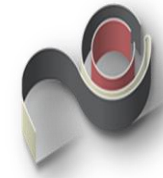




the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA



NATIONAL CONSUMER COMMISSION

a member of **the dti** group

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Business Education Circulars

South Africa

1. Business Obligations to honour Returns and Refunds



Introduction

✓ Suppliers whether small, medium or large have a responsibility to comply with the provisions of the Consumer Protection Act No 68 of 2008 (CPA). The CPA is rights based and makes it mandatory for business to comply with its provisions. Returns and Refunds are but one aspect to ensure compliance with the Act.

Statutory Returns and Refunds

The Consumer Protection Act makes it compulsory for business to accept returned goods and refund consumers their monies.

✓ **Direct Marketing (s32, s20, s16):** When goods and services are marketed either in person or through the mail or electronic communication and the consumer did not have the opportunity to inspect them, on delivery they are not what the consumer has ordered, the goods may be returned at the supplier's cost. When goods are returned, the consumer shall not be penalised, the supplier will have to bear the risks and costs attached.

Returning goods bought through Direct Marketing:

- ✓ When an agreement has been cancelled within the cooling off period (5 business days after concluding the agreement / delivery of the goods);
- ✓ Goods are rejected because:
 - ✓ they were mixed with items not ordered;
 - ✓ they do not meet specifications in terms of quality;
 - ✓ they do not conform to material specifications as per special order;
 - ✓ they do not satisfy the purpose for which they were intended;
 - ✓ the goods are unsolicited/ have not been requested.

Right to Safe, good quality goods (s55, s56)

The CPA places an obligation on suppliers to comply with the following:

- ✓ supply goods that are safe, of good quality, working order, free from any defect and fit for the purpose for which they were bought for;
- ✓ A mandatory warranty requires that the supplied goods must meet the above mentioned conditions for a period of 6 month from the date of delivery;
- ✓ The warranty places an obligation on suppliers to accept returned goods within 6 months of delivery in the event that the goods do not comply with requirements and standards for safety and quality. In such an event, the supplier must at the discretion of the consumer, either:
 - ✓ refund all the monies paid;
 - ✓ exchange; or
 - ✓ repair the goods.

Conditions for Returns and Refunds

- ✓ **Repaired goods:** If within three months after the goods have been repaired the defect persists or the unsafe component has not been remedied, or a further failure or defect is discovered, then the supplier must either
 - ✓ replace the goods; or
 - ✓ refund the consumer the full price of the item e.g. (“lemon” vehicles that keeps breaking down).

PLEASE NOTE!!!

- ✓ **As the above implied warranties have a potential of having an adverse effect on business: suppliers are advised to always buy and sell quality goods/ products from credible manufactures to avoid any potential financial losses.**
- ✓ **Statutory warranties take precedence over manufactures/ suppliers warranties unless the latter are more beneficial to the consumer.**

Suppliers Liability (Strict Liability)

✓ Suppliers who supply unsafe/ defective products can be held liable jointly with manufactures in the event that consumers suffer harm due to consumption or use of the product. Suppliers must ensure that they supply good quality products from credible manufactures and distributors.

When is the supplier not entitled/ forced to refund?

- ✓ A supplier is not obliged to accept returned goods and refund consumers their monies where;
- ✓ In respect of direct marketing, the consumer cancels the agreement long after the cooling off period has expired;
- ✓ When consumers have had an opportunity to inspect the goods before purchase and changed their mind about the goods;
- ✓ The goods have been damaged due to negligence;

Not to refund cont...

- ✓ The goods have been disassembled, physically altered, permanently installed or combined with other goods or property;
- ✓ A public regulation prohibits such return for reasons of public health e.g. underwear and medicines etc.

When may a supplier impose a penalty on refunds?

A supplier may impose a penalty if the goods are returned in their original packaging and they have been used while in the consumer's possession. Such a penalty may not be imposed if the use was reasonable to determine if the goods were acceptable to the consumer.



