

SELLER BEWARE!

A Brief Look at the Consumer Protection Act



The Consumer Protection Act is designed to “*provide for the promotion and protection of consumer interests, in relation to the supply of goods and the provision of services in order to ensure protection of life, health and safety of consumers and others, the establishment of a Consumer Affairs Commission and for connected purposes.*”

There is no doubt that this piece of legislation has a significant impact on both merchants and consumers.

Under the Act the Consumer Affairs Commission is entrusted with wide discretionary powers, and is charged with the responsibility of policing the goods and services market and enforcing the provisions of the Act.

A few provisions of the Act that providers of goods and services ought to be aware of are as follows:

Provision of Information

Providers are now required before payment is made for any goods, whether sold as new or used, to provide to the consumer verbally or in writing in the English language, all information concerning the goods being sold.

“All information” includes the origin, the price in the currency of Jamaica, care, terms, components, proper use, weight, size, instructions for assembling and installation of the goods and where applicable, the professional fees of the provider in respect of the goods.

More critically, where a provider fails to supply this information, he will, notwithstanding anything to the contrary in the warranty document, be responsible for any damage done to the

goods by the consumer, once that damage can be directly attributed to the consumer's lack of information. A provider is now required to go beyond the scope of the warranty document and is no longer shielded by its terms. A provider must ensure that a consumer is given all pertinent information relating to the good directly. The penalty for failing to comply with this provision is a fine not exceeding two hundred thousand dollars.

Return of Defective Goods

Where a consumer is encouraged to purchase goods by virtue of a provider's representations and it is subsequently discovered that the goods are either defective or materially different from what was represented, the consumer is entitled to return the goods to the provider. The Act mandates that in such a circumstance the provider must immediately offer to the consumer monetary compensation equal in value to the returned goods or such other amount that may be agreed between the consumer and provider.

The consumer may only insist on a refund where the returned goods are in the same condition in which they were purchased or with minimal damage from reasonable exposure in the normal course of use prior to the discovery of the defect or discrepancy. A consumer is not entitled to exercise his rights under this provision if after purchasing the goods simply changes his mind and decides for whatever reason that he no longer wants it.

Receipts

A provider is required to provide a consumer with a receipt which sets out the amount paid by the consumer, the date on which the purchase was made, a description of the goods or services sold, where applicable the professional fees charges. The receipt will act as proof of purchase of the goods. Failure to supply a consumer with a receipt will make a provider liable to a fine of fifty thousand dollars or thirty days imprisonment, or possibly to both fine and imprisonment.

Advertising

In the area of advertising, a provider cannot advertise goods or services which he either does not intend to supply or has no reasonable basis to believe that the goods/service can be supplied by him at the price advertised, for a period and in quantities, that are reasonable, having regard to

the nature of the market and the nature of the advertisement. The determination of reasonableness is made by the Commission. Breaching this requirement may result in a provider facing 30 days imprisonment or a fine of one hundred thousand dollars.

Exemptions

It is important to note that the Minister has the discretion to exempt categories of trade or business from the application of the Act. Professional bodies will be most able to benefit from this provision as they are, in most cases, subject to their own regulatory framework.

Effective policy is always a question of balance. As we make advances in the area of consumer protection, it is important to ensure that free trade is not stifled and the conduct of business does not become overly burdensome.

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