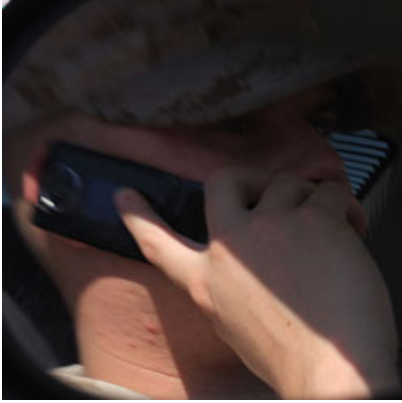


Direct marketing and your right to privacy

The Consumer Protection Act (CPA) of 2008 contains several provisions dealing with various marketing strategies, including bait marketing, trade coupons, promotional competitions, and loyalty programmes.



One of the issues people have with direct marketing is that the calls sometimes come in at the most inopportune times. (Image: Wikimedia Commons)

This article's focus is on direct marketing. It is fairly safe to assume that every reader has been the target of direct marketing on more than one occasion.

Direct marketing does play an important role in the modern economy. The idea of this article is not to question the right of existence of this marketing strategy but to point out some aspects of the CPA that regulate direct marketing.

Direct marketing falls under the heading "Consumer's right to privacy".

The aim of the CPA in regulating direct marketing therefore is to protect the privacy of the consumer and not to prohibit this marketing strategy.

Direct marketing means the approach of a consumer in person, by mail or electronic communication (telephone, SMS, e-mail) in order to promote goods or services in the ordinary course of business, or to ask the person for a donation. Charitable organisations contacting people for donations also are subject to the CPA.

An important regulation is that a consumer has a right to a cooling-off period of five days if a contract is concluded as a result of direct marketing.

This means that a consumer who bought an item because of direct marketing can cancel the contract within five business days of concluding the contract or receiving the goods.

The consumer must give notice to the supplier in a written or recorded form.

This should mean that an e-mail or SMS can be used to give notice of cancellation.

The consumer need not give a reason and no penalties can be demanded. All monies paid must be returned to the consumer within 15 days of receipt of the notice or return of the goods.

The supplier must inform the consumer of his right to the cooling-off period.

The CPA provides that a consumer may not be contacted at home for purposes of direct marketing during the following times:

- Sundays and public holidays;
- Saturdays before 9am and after 1pm;
- Any other day between 8pm and 8am.

A consumer can prevent the receiving of "junk mail" by placing a notice saying "No Adverts" on his post box. Junk mail may then not be placed in such post box.

The CPA has created an opt-out system by which direct marketers can approach a consumer until the consumer requests the marketer, or marketers in general, to stop the direct marketing.

The act envisages two ways in which this can happen. Firstly, the consumer who is or has been approached for purposes of direct marketing can demand during the approach, or within a reasonable period after such approach, that the direct marketer stops such direct marketing attempts and desists from contacting the consumer again in future.

The direct marketer is under an obligation to have a system in place to record such requests from consumers and to prevent any further communication with the consumer for direct marketing purposes.

The act also requires that the direct marketer must provide the consumer with written confirmation of having received the demand.

This imposes a significant administrative burden on direct marketers and the extent to which they will comply with this requirement is open to question.

Secondly, the National Consumer Commission (NCC) must establish a national registry. The function of the registry will be to allow consumers to register a pre-emptive block against any direct marketing.

A consumer, for instance, will be able to register his private cellphone and landline number on the register. The consumer may then not be contacted on those numbers for direct marketing purposes.

This registry has not yet been established, however.

Source: *Herald*, via I-Net Bridge