Are 'No Returns and No Refunds signs appropriate?

Signs that simply state “**NO RETURNS AND NO REFUNDS**” are inappropriate and misleading as these signs could lead consumers to believe that as the policy is displayed, consumers ought to know that they cannot return goods under any circumstance.



2.

Country of Origin Labelling (COOL)



Introduction

Section 22 of the Consumer Protection Act (CPA) prescribes that suppliers of goods and service must disclose information to consumers in plain and simple language to allow them to make informed decisions. One aspect relates to product labelling and descriptions attached on goods. Regulation 6 of the CPA places special emphasis on the clothing, textiles, textile products, shoes and leather apparel industries.

What does the Country of Origin Labelling (COOL) mean?

Regulation 6 of the CPA requires importers and manufacturers of clothing, textiles, textile products, shoes and leather goods for sale in the Republic to have attached a "Country of Origin" labelling on the products. It prohibits the importation or sale in South Africa of clothing, textiles, textile products, shoes and leather goods, irrespective of whether such goods were made or produced in the Republic or elsewhere, unless the following is attached permanently and prominently:

COOL cont...

- ✓ the country in which it was produced or made;
- ✓ an indication, where a South African textile manufacturer has used imported griegge fabric to produce dyed, printed or finished fabric, that such fabric has been dyed, printed or finished in South Africa from imported fabric;
- ✓ an indication, where a locally manufactured product uses imported material, that the product is "made in South Africa from imported material".
- ✓ the goods must conform to the South African National Standards (SABS) for fibre content and care labelling as prescribed in terms of Notice No. 2410 of 2000, published in Government Gazette dated 30 June 2000.
- ✓ where the goods are reconditioned, rebuilt or remade, within the Republic or outside, such information should be applied to them in clear and eligible wording.

COOL cont....

- ✓ The label should state clearly "Made in South Africa" and the product is wholly assembled in Republic of South Africa (RSA), otherwise the product will not qualify for such a label;
- ✓ In the event that the above mentioned goods are found to be in contravention of regulation 6 of the CPA, importers of those goods will be required to return or export the goods to where they come from;
- ✓ It will be unlawful to export the goods to another country in Africa and to even attempt to do labelling of those goods in the Republic of South Africa. Such goods must either be returned to their country of origin or must be destroyed. They cannot be allowed to hit the South African market.

What is the Legislative Framework for COOL?

- ✓ **Consumer Protection Act (CPA) Section 22 and Regulation 6:** The National Consumer Commission is responsible for the enforcement of this legislation.
- ✓ **Customs and Excise Act (Section 113 (8)):** SARS is responsible to carry out inspectorate function to detect and detain non-compliant imports, at various ports of entry, on behalf of the NCC.
- ✓ **Code of practice – Care-labelling of textiles and clothing** (South African National Standards (SANS) 1001, South African Bureau of Standards (SABS) 011),
- ✓ **Code of practice – Fibre-content labelling of textiles and textile products** (South African National Standards (SANS) 10235, South African Bureau of Standards (SABS) 0235).

Exceptions the COOL requirements?

There are no exemptions from labelling requirements.

Application of the COOL requirements?

- ✓ Will apply to new and second-hand goods for domestic sale;
- ✓ Re-imported goods for domestic sale;
- ✓ Goods cleared ex-warehouse;
- ✓ Locally manufactured goods.

What can business do to comply?

Importers, manufactures and suppliers when selling or importing clothing, textiles, textile products, shoes and leather into South Africa, have an obligation to ensure that the merchandise or goods have in English a label sewn on, printed on legibly and conspicuously on, or securely attached to them indicating;

- ✓ the country of origin

Comply cont...

