SHOULD SHOPPERS CONFORM TO A STORE'S DRESS CODE?

Category: Administrative and Procurement Law,Commercial Law,Dispute Resolution
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A dress code is a set of rules, often written, with regards to clothing.[1]

There was a recent incident where a customer was refused entry into a reputable store merely because of how she was dressed. But, do you, as a customer, ever glance at or read the store's policy upon entry? Do customers have to adhere to the store's dress code? Is it a universal rule, or does it differ from store to store?

As much as everybody has a right to wear whatever he/she wants, society may frown upon such, and stringent rules imposed by some stores may adversely affect such right. It may be viewed as grossly unfair, let alone unconstitutional to turn a customer away merely because of her apparel. But, to what extent does the store's policy take precedence?

Section 9 of the Constitution of the Republic of South Africa, 1996 confers equality on everyone.

A right of admission reserved sign – policy/standards over rights?

Section 36 of the Constitution provides for limitation of rights and stipulates that

The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including— (a) the nature of the right; (b) the importance of the purpose of the limitation; (c) the nature and extent of the limitation; (d) the relation between the limitation and its purpose; and (e) less restrictive means to achieve the purpose. (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.

In a Randfontein Herald article[2] by Maritza van Zyl, a certain Pick 'n Pay branch allegedly denied two children access for wearing pyjamas. One of the children's parents was apparently handed a "No children in sleepwear and clown outfits are allowed." note. The store apologised to the family involved and said they will investigate the matter.

It is puzzling to learn of a recent August 2019 incident[3] where a mom of three from Woodlands in Mitchells Plain, Cape Town, is opting to head to the Equality Court after her son, who uses a wheelchair, was denied access into a local superette. Attorney Odette Geldenhuys has since taken Haskin's case pro bono. On 6 July, Geldenhuys sent a letter of demand to Khan, asking him to apologise in writing to Haskin; restructure the store to allow wheelchair access; pay R5,000 to Red Cross Children's Hospital: Down Syndrome support group and R5,000 towards Connor's next wheelchair.

Athough there is no record of reported cases covering the above infringements, it is saddening to learn of such incidents. The law does confer some form of 'comfort, remedy or assurance' to such unfair treatment through the Equality Court, which was created by the Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000, which mandates equal treatment on everyone.

Whenever a person experiences some form of unequality or feels that his/her rights have been infringed upon, it might be beneficial to also consider approachign the Equality Court to seek restoration of such infringed rights. Section 6 of the Promotion of Equality and Prevention of Unfair Discrimination Act provides that neither the State nor any person may unfairly discriminate against any person.

There should be a distinction between a dress code applicable to employees and customers. Such stringent policies seem redundant and may inhibit customers from considering shopping at certain stores, and ultimately affect a store's revenue and possibily its reputation. It might be worth relaxing some rules.

[1] Wikipedia dictionary.

[2] https://randfonteinherald.co.za/233602/pajama-issue-update-supermarket-apologises/.

[3] https://www.dailymaverick.co.za/article/2019-08-02-mom-heads-to-equality-court-after-son-in-wheelchair-denied-access-to-superette/