



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

**Workshop on Food Security and Food Safety
02-03 February 2016**

**Presented by Andisa Potwana : Director of
Consumer Law and Policy, thedti**

The presentation will focus on:

- 1. The role of the dti**
- 2. The Consumer Protection Act (the CPA)**
- 3. Powers of the Minister**
- 4. The National Consumer Commission (the Commission)**
- 5. Challenges**
- 6. Penalties**

thedti's role

- **the dti** is the custodian of the Consumer Protection Act, 2008 (68 of 2008) (the CPA) and its role in relation to food is defined by the CPA
- The CPA is an over-arching statute that covers a wide range of consumer protection issues and creates consumer rights. It became fully effective on 01 April 2011
- The pre-amble emphasises the protection of consumers from hazards to their well being and safety

The CPA

- Consumer's rights to **safe and good quality** goods is protected under section 55. Section 55 should be viewed in conjunction with other rights such as:
 - The consumer's right to **choose or examine** goods (Section 18)
 - The consumer's right to **return** unsafe or defective goods (Section 20)
 - The consumer's right to **disclosure and information** in plain and understandable language (sec 22)
 - The consumer's right to **correct product labelling** promotes consumers right to choose (Sec 24)

The CPA

- The consumer's right to **fair and responsible marketing** (sec 29)
- The consumer's right to be **warned of risks** of unusual character or risks that the consumer could not be reasonably expected to contemplate (section 58)
- The Commission's statutory powers to carry out a **product recall** programme (Section 60)
- Section 61 in terms of which any producer or importer, distributor or retailer is **strictly liable** for:
 1. **death or injury to any natural persons**
 2. **Illness to any natural persons**
 3. **economic loss resulting from the above**



Unpacking section 55

- Does not apply to goods bought at an **auction**
- Prescribes that goods must be **reasonably suitable** for the purpose for which they are generally intended
- Goods must be of **good quality and comply with applicable standards and regulations**
- Goods **must be useable** for a reasonable period of time

Exception! where a consumer was expressly informed of the condition of the goods and expressly agreed to accept the goods.

Unpacking section 24

Section 24 (2) of the Consumer Protection Act, 2008 (68 of 2008) prohibits any person from:

- Knowingly applying to any goods a **trade description** that is likely to **mislead** the consumer to any matter implied or expressed in that trade description; or
- Altering, defacing, covering, removing or obscuring a trade description in a manner calculated to **mislead** consumers;

The CPA

A “**trade description**” is defined under section 1 (a) of the Consumer Protection Act, 2008 (68 of 2008) as any description, statement or other direct or indirect indication, other than a trade mark, as to –

- (i) the number, quantity, measure, weight or gauge of any goods;
- (ii) the name of the producer of any goods;
- (iii) the **ingredients** of which any goods consist, or material of which any goods are made;

The CPA

- iv) the place or **country of origin** of any goods;
- (v) the **mode of manufacturing** or producing any goods;
- (vi) any goods being the subject of a patent, privilege or copyright; or
- (b) Any figure, work or mark, other than a trade mark, that according to the custom of the trade, is commonly understood to be an indication of any matter contemplated in paragraph (a)”

The CPA

Section 24 (3) (a) of the Consumer Protection Act, 2008 (68 of 2008) **prohibits a retailer** from offering to supply, display or supply any goods if the retailer reasonably could determine or has reason to suspect that –

- (i) a trade description applied to those goods is likely to **mislead** the consumer; and
- (ii) a trade description or trade mark **has been altered, covered or defaced.**

The retailer is also compelled to prevent any person from committing any of the prohibited acts.

Minister's role

The Minister may prescribe the following:

- categories of goods that should have a trade description;
- the rules to be used for determining the country of origin; and
- the information that should be included in any trade description.

Minister's role

Following reports of incorrect labelling in the **meat industry**, the Minister issued Government Notice No. 36285 notifying the public of his intention to prescribe **Processed and Packaged Meat Products and Dried and Packaged Meat Products** as categories of goods that are required to have a trade description applied to them.

The final notice (**G G Notice 36968**) was issued on 25 October 2013 and became effective 6 months later

Minister's role

The information required to be disclosed in a meat **trade description** includes:

1. The **number, quantity, measure, weight or gauge of the goods,**
2. The **name of the producer** of the goods,
3. The **ingredients** of which the goods consist, or material of which the goods are made, and
4. The **mode** of manufacturing or producing the goods.

Minister's role

In addition to the notice, the Minister invoked his statutory powers in terms of section 86 (b) of the CPA and **directed the National Consumer Commission (“The Commission”) to investigate** the allegations of incorrect labelling of meat products.

The Commission has completed its investigation and has made recommendations to the Minister the most prominent of which is the establishment of a **Food Safety Agency**

Minister's role

The Minister has also issued the following notices:

- Notice 380 of 2013 on labelling of **goods originating from East Jerusalem, Gaza or West Bank** wrongly labelled as originating from Israel in Government Gazette No.36364 on 12 April 2013
- Regulation 7 of the CPA which requires the labelling of genetically modified goods. **“goods” means anything marketed for human consumption**

The Commission

The Commission:

1. is statutory body outside the public service,
2. Is statutorily empowered to investigate alleged contraventions of the Act,
3. has investigating powers including search and seizure,
4. has jurisdiction across the country,
5. is accountable to the Minister.

Challenges

- Harnessing the expertise that sits with various government departments
- Fragmented legislation
- Consumer education is critical as consumers need to know their rights and how to enforce them
- Testing laboratories

Other Legislations

- Foodstuffs, Cosmetics and Disinfectants Act, 54 of 1972
- National Health Act, 61 of 2003
- Meat Safety Act, 40 of 2000
- Agricultural Products Standards Act, 119 of 1990
- Animal Diseases Act, 35 of 1984
- Trade Metrology Act, 77 of 1973

Sister Departments

The Department of Health

- Primarily responsible for the health of consumers
- Regulates inspections of **food premises** through Health Inspectors
- Regulates the of labeling and advertising of foodstuffs

The Department of Agriculture, Forestry and Fisheries

- Food safety controls eg. meat safety, brine injection etc.
- DNA profiling and pathogen profiling
- **Identification of laboratories for testing** under the Agricultural Research Council

Penalties

Compliance is critically important because:

- Non-compliance exposes companies to huge financial risks, unnecessary & protracted investigations.
- Unnecessary expenditure to respond to actions of the regulator due to complaints which could be numerous.
- Bad reputation exposes the company to loss of custom, high legal fees and fines for violations.

PENALTY : R1 Million or up to 10% of the offending firm's total annual turnover in the preceding financial year whichever is the greater.



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

THANK YOU