- ✓ In the case of fabric in the roll, the required information must be placed on a placard, tag, sign, label, sticker, band, twist tie, pin tag attached to the roll;
- ✓ Garments comprising sets, i.e. two-piece suits, the label with the required information must be attached on all such pieces;
- ✓ 4) A locally manufactured product using imported material must state that the product is "Made in South Africa from imported material".

Detention of goods

- ✓ The National Consumer Commission in collaboration with the South African Revenue Services (SARS) and the SABS will ensure enforcement of the regulations;
- ✓ SARS will randomly detain consignments to conduct inspections and goods that do not comply with the origin-labelling requirement will be seized;
- ✓ Any contravention of the CP Act is a criminal offence, punishable by a fine not exceeding R5 000, for an article to which the offence relates, to imprisonment for a period not exceeding three years, or to both a fine and imprisonment.

3.

Compliance with Layby Agreements



What is a layby agreement?

It is an agreement where the supplier agrees to sell a product to a consumer and accepts period payment for those goods while keeping them until the full amount is paid. The supplier has a responsibility to keep the goods at own risk until they are delivered to the consumer. Any deposit paid by the consumer is an instalment and remains the property of the consumer until goods are received in good, working order and fit for purpose.

Business requirements for layby agreements

For a layby agreement to be valid, a supplier must ensure it complies with the following:

- ✓ in writing;
- ✓ in plain and simple language;
- ✓ specifies all terms and conditions, including any termination charge;
- ✓ supplier must provide a copy of the layby agreement to the customer.

Termination / Cancellation of a layby agreement

A supplier may terminate/ cancel a layby agreement if:

- ✓ the customer has breached a term of the agreement (such as missing a scheduled payment);
- ✓ the goods are no longer available due to circumstances outside of the supplier's control, in which case the supplier must at the option of a consumer
 - ✓ **supply equivalent or superior goods;**
 - ✓ **refund all monies paid plus interest; or**
 - ✓ **pay double the amount paid by the consumer. Interest should be paid from the date of the first payment calculated in accordance with the Prescribed Rate of Interest Act No. 55 of 1975.**

When to charge a termination / cancelation penalty

A supplier may charge a termination / cancelation penalty if:

- ✓ a consumer cancel the agreement before fully paying for the goods; or
- ✓ fails to complete the payment for the goods within 60 business days after the date of completion of the contract;
- ✓ A supplier may charge 1% of the total amount of goods bought under a layby agreement. After deducting the cancelation penalty, a supplier is obligated to refund the balance back to the consumer.

When not to charge a termination/cancelation penalty

A supplier may not charge a cancellation penalty if the consumer's failure to complete payment was due to hospitalisation or death of the consumer or if the supplier failed to inform the consumer of the cancellation penalty before entering into the lay-by agreement.

4.

Implications of Sect 63 of the CPA



Introduction

The onset of COVID-19 has had many implications for business. With government announcing the national lockdown some businesses have had to come up with more creative ways to continue operating and keep their clients serviced. Most businesses had to shut down their operations with no idea for how long and when they would resume operations. One way to keep relevant for those who could was to trade online.

One of the areas that have come out during this time due to cancellations of pre-booked / non availability of some services offered is that businesses offer more prepaid certificates, credit, vouchers to their customers to be used in the future. Some even offer postponement to bookings made prior the lockdown to be used at a later stage as a retention measure and provides some sort of assurance that services can be easily accessed at their own time when they do become available.



Section 63 cont...

- ✓ In the normal course of business, it is an acceptable practise for suppliers to accept consideration from a consumer in exchange for prepaid certificates, card, credit or voucher; in the process agreeing to provide goods or services to a consumer who presents such, up to the actual value represented by it.
- ✓ What is common practise in relation to the above is that business tends to impose their expiry periods to the prepaid certificates, credit card, or voucher which tends to be less than what is prescribed by law thereby prejudicing poor consumers who most often do not know any better. Section 63 of the CPA states categorically clearly the conditions under which that the above mentioned trading devices may expire.

Firstly,

- ✓ until the date on which their full value has been redeemed in exchange for goods or services or future services; or



Section 63 cont...

✓ Three years after the date on which it was issued or the extended time agreed to by the supplier at any time.

✓ The implication is that even if the full value of the product has not been redeemed, whatever is left remains valid for three years from date of issue or until it is redeemed/depleted. Any offer that is less than the stipulated conditions is in total violation of the Act.

✓ Even with opening of the hospitality industry like hotels, lodges where consumers were offered vouchers to use later the same conditions as above will prevail. Denying access to services deprives consumers of the financial value and benefit that would ordinarily accrue to them for the duration of the validity of the device.

✓ Moreover, business should always explain to consumers that the value of the device at the time it is bought might not actually guarantee the same product or service due to price increases or inflation at the time that the consumer finally redeems the voucher. What this means is that there could be difference in value depending on the length of time that lapses between when the device is bought and the period when it is redeemed.



How business can comply

To comply with Section 63, businesses must ensure the following:

- ✓ Prepaid certificates, card, credit or voucher should be valid until the date on which their full value has been redeemed in exchange for goods or services; or
 - ✓ 3 years from date on which it was issued or the extended time agreed to by the supplier at any time;

- ✓ Business should provide consumers with an option to top over the balance should the value of the device presented fall short for the goods or services acquired;

- ✓ These conditions should be contained in the store policy and brought to the attention of consumers whenever these products are sold;

5.

Phishing Scams



Introduction

The National Consumer Commission (NCC) has recently been a victim of a Phishing Scam. Scammers wrote letters where they used NCC complaints reference numbers, which turned out to be false references; they also used the Commission's physical address which is published on the internet; they purported to be the Commission. This indicates that no body including companies big or small are immune to these kind of scams.

What is bad about phishing scams is that if consumers, including the business fraternity (big and small) fall for the scam it might tarnish the good name of an institution leaving people worse off financially than they were before being scammed.

What does a Phishing Scam entail?

✓ Phishing is when an online fraudster pretends to be a legitimate business or government department to trick consumers into giving out their valuable personal information and sometimes money. It's not just a problem for consumers, but for the companies the scammers are impersonating too. The scammers may use either the phone or email to contact potential victims.

Potential harm by Phishing Scams

✓ Consumers and businesses who fall victim to the scam end up divulging valuable personal information like bank account numbers, passwords, or cash leading to unwarranted financial loss.

✓ Business might suffer reputational damage. It is important for business to know their buyers and sellers, conduct background research on online clients so that they can know whom they are dealing with.

What to do when your business is impersonated in a Phishing Scam?

Should consumers contact your company about receiving and or responding to a phishing email from a scammer impersonating your business, offering immediate advice and support can help you retain the company reputation earned over a period of time.

To rescue the situation consider the following options:

- ✓ **Notify consumers of the scam.** If you become aware of a phishing scam where fraudsters are impersonating your business, inform your customers as soon as possible as they could be at risk of identity theft. Use any avenues available to your business e.g. social media to announce the scam and warn consumers to ignore suspicious emails or texts purporting to be from your company. Remind your consumers that your business is legitimate and would never solicit sensitive personal information through insecure channels like email or text messages.

Phishing Scams cont...

- ✓ **Contact law enforcement.** If you become aware of a phishing scam impersonating your business, report the scam to the law enforcement agencies operating in your area.
- ✓ **Provide resources for affected consumers.** If consumers believe they may be victims of identity theft because of the phishing scam impersonating your business, direct them to South African Fraud Prevention Services by visiting their website at: www.sapf.org.za or call them at: 011 867 2234 where they can report identity theft.
- ✓ **Upgrade your data protection systems.** Invest in data protection services to avoid further exposure to phishing scams and more. It is of paramount importance to keep customer's sensitive personal information secure at all times.

Thank you!

**National Consumer Commission
South Africa**

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