

Short Notes on:

A BRIEF LOOK AT CONSUMER RIGHTS IN TERMS OF THE CONSUMER PROTECTION ACT

Introduction

In recent times November has become the favorite month for South African consumers with the adoption of sale specials like Black Friday and Cyber Mondays. Retailers provide massive discounts on their inventories allow for the intake of the latest ranges in the new year. The advantage is a turnover of stock, with suppliers keeping up to date with the latest products, while consumers are able to enjoy significant savings. This article will explore some of the rights consumers have which would be important to remember, not just during the month of huge savings, but all year round.

Consumer Protection Act 68 of 2008

The Consumer Protection Act (herein after the CPA) was enacted with the aim of *'promoting a fair, accessible and sustainable marketplace for consumer products and services.'*¹ Although the CPA is not a full codification of supplier and consumer laws, it has had the effect of providing a reliable foundation for fair trade to develop within the country. As consumers interact with various retailers and suppliers, it would be wise to remember some of these provisions.

Consumer's right to select suppliers

Section 13 of the CPA provides that a supplier may not require that in order to supply a specific product or service, the consumer must purchase any other particular product or service from that same supplier. This would mean that suppliers cannot virtually 'force' consumers to purchase packaged products or services on an 'all or nothing' basis unless the supplier can show that the bundled products or services would be of more benefit to the consumer than the limitation placed on that consumer's right to choose suppliers.

Consumers are therefore encouraged not to accept or enter transactions where they are not completely satisfied with the terms offered by the supplier.

¹ Foreword of the Consumer Protection Act 68 of 2008.

Consumer's right to choose or examine goods

"Its Nice to Touch, Its Nice to Hold... But if it Breaks, Consider it Sold", a sign like this or to this effect can often be seen on display in shops or stores, explaining that consumers will be held liable for any loss of damage of goods or products incurred as a result of any conduct of the consumer. Section 18 of the CPA however states that consumers may not be held liable for any loss of damage suffered by a supplier due to the consumer's actions unless it can be proven that the consumer was grossly negligent, grossly reckless or if the consumer acted maliciously or criminally. This would allow for consumers to reasonably exercise their right to inspect goods on display and, furthermore, to select or reject a specific item from that stock.

Consumer's right in respect of delivery of goods or supply of services

Online shopping has resulted in the roads being filled with scooters delivering goods from suppliers to consumers with specific addresses and window periods agreed to beforehand. Section 19 lays out that unless otherwise expressly stated in a contract of agreement, the supplier would always be responsible for the delivery of goods. The delivery would occur at an agreed upon time and at an agreed upon place between the parties, with risk not transferring until the consumer has accepted delivery (again unless otherwise expressly provided for). A consumer must be allowed, upon request, to inspect the good being delivered for the purposes of ensuring that its type and quality is satisfactory.

Disclosure of price of goods or services

Section 23 regulates the disclosure or advertisements of the price of goods. A retailer may not display any goods for sale without displaying a price in relation to those goods. To satisfy the requirements of Section 23(5) a price is deemed to be adequately displayed if the price is expressed in Rands, the price is affixed to the item or a tag, label or shelf in connection with the goods or that the goods are mounted or displayed on, where such affixation can be reasonably inferred to be the price of the relevant item.

If the price is somehow published in a catalogue, brochure or similar form of publication, Section 23(5)(c) stipulates that the price would be considered 'adequately displayed' if such publication includes a date period for which the specials are to run.

A price will further be deemed to be displayed if a second price fully covers and obscures the first. In an instance where there are multiple prices displayed, all of which are different, the supplier can only charge the lowest price on display.²

However, if the price displayed is an obvious error, the supplier would not be bound by it if they correct the price displayed and reasonable steps are taken to inform the consumer of the pricing error.³ A supplier would further not be liable if a change in price if an unauthorized person has altered, defaced, covered or removed a price displayed by the supplier.⁴

Conclusion

When scouring for deals in the marketplace, whether online or in person, the legislative provisions above would be a good foundation to ensure that as a consumer, you are fully aware of the parameters within which your exchange will be regulated. Although the above was highlighted, it in no way is meant to be an exhaustive reflection of the provisions governing suppliers and consumers. Whether you are a supplier or consumer, SchoemanLaw Inc can assist with ensuring that you are fully aware of the terms of any agreement you enter into and the risks involved.

² Section 23(6)(b) of the CPA.

³ Section 23(9)(a) and (b) of the CPA.

⁴ Section 23(10) of the CPA.