

the consumer protection act: should I be **concerned?**

On anxiety and fear - I get goose pimples. Even my goose pimples get goose pimples.

- From the 1939 film, "The Cat and the Canary"



Deon Schaup
Litigation Division

There are two answers to the question: Should I be worried about the New Consumer Protection Act.

The short answer is: If you are in business, the Act will affect the way in you do business in the future.

The long answer, as usual, is a bit more complicated ...

There are basically three - conditions for the New Consumer Protection Act to apply:

1. You must be a 'supplier';
2. You must supply goods or services to a 'consumer'; and
3. The goods and services must be supplied in the ordinary course of business and in return for a consideration.

The Act defines "suppliers" broadly to include the entire supply chain, from farmers and manufacturers, to importers, distributors and retailers. The franchise industry is specifically included, and the Act also applies such diverse industries such as hospitality and catering, and logistics and transport. Service providers, such as estate agents and health practitioners, are included, as are public sector entities that are involved in providing services to consumers. The Act also has implications for property developers and property speculators.

Consumers on the other hand include all individuals and franchisees, as well as

Companies, Close Corporations, Trusts and Partnerships with an annual turnover (or nett asset value) of less than R3 000 000.

So the long answer is: if you are a 'supplier' who provides goods and services to 'consumers' in the ordinary course of business, for consideration, then the Act applies.

But what happens if I don't comply with the Consumer Protection Act. At the level of general compliance, your business will be vulnerable to fines (not exceeding R1 000 000 or 10% of turnover) and reputational risk. At the same time, you may find that certain transactions are unenforceable, leaving you without a remedy to recover from a consumer while you may be required to receive the return of goods under certain circumstances.

The product liability provisions of the new Consumer Act are even more concerning. In terms of Section 61 of the Act, the entire supply chain is strictly liable for any injury, damage or loss suffered as a result of a defective product. The law has been changed in a number of regards: firstly, consumers may proceed against anyone in the supply chain, not just against the manufacturer. The second major is that the consumer does not have to prove that that anyone was negligent in producing a defective product - there is strict liability, meaning that if someone is hurt or has suffered a loss as a result of the defect, you have to pay

up. The third extension of our law is that this strict liability extends to consequential damages. This means that if your small engineering company undertakes to machine a cart, which is to be used in a large smelter, and the part fails resulting in the closure of the smelter for several days, you will be liable for the consequential loss of profits and any other damage caused to the rest of the smelter. There are some exceptions to the new stiff

product liability rules for retailers and distributors: if a retailer or distributor can show that having regard to its position in the supply chain, it was unreasonable to expect that the unsafe product defect would be discovered then that retailer may be able to evade liability.

The New Consumer Protection Act is coming into force on 31 March 2011.

LAW LETTER

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coffee with yuri

Yuri Maharaj is a self-confessed sports fanatic but interestingly, he has found that it is martial arts that has prepared him most for his professional life as a litigator. We found out more about Yuri over a cup of coffee.....

I do a lot of property-disputes. Many of these disputes relate to the eviction of non-paying tenants from residential or commercial properties, as well as the eviction of labour tenants and occupiers from farming properties. The legislation is difficult to understand and, there are relatively few court judgments to provide guidance. It is important to apply the proper procedure when evicting a tenant. A non-paying tenant is obviously a nightmare for any landlord as this has significant implications for cash flow. The wrong procedure can get you thrown out of court. I find it very satisfying when I am able to help an owner to recover a property and place a paying tenant.

Property disputes often throw up unusual and interesting situations. We are presently applying for a court order against a farm tenant who has persisted in burying deceased relatives on a farm, despite a previous court order which we obtained. The situation is interesting because farm labourers are generally entitled to bury their deceased relatives on farms, given their relative indigency and their inability to travel to municipal cemeteries. However, in this case, the burials were affecting the water table and we were able to obtain a judgment in our favour on environmental grounds.



Yuri Maharaj
Litigation Division

I also do a lot of banking and foreclosure work. This work is interesting because we are required to ensure that there has been compliance with the National Credit Act before proceeding with legal action. The Act is also relatively new and difficult to interpret and require some clear thinking!

The main issue with evictions and foreclosures is time. Once we have instructions, we have to pursue these matters vigorously. An eviction can take up to three months if unopposed, but three to six months, if opposed. A foreclosure, on the other hand can take as little as one and a half months before we get judgment. A sale in execution of the property concerned can then be held within a month after judgment. The real issue for our clients, whether landlords or the banks, is to place them in possession of their properties as soon as possible so that they can earn an income stream as soon as possible.

Martial arts has helped my work. I found that by pushing myself physically, I have become more mentally tough. Another important result of martial arts training is the ability to focus. This has helped me to focus on the matter at hand, to avoid becoming stressed by work overload and to ride the shocks and surprises that are the normal part of litigating. I train in Jeet Kune Do,

which was practised by Bruce Lee, as well as a Phillipino martial arts called Bahad Zuba.

I initially thought I would go into drama. I made the decision to study law at

the last minute, and although it seemed an impulsive decision, it has become increasing clear that it was the right one. I have always enjoyed public speaking, arguing and most of all, winning!

a pet is a hobby... is a nuisance

*A man has complained to a pet-shop owner and has been told that his recently-acquired parrot is 'just pining':
It's not pining, it's passed on. This parrot is no more. It's ceased to be. It's expired. It's gone to meet it's maker. This is a late parrot. It's a stiff. Bereft of life, it rests in peace. It would be pushing up daisies if you hadn't nailed it to the perch. It's rung down the curtain and joined the choir invisible. It is an ex-parrot.
- Monthly Python, The Parrot Sketch*



Pat Dewes
Litigation Division

We were consulted by a disgruntled client who owns a luxurious home in an upmarket suburban area in the Midlands. Our client's neighbour had built aviaries which housed some eight hundred parrots.

Anyone who has lived next door to but a single parrot will understand why our client was unhappy.

A demand that the parrots, or at least the noisy ones, be removed, was met with the response that:

- the parrots were domestic pets;
- the breeding of parrots was simply a hobby; and
- our client was unreasonable and over-sensitive.

Summons was issued, a plea was entered, experts in noise measurement were consulted, and the matter came to trial. The judge was invited to see (or perhaps hear) for himself by attending an inspection-in-loco. He declined, curtly informing our counsel that "You may call as many witnesses as you choose but I will not be one of them".

So our client gave evidence of sleepless

dawns and rapidly-developing depression. Our client's wife told the court that she thought on one occasion that her 3 year old child was being strangled, such was the din. Then a professor of acoustics ventured the opinion that the cacophony produced by the birds was significantly beyond acceptable ambient levels.

None of this seemed to impress the Judge who, we suspect, was himself rather hard of hearing.

The witness who did the trick, however, was a genuine breeder of parrots. When asked by the judge to try to describe the noise made by the marvelously-named "Hyacinth Macaw", he said it was like a train driving into your one ear and blowing its whistle before it exited from the other ear!

An interdict was granted.

So, be warned, if you choose to run a business in your back yard, be sure that what you are doing is legal or, at the very least, quiet.