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Direct Marketing – What Are Your Rights As Consumer?

You are at work, and a salesperson comes to your offices, persuades you to purchase a top of the range DVD player which is on special. He shows you all its functions, and you are sold. You purchase the DVD player, however, when you do your budget for the month, you realise you can't actually afford it.

The transaction is considered to be direct marketing in terms of the Consumer Protection Act. This means that you, as consumer, have rights – and can cancel the purchase within five business days after either the DVD player was delivered to you, or after the transaction was concluded (whichever is the later date).

You do not have to give a reason for cancelling and no cancellation penalty may be charged to you. You do, however, need to give notice of the cancellation to the supplier in writing. When the salesperson initially made his sale pitch to you, he was required to inform you of your right to this "cooling off period".

So there are a number of consumer rights at play here – the right to choose (and thus to the cooling off period), the right to disclosure and information (to be informed thereof) - all of which are firmly entrenched within the Act.

If you have made payment already, you are entitled to a full refund. The supplier may in certain circumstances levy a reasonable charge- where for example the item has been opened and re-packaging is required or the goods have been used.

If you had taken delivery of the DVD player, and you exercise your right to cooling off, you are required to return it to the supplier within ten business days after having taken delivery of it, and at your own risk and expense.

If you had taken delivery and have not yet made payment to the supplier, and the supplier has not made any arrangements with you for payment, the DVD player may

fall into the category of “unsolicited goods”, to which Section 21 of the Act would apply.

If you have any kind of dispute with the supplier you can either refer the matter to the relevant Ombudsman or to the National Consumer Commissioner.

RIGHT TO RESTRICT UNWANTED DIRECT MARKETING

This falls under the right to privacy.

Any supplier who approaches you either in person, by email, mail or other electronic communication for the direct or indirect purpose of requesting a donation from you or promoting or offering to supply goods or services to you - is a direct marketer.

As a consumer, you can limit unsolicited direct marketing campaigns, by requiring the direct marketer to provide you with an ‘opt out’ option. Direct marketers cannot contact you during prohibited times during the day, unless you have expressly agreed to it.

You may register a pre-emptive block against direct marketing – either generally or for specific purposes - at a registry set up by the Commission (which still needs to be established). Direct marketers cannot send unsolicited marketing campaigns to you unless they have confirmed (and received confirmation in writing from the registry) that no pre-emptive block has been registered by you.



You could also display a notice at your office or on your post box that you do not wish to receive direct marketing material.

The CPA contains general sections on marketing, but also regulates specific types of marketing such as bait marketing, promotional competitions, and discriminatory marketing practices. Intermediaries such as estate agents are required to disclose specific personal information to the consumer before entering into any transaction or mandate with them.

The consequences of non-compliance with the Act range from exposing the supplier to actions by dissatisfied consumers, to administrative fines of up to 10% of the supplier’s annual turn-over (or R1 million, whichever is the greater). Suppliers – make sure that you adjust your policies and procedures and also that your employees adhere to the requirements – you will be jointly and severally liable with your employees or agent for any contravention of the Act.

Sole Proprietor – What Will Happen To My Business Should I Die?

In many cases, sole proprietors place too much of their effort into meeting the daily demands of running their own business and neglect to plan for what will happen when they are no longer there to run it. The sole proprietor “is” the business, which means that should she pass away, her estate will be wound up, and essentially the business forms part of her estate.

A Last Will and Testament could state who should be approached first to take over the business, and how the executor should deal with the situation. The sole proprietor will need to make a decision as to whether she wishes to leave the business to an associate or to a family member.

It could be useful for the sole proprietor during her lifetime to give or sell the named successor a small share of the business, and to introduce the successor to the secrets, modus operandi and client base (where applicable).

She should **write down** the secrets or methodologies of the business, so that they are available in the event of her demise, including such aspects as:

- Suppliers agreements,
- Intellectual property ,
- Arrangements with customers,
- Agreements with key staff,
- Methodologies or business model ,
- Banking arrangements

Where she leaves the business to someone in terms of a Will, she could make the bequest subject to a bequest price- a payment of cash to the estate, so that her heirs are protected. The business owner could leave the named successor with enough capital to assist that new person's purchase of the business. A life policy could be taken out whereby the sole proprietor is the life assured and the potential new owner is the beneficiary. The policy proceeds on death would form part of the deceased's dutiable estate, but the amount of cover could be increased to mostly cover this as well.

The Executors could also arrange for the sale of the business whereby the purchase price will form part of the deceased estate in terms of estate duty and other taxes.

Ultimately, a sole proprietor's beneficiaries will benefit from a well thought out succession plan. A sole proprietor who instructs her Executor to sell the business and ensures that her business will continue uninterrupted after her death, will benefit her beneficiaries in the long run, as a beneficiary is likely to receive far less if a business is sold on the basis of fixed assets, stock and a debtors book rather than as a going concern.



Establishing and monitoring a succession plan also provides excellent ongoing opportunities for reviewing an organisation's aspirations and strategies.

Succession planning in a business is not easy and the assistance of a skilled professional to assist in the logical planning of your business succession issues, particularly from an efficient taxation planning point of view, is essential. You will also need to review and update your estate planning strategies on an annual basis, or as circumstances change.

Unauthorised Trustees – Are Their Actions Valid?

What happens where I have been appointed as a trustee (in terms of the trust deed), yet the Master's office has not yet authorised the appointment by issuing new Letters of Authority? Are my actions still valid?

Trustees are the co-owners of the trust property. Consequently they must act jointly when taking any steps or actions in regard to that property. A trustee acting on his own will need the written authority from the remaining trustees to act in that specific manner before his action is valid and enforceable.

A case heard this year in the Supreme Court of Appeal dealt with the question of whether an unauthorised trustee could institute legal proceedings on behalf of the trust. The facts of the case were that the trust conducted a night club business. One of the terms of the deed was that there was always to be a minimum of two trustees acting on the trust. In June 2003, one of the trustees resigned, and another trustee appointed, yet her appointment was never authorised by the Master, for various reasons.



In September 2003, the remaining trustee and the "unauthorised" trustee resolved to institute an action for damages against the State for an illegal raid on the night club. The court a quo had to consider the validity of the proceedings instituted by an unauthorised trustee, and held that such proceedings were of no force. The matter went on appeal and the appeal court (this year) confirmed the court a quo's finding, and held that both case law and the authorities supported the view that legal proceedings instituted by an unauthorised trustee are not valid.

Tax Deductions – List Of Physical Impairments Or Disabilities That Qualify

SARS has released a list of physical impairments or disabilities that will qualify as a deduction in your tax return – effective 1 March 2012.

Disability	Impairment
Includes any limitation on a person's ability to function or perform daily activities due to a physical, sensory, communication, intellectual or mental impairment if it has a prognosis of lasting more than one year, and is diagnosed by a registered medical practitioner.	An impairment on the other hand, is not defined, and is wider in scope - it means that the person's ability to perform daily activities even after corrective therapy is less than "a severe to moderate limitation".
Can be in respect of taxpayer him or herself or his/her spouse, or child.	Includes a taxpayer or his/her 'dependent' as admitted on the taxpayer's medical scheme.
Deduction may be claimed in full.	Deduction only available to the extent the amount exceeds 7,5% of the taxpayer's taxable income.

List of qualifying expenses

Personal attendant care expenses – available as a deduction even if takes place in a nursing home, retirement home or private home – includes nursing services, special care. Note: if a husband is, say, looking after his spouse, he cannot claim for expenses incurred in respect of a salary for her nursing care. This applies to Services* below. Must be provided by independent third party.

Travel expenses – travel, including accommodation, to acquire goods or services – for example if a person takes a wheel chair to the manufacturer for maintenance/repairs – the travelling expenses will be deductible.

Insurance, maintenance, repairs and supplies - expenses incurred to insure, maintain, repair aids, special devices, artificial limbs and organs.

Prosthetics, Aids and other devices - required to enable person to function or perform daily activities, e.g kidney machine, image enhancement devices, mobile ramps, wheelchairs etc.

Services* - lip speaker services, rehabilitative therapy etc.

Contenance products - catheters, diapers etc.

Service Animals - the cost of an animal specially trained to be used as an aid to perform daily functions- includes food and vet bills.

Alterations or modifications to assets acquired - e.g the modification of a motor car to allow disabled person to gain access in and out of the vehicle or to drive it. Note the cost of buying the vehicle will not qualify. Also applies to power-operated stairs, elevators, alterations to a house (ramps), cost of automating a garage door.

This list is not exhaustive, and provides some examples in the general categories mentioned. Refer to Section 18 of the Income Tax Act, or consult our offices for further advice.

IMPORTANT NOTE: *The information contained in this newsletter is of a general nature, and may in certain circumstances be subject to misinterpretation. Consequently, we recommend that our advice be sought when acting upon the information contained herein. While every care has been taken in the compilation of this newsletter, no responsibility of any nature whatsoever shall be accepted for any inaccuracies, errors or omissions.
All references to the masculine gender shall include the feminine (and vice versa).*