



Marketing insights

Marketers had better make sure they know their way around the new law protecting consumers before it takes effect next year.

the new Consumer Protection Act (CPA) is a minefield for marketers, according to Matthew Gibson, an associate at Edward Nathan Sonnenbergs. Speaking at a marketing legislation seminar organised in Johannesburg by Knowledge Resources, Gibson said the new law was in a “galaxy of planned legislation” representing the government mindset to protect consumers and followed the promulgation of the first of its kind, the National Credit Act.

“For people who interact with consumers, these acts are incredibly important. The new law will give consumer a one-stop shop for redress and establish institutions to carry out protection of consumers with one set of legislation,” said Gibson.

The new overarching law aims to:

- promote the social and economic welfare of consumers by promoting fair business practices;
- protect consumers from unfair, improper trade practices and deceptive, misleading, unfair or fraudulent conduct;
- improve consumer awareness; and
- develop a culture of consumer responsibility through individual and group education and vigilance.

“Basically the CPA follows what happened in the rest of the world. It reflects what has been in place for some time in Europe as far as protection of consumer rights is concerned,” Gibson said.

The CPA would apply to:

- every transaction for the supply of goods and services unless specifically exempt;
- the promotion of goods and services; and
- the goods and services themselves after the transaction is completed.

“The CPA allows consumers to be more active. It will be useful not only to people who have suffered harm as result of using a product or service, it also allows class actions. It almost amounts to a system of self-regulation. Previously a lone consumer could not easily take on a multinational -- one just doesn’t have the necessary resources. Now consumer bodies can bring this kind of action”, said Gibson.

“The definitions are very broad to capture as many people as possible. The act applies to every transaction for supply of goods and services and their promotion unless specifically exempted. People or bodies can apply for exemption, which will be granted if you can persuade the minister that the law that regulates your industry offers the consumer the same protection as this act.” The new law would come into force over an 18-month period from April this year.

“The CPA will have a big effect on what information marketers may hold on consumers and how it is used and you should be thinking of making representation on the rights you have gained in your dealings over years or decades or even a century or more,” Gibson said.

Other activities outlawed included:

- Negative response marketing;
- Bundling, unless it could be shown that it was to the benefit of the consumer or the goods or services were available separately;
- Unconscionable conduct by taking advantage of consumer’s inability to understand documentation relating to products or services; and
- Bait marketing – goods advertised at discounted price when the seller did not have sufficient quantities to satisfy likely demand.

The CPA prohibited discrimination on the grounds of race and gender, but allowed differentiation on the basis of wealth. “But you need to guard against discriminating accidentally. And the right to privacy is coming in a much bigger way. Direct marketing is widely defined. Electronic communication basically means any communication – including telephone calls. Consumer can block such approaches. A register will be opened to block marketing to people who opt for this. This will have massive ramifications for marketers,” Gibson said.

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25 – 27 May: Branding 2010
22 July: Marketing Legislation
24 – 26 August: Kid and Teen Republic

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