

# THE HAPPY SHOPPER

CONSUMER GOODS AND SERVICES OMBUDSMAN

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## PARTICIPATION LEVELS UP

**For the fourth year in a row, the Board of CGSO has decided not to increase the annual participation fee. This was made possible thanks to the assistance of Massmart and Lewis Stores in getting their supply chain partners to register with CGSO.**

So far, an additional 410 participants have registered with CGSO since the launch of the initiative, bringing the total to 662. This has more than doubled the pre-launch number of 252 participants and, importantly, has broadened the representivity of participation to include smaller entities.

If this momentum continues, it will be possible for CGSO to reduce the annual fees payable in 2018 as the scheme operates on a non-profit basis. Naturally, the increased participation will mean more complaints. The Board has resolved to use any surplus in the current year to build operating reserves as a safeguard for the future.

## Law updates

At the request of one of the participants, CGSO has started providing summaries of the decisions of the courts, the National Consumer Tribunal and CGSO in a summarised format to assist busy in-house counsel in keeping up with the latest developments in Consumer Protection Act law.

To be placed on the mailing list for the Legal Bulletins, contact:

[oumar@cgso.org.za](mailto:oumar@cgso.org.za)

## COURT APPLICATION: DECLARATORY ORDER

The CGSO has through its legal counsel initiated an application in the High Court, Gauteng (Pretoria) for a declaratory order requiring participation in the CGSO by eligible businesses and payment of the annual fees.

The application also seeks clarity on other ancillary aspects such as the right of the CGSO Board to set fees.

The matter has been placed on the roll for 8 June 2017, if unopposed. An electronic version of the Notice of Motion is available at <http://www.cgso.org.za/news-2/>.

Notwithstanding the increase in the number of participants mentioned on page one, such increased number remains far short of the total number of eligible businesses nationwide.

Despite CGSO's attempts to ascertain the actual number of eligible business from various sources, including Government, the CGSO has not been able to do so.

As far as the retail sector alone is concerned, however, research by global marketing research firm Nielsen estimates that there are 134 000 small and independent retail

outlets nationally, 4 500 supermarkets and 2 758 convenience stores.

Whether or not a participant has registered with the CGSO or paid its fees/levies, the CGSO must deal with any complaints received against it.

This means that the participating and paying suppliers are cross-subsidizