YOUR RIGHTS IN TERMS OF THE CONSUMER PROTECTION ACT

Category: Commercial Law
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The Consumer Protection Act, 2008 (“CPA”) entitles you, as the consumer, to protect and enforce your rights.

As a way of marketing their products, some suppliers supply potential consumers with samples to ‘test’ at home. In some instances, this piques the consumers’ interest and nudges them toward buying the particular product. However, there are times where a sample product differs from the original product.

If you have ever purchased products online as a result of bait marketing and the supplier refused to (i) refund you; or (ii) take the product back, please read on.

Consumer’s right to choose or examine goods

If you, as a consumer, have agreed to purchase goods solely on the basis of a sample, such goods provided by the supplier and delivered to you as a consumer must in all material respects and characteristics correspond to that which an ordinary alert consumer would have been entitled to expect based on the description or on a reasonable examination of the sample as the case may be.

If you are dissatisfied with goods received by direct marketing, you have a right to return the goods to the supplier and receive a full refund of any consideration paid for those goods.

The Consumer Protection Act grants you the rights to seek redress and to be heard.

There are various ways in which suppliers market their goods or services. These include bait marketing and direct marketing.

Bait marketing

Bait marketing is when a supplier advertises goods as being available at a specific price, and the advertisement expressly states a limitation in respect of the availability of those goods or services from that supplier at that price, the supplier must make those goods or services available at that price, to the extent of the expressed limits.

Some of us have witnessed these ‘Amazing Deals / Slashed Prices’ on promotion days such as Black Fridays etc.

A supplier is prohibited from advertising any particular goods or services as being available at a specific price in a manner that may result in consumers being misled or deceived in any respect relating to the actual availability of those goods or services from the supplier.

Direct marketing to consumers

A person who is directly marketing any goods or services and who concludes a transaction or agreement with a consumer, must inform the consumer in the prescribed manner and form of the right to rescind that agreement as set out in section 16 of the CPA.

Consumer’s right to cooling-off period after direct marketing

Section 16(3) of the CPA entitles the consumer to rescind a transaction resulting from any direct marketing without reason or penalty, by notice to supplier in writing or another recorded manner and form, within five business days after the later of the date on which –

(a) the transaction or agreement was concluded; or

(b) the goods that were the subject of the transaction were delivered to the consumer;

(4) *A supplier must-*

(a) return any payment received from the consumer in terms of the transaction within 15 business days after –

(i) receiving notice of the rescission if no goods had been delivered to the consumer in terms of the transaction; or

(ii) receiving from the consumer any goods supplied in terms of the transaction; and

(c) not attempt to collect any payment in terms of the rescinded transaction, except as permitted in terms of section 20(6).

Section 20(6) of the CPA provides that in determining the right of a supplier to impose a charge contemplated in subsection (5), if any goods returned to the supplier in terms of this section are—

(a) in the original unopened packaging, the supplier may not charge the consumer any amount in respect of the goods;

(b) in their original condition and repackaged in their original packaging, the supplier may charge the consumer a reasonable amount for—

(i) use of the goods during the time they were in the consumer’s possession, unless they are goods that are ordinarily consumed or depleted by use, and no such consumption or depletion has occurred; or

(ii) any consumption or depletion of the goods, unless that consumption or depletion is limited to a reasonable amount necessary to determine whether the goods were acceptable to the consumer; or

(c) in any other case, the supplier may charge the consumer a reasonable amount—

(i) as contemplated in paragraph (b); and

(ii) for necessary restoration costs to render the goods fit for re-stocking, unless, having regard to the nature of the goods, and the manner in which they were packaged, it was necessary for the consumer to destroy the packaging in order to determine whether the goods—

(aa) conformed to the description or sample provided, in the case of goods that had not been examined by the consumer before delivery, as contemplated in subsection (2) (b); or

(bb) were fit for the intended purpose, in a case contemplated in subsection (2) (d).

If you feel that your rights, as a consumer were infringed, you may refer your matter to the Tribunal or to Ombudsman in whose jurisdiction and industry the supplier falls.

Contact us for more good, clear, precise advice.