




CONSUMER PROTECTION ACT



A background image of a fencing match, tinted in a dark blue color. Two fencers are visible, one in the foreground and one in the background, both in dynamic poses. The fencer in the foreground is wearing a white jacket and mask, and is holding a foil. The fencer in the background is also in a dynamic pose, with one arm raised. The overall scene is captured in a high-angle, slightly blurred perspective, emphasizing the movement and intensity of the sport.

A good knowledge of the CPA and how to comply with its content are mandatory for consumer driven businesses.


OVERVIEW

The coming into force of the Consumer Protection Act, No 68 of 2008 (CPA), in April 2011 not only dramatically changed the legal landscape for the conduct of business with consumers, but also in respect of marketing to consumers and for businesses involved in manufacturing consumer goods, even if those businesses don't deal with end consumers.

The National Consumer Commission (NCC) has made it clear that it will vigorously pursue its mandate to protect consumers and bring to book businesses that don't comply with the CPA. A good knowledge of the CPA and how to comply with its content are mandatory for consumer driven businesses.

"They have good judgement and give great advice, based on their depth of experience and of course years of interaction with the South African competition authorities."

THE LEGAL 500 EMEA 2023



The CPA regulates supplier and consumer relationships under three broad category headings.



AGREEMENTS WITH CONSUMERS

The CPA extensively regulates the content of consumer agreements (those agreements entered into with consumers directly) in both form and substance.

As a result, it also impacts on how businesses, and their representatives, conduct themselves when they enter into and, ultimately, seek to enforce consumer agreements. Every form of agreement, from detailed terms of supply to disclaimer signs, are affected.

The NCC took an early interest in the consumer agreements of various industries. In many cases this has extended to considering related conduct and practices in those industries as well.

Terms and conditions, warranties, indemnities and disclaimers fall into this category – irrespective of the manner in which they are communicated to consumers. In particular, the CPA places great emphasis on the fact that information made available to consumers must be plain and understandable, taking into account the context of the relationship with the consumer. Certain terms must be conspicuous in order to be enforceable.

"Excellent team with great technical skills, combined with a practical and commercially minded approach to competition issues."

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IMPLIED WARRANTIES AND STRICT PRODUCT LIABILITY

Retailers face increased product liability risks, but the CPA may also create significant legal risks for businesses that do not actually supply goods or services directly to consumers.

The CPA imports the concept of strict liability for defective goods into South African law. Even where a business does not deal with consumers directly, but goods which it supplies end up in the hands of consumers (even outside the scope of a transaction), every business in the supply chain, from manufacturer to retailer may be at risk of incurring liability for defects in those goods. As a result of the fact that liability is strict (a “no-fault” principle), retailers and distributors may also face claims from consumers who have suffered loss and damage due to defective goods.

The CPA also provides for limited duration implied warranties of quality on all goods supplied to consumers. These warranties are read into existing agreements, override contrary contractual provisions and form part of all transactions underlying the purchase of goods by consumers. Save for limited exceptions, their operation cannot be excluded in agreements.

The CPA also provides for minimum service standards and consumer remedies for consumers dissatisfied with services purchased.

“They are knowledgeable and available at short notice.”

THE LEGAL 500 EMEA 2023





MARKETING AND FAIR AND HONEST DEALING

The activities which are sought to be regulated can be divided into two groups:

Firstly, those that relate to the manner in which consumers are dealt with when marketing products to them. The focus is on the substance of interactions with consumers and not their form. The CPA explicitly prohibits false or misleading practices. Also included are extensive provisions regulating practices commonly accepted as posing risks to consumers if left unchecked. These practices include referral selling, alternative work schemes, pyramid schemes, bait marketing and negative option marketing.

Secondly, the CPA regulates specific marketing practices commonly undertaken by firms. These practices include auctions, customer loyalty programs, promotional competitions, direct marketing and trade coupons, and related promotions.

Be introspective, be proactive, be prepared

CPA compliance should not be reactive, as reactions may be too late to avoid regulator scrutiny, sanctions and reputational harm. CPA compliance should be constant, proactive and continuously assessed.

Compliance begins with CPA familiarity and education.

Assert your rights in the event that the regulator does approach you. When the NCC carries out its mandate it is required to do so rationally, fairly and within the four corners of the CPA. You should be aware of your rights when dealing with the NCC.

What can we do for your business?

- Training sessions and executive presentations tailored to your business
- Opinions regarding the existence of legal risks and the application of the CPA
- Focused reviews of internal processes and documentation.
- Strategic assistance in dealing with complaints from consumers
- Interacting with the regulator on complaint proceedings or other regulatory action
- Specialised litigation before the Consumer Tribunal and courts

Clients appreciate that *"the team applies expertise where it is needed, at the right level, and does not apply more resources than required."*

CHAMBERS GLOBAL 2023

MARKET RECOGNITION

Our Competition Law team is externally praised for its depth of resources, capabilities and experience.

Chambers Global 2011–2024 ranked our Competition Law practice in Band 2 for competition/antitrust. *The Legal 500 EMEA 2011–2024* recommended us in Tier 2 for competition.

The way we support and interact with our clients attracts significant external recognition.

Chris Charter is the Practice Head of our Competition Law team. *Chambers Global 2018–2024* ranked him in Band 1 for competition/antitrust. *The Legal 500 EMEA 2017–2024* recommended Chris as a 'Leading Individual' for competition. *The Legal 500 EMEA 2012–2016* recommended him for competition. *IFLR1000 2019–2023* recommended him as a highly regarded lawyer. *IFLR1000 2011–2018* recommended Chris as a leading lawyer. *Global Competition Review 2020–2021* named Chris a highly recommended lawyer.

Chambers Global 2023–2024 ranked **Albert Aukema** in Band 5 for competition/antitrust. *Chambers Global 2020–2022* ranked him as an 'Up & Coming' competition/antitrust lawyer. *The Legal 500 EMEA 2021–2024* recommended Albert for competition.

The Legal 500 EMEA 2024 recommended **Anita Moolman** for projects & infrastructure. *IFLR1000 2021–2023* ranked her as highly regarded in M&A.



OUR TEAM

For more information about our Consumer Protection Act sector and services in South Africa and Kenya, please contact:



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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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