire in the ordinary course of business for consideration; or*
 - b) *in relation to services, means to sell the services, or to perform or cause them to be performed or provided, or to grant access to any premises, event, activity or facility in the ordinary course of business for consideration.”*

2. A consumer in respect of any particular goods or services is:
 - a) *“a person to whom those particular goods or services are marketed in the ordinary course of the supplier's business;*
 - b) *a person who has entered into a transaction with a supplier in the ordinary course of the supplier's business, unless the transaction is exempt from the application of this Act by section 5(2) or in terms of section 5(3);*
 - c) *if the context so requires or permits, a user of those particular goods or a recipient or beneficiary of those particular services, irrespective of whether that user, recipient or beneficiary was a party to a transaction concerning the supply of those particular goods or services; and*
 - d) *a franchisee in terms of a franchise agreement, to the extent applicable in terms of section 5(6)(b) to (e).”*

Retrospective application to pre – existing agreements

Generally the CPA is not retrospective and therefore will not apply to matters pre - dating the general effective date. It will however apply to any pre –existing agreement that would have been subject to the CPA if it had been in effect at the time the agreement was made and to any fixed term contract where the parties will be bound

¹ Section 5 of the CPA.

until a date that is on or after the second anniversary of the general effective date of the CPA.²

In addition to this, schedule 2 to the CPA further details the extent to which the CPA will be retrospective, for example the expiry and renewal of fixed term contracts,³ disclosure of reconditioned goods so supplied to the consumer on or after the effective date⁴ and to keep and supply the consumer with accurate sales records.⁵

Cooling off

In terms of section 16 of the CPA the consumer has the right to a cooling off period after direct marketing. This entails that the consumer may cancel without penalty any transaction within 5 business days after the agreement was concluded or goods delivered. To what extent this will be enforced remains to be seen.

Direct marketing means to *“approach a person, either in person or by mail or electronic communication, for the direct or indirect purpose of-*

- a) promoting or offering to supply, in the ordinary course of business, any goods or services to the person; or*
- b) requesting the person to make a donation of any kind for any reason.”⁶*

Promoting means to

- “a) advertise, display or offer to supply any goods or services in the ordinary course or business, to all or part of the public for consideration;*
- b) make any representation in the ordinary course of business that could reasonably be inferred as expressing a willingness to supply any goods or services for consideration; or*
- c) engage in any other conduct in the ordinary course of business that may reasonably be construed to be an inducement or attempted inducement to a person to engage in a transaction.”⁷*

Conclusion

From the purpose and somewhat retrospective nature of the CPA along with the few general aspects highlighted in this article the wide and encompassing application and the legislature’s intent is self evident.⁸ It is therefore of utmost importance that marketers, consumers and suppliers be fully acquainted with the implications of the CPA even before it’s commencement date.

² Schedule 2 of the CPA.

³ Section 14 of the CPA.

⁴ Section 25 of the CPA.

⁵ Section 26 of the CPA.

⁶ Section 1 of the CPA.

⁷ Section 1 of the CPA.

⁸ Section 3 of the CPA.