

# Does your social media team know the CPA?

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An internet user recently purchased a product from a service provider that offered internet access and coverage via mobile data, in most "major cities and towns", and provided a map where users are able to check their coverage. All seemed in order - until the unit didn't provide the coverage that the advertising promised.



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On calling the company and mailing several times, the service provider did attempt to assist, but neither the speeds nor the coverage were as indicated in the advertising. The user then wrote another mail asking how to get a refund for a product they could obviously not use in the way they understood the advertising maintained it could be used.

The company did not respond and the user went on to social media and sent a private message to the company's social media representative. The immediate response was "We won't take back the device". The conversation continued, with the user suggesting the Consumer Protection Act may require the company to take the device back and refund what they had paid. The staff member then said: "If the device is unopened and in its original packaging, we may take it back."

What are the chances of a customer knowing that the device didn't do what the ads said it would while it remained unopened and in its sealed packaging? After more discussion and further phone calls, the company checked its own Terms & Conditions and saw that they indicated the customer could, indeed, return an item for a refund within seven working days of purchasing it. (The CPA, however, allows 10 business days to return the goods.)

## Why did the social media team not know this?

The Consumer Protection Act (CPA), which came into full effect in April 2011, requires that information about products - including Terms & Conditions, websites, brochures and marketing material - are written in "plain language" - that is, language that is understandable by ordinary consumers with average literacy skills.

Over and above this, it is vital that all client-facing staff understand the Act, or at least have access to their company's (plain and understandable) documentation on procedures to follow should someone quote the CPA.

Here are some basics that every member of your staff should know, to avoid either contravening the CPA, or attracting the kind of negative publicity that social media is able to spread in no time at all:

## **1. Does a company's T&Cs supersede the CPA?**

No. The primary purpose of the CPA is to provide consumers with specific rights in relation to suppliers. These rights cannot be negated by a supplier's terms and conditions.

## **2. Does a company's advertising have to follow the rules of the CPA?**

Yes, all suppliers of goods and services in their ordinary course of business must adhere to the Act, including its provisions on the rights of consumers in relation to advertising.

## **3. If a company's terms and conditions, as listed on its website, say: "The package must be returned in the order in which it was sent", but the company representative insists that this means meaning "unopened", how is a consumer supposed to know that the product may be defective if they aren't supposed to open the packaging?**

Here we are dealing with both products (the device) as well as services (the internet access and coverage) and consequently (in this context specifically):

- a) The consumer has a right (in terms of section 20) within 10 business days to return the goods (i.e. the product) where the consumer did not have an opportunity to examine the goods before delivery in order to examine are of the type reasonably contemplated in the agreement (this would generally be borne out by the quality marketed);
- b) In determining whether a supplier may impose a charge on the return of goods, the question of whether the goods are in their original packaging becomes important. If the goods are in their original packaging then the supplier cannot charge any fee. If the packaging was of such a nature that the consumer had to destroy the packaging in order to inspect the goods, then no charge may be levied. If, on the other hand, it was not necessary for the consumer to destroy the packaging in order to inspect the goods then the supplier may charge a reasonable fee to restore the goods (including packaging to a marketable state - i.e. to put the goods back on the shelf, as it were). It is also worth noting that the supplier may charge a reasonable fee for the use of the goods if they were in fact used.
- c) The above provisions will not apply if it is not the goods which are defective, but the services offered in relation thereto; unless the services were integral to the purchase of the goods and there was a false, misleading or deceptive representation by the supplier - in which event the consumer may approach a court to have the agreement declared void. The courts are obligated to take into account a very wide array of facts and circumstances in assessing the fairness of the transaction and can make a broad range of orders in order to restore fairness.

## **4. What recourse does a consumer have if they are led - by the advertising - to believe that their device will work in a certain area or under certain conditions, but it doesn't?**

The rights of South African consumers are protected by law, which means they can demand redress. There are a number of pieces of powerful legislation in place to protect consumers, the most important being the Consumer Protection Act (Act 68 of 2008) and the National Credit Act (Act 34 of 2005).

Consumers wanting to determine whether or not their rights have been breached can contact their Provincial Consumer Affairs Offices and, should the situation require it, seek legal advice.

Companies who have client-facing staff either online or offline should ensure that every staff member has a basic working

knowledge of the Consumer Protection Act, to avoid situations where statements are made that do not comply with the protection the CPA offers consumers.

It's also important to note here that "conversations" in e-mail and on the various social media platforms can be recorded and, should a company's representative mistakenly advise a consumer (or suggest that items are "not returnable"); this can be taken to Provincial Consumer Affairs Offices and further.

## ABOUT GARETH CREMEN

Works closely together with Brian Webber handling commercial and corporate work for clients ranging from private individuals and small business to large companies, including listed companies and international corporations. His position involves the attendance of consultations and negotiations for the purpose of structuring business deals.

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