

THE HAPPY SHOPPER

CONSUMER GOODS AND SERVICES OMBUDSMAN

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WE HAVE LIFT OFF

It has been touch and go for the last three years, but finally CGSO has signed up a sufficiently large number of participants for it to be financially viable.

This is a far cry from what the position was at the end of the previous financial year, with the auditors having cautioned about our “negative net asset value” (a polite way of saying we were bust).

We have by no means registered all the businesses that are obliged to participate in the CGSO scheme but went from 24 registered participants prior to the promulgation of the Consumer Goods and Service Industry Code to about 200 now. Most of these participants fall within CGSO’s top fee category and are nationwide groups, many with multiple brands within their stables.

We have prevailed upon Trifecta Capital, whom we appointed to manage participant registration, to step up its efforts in signing up those businesses that are still holding out and not paying their share of CGSO’s costs.

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A plea to Industry Bodies

The success of CGSO in signing up so many new participants is also in no small measure thanks to the efforts of two industry bodies, the Vacation Ownership Association of Southern Africa (VOASA) and the South African Poultry Association (SAPA).

At its last Annual General Meeting, VOASA announced that the CGSO would be taking over its ADR functions.

Having obtained legal opinion, SAPA Instructed its members to register with CGSO.

We appeal to other industry bodies to follow this sterling lead.

Recent Decisions: Unsolicited goods

When are goods “unsolicited” for the purposes of the Consumer Protection Act? This is something that CGSO had to consider in a recent case. The answer was not merely of academic interest because the supplier stood to lose the right to claim payment for the goods if they were indeed unsolicited.

What had happened was that after placing an order for a number of items with the supplier, the consumer cancelled the order for one of the items, an LED TV set.

In spite of this, the supplier went ahead and delivered the TV set along with the other goods ordered, owing to an error in its system.

When the supplier picked up on the error and informed the consumer of the error, the consumer claimed to have been entitled to keep the TV set as it was unsolicited.

Although CGSO could not find any authority on point, it considered the views of certain academic writers to the effect that a supplier must be informed of the misdelivery as a prerequisite for such goods to be treated as unsolicited by the consumer.

This, however, is only the case if the goods are clearly addressed to another person, and have obviously been misdelivered; or if it would be apparent to the ordinary alert consumer that the goods were intended to be delivered to another person.

The CPA does not expressly deal with situations in which the goods are merely delivered in error. The CGSO thus had to resort to the rules of statutory interpretation in order to decide how to deal with the factual situation at hand.

The CPA provides guidance as to its interpretation, saying that it must give effect to its purpose.

Adopting this approach, CGSO concluded that the purpose of section 21 is to bring the delivery of unsolicited goods by suppliers to consumers to an end rather than to punish the negligent acts of deliverers.

The TV set was accordingly not unsolicited and the supplier was entitled to reclaim it or demand payment for it. The matter was settled on this basis between the parties.

Suppliers should however ensure that their systems are failsafe.



Plain language

A consumer contended that the supplier’s terms and conditions were vague and misleading regarding the period during which the contracted benefit could be claimed.

A central feature of the CPA is improving consumer information to enable informed consumer choice and behaviour.

Section 22 strives to do this by requiring that documents are in plain language understandable by the class of persons for which they are intended.

The CGSO found that the agreement was not in plain language because not even a lawyer would have understood it to have the meaning that the supplier intended it to have.

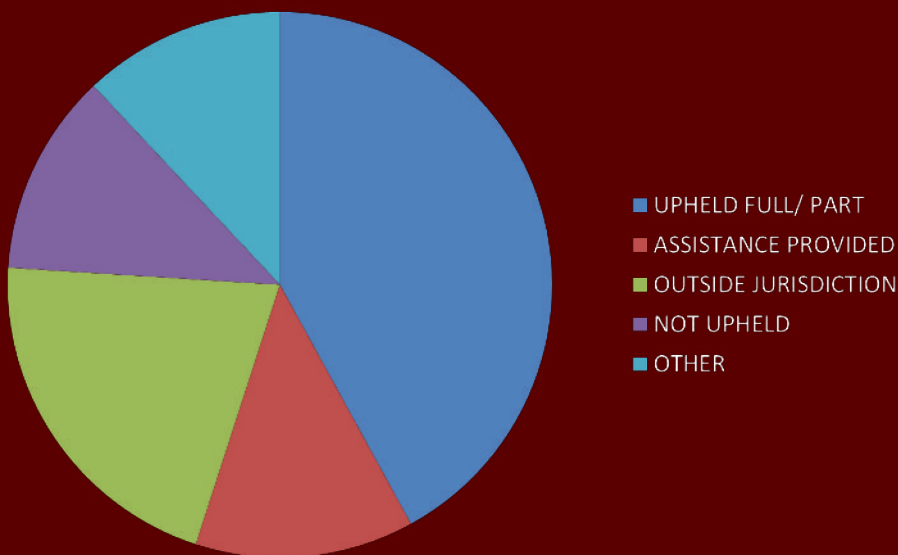
Is there really a need for CGSO?

The top management of several of the businesses that we visited during our ongoing stakeholder engagement road trip certainly don't believe that there is a need for CGSO. They are of the view that the customers who approach us are merely out to make mischief.

Of the cases that were within the CGSO jurisdiction and in which there was an outcome, 69% were resolved by the consumer receiving all or part of what was claimed or some other assistance that they were unable to get directly from the supplier.



How Resolved



The CGSO Annual Report for 2015-16 tells another story. It carries a letter from a consumer that catalogues her vain attempts to get assistance from either the supplier or the manufacturer of a washing machine.

The pie chart above shows that in fact only in a relatively small percentage of the cases (12%) was the complaint not upheld/ invalid.

ADVISORY NOTE:

Security companies

Following the highly publicised incident in which a security guard at a shop caused a grandmother to break into tears, CGSO released an advisory note on best practice in dealing with suspected shoplifters.

Unfortunately, the response to shoplifting by the security companies engaged by retailers is sometimes so heavy handed that it lands the retailers in trouble with the law or causes them tremendous reputational damage.

In order to protect themselves, retailers should beef up the Service Level Agreements that they have in place with third party security companies to specify what is expected in the area of dealing with suspected shoplifters.

Terminology

Q: What does the word mediation mean?

A: "Mediation" means the active participation of a Dispute resolver, being the CGSO, intended to assist the Parties to identify the issues, to generate options, to consider alternatives and to endeavour to reach an agreement;



Time Please

Despite our best attempts to spur on participating suppliers to resolve complaints against them more speedily, the situation has progressively worsened:

For year March 2015- February 2016: Average days to close a file: 57 days

[Target 45 days]

From April 2015 to February 2016 we closed 2192 cases: 807 (37 %) of these were closed after 60 days and 1385 (63%) were closed within 60 days.

[Target 75% < 60 days]

The Code requires CGSO to refer all cases over 60 days old to NCC.

Tail Piece

Any fool can criticize, condemn and complain– and most fools do.

Benjamin Franklin

Green with envy

The meeting we recently had with WASPA (Wireless Application Service Provider's Association) left us green with envy at the turnaround time they boast of: five days for a member to respond to a complaint.

This is a far cry from the 180 odd days one of our participants has taken so far to resolve a complaint.

The Happy Shopper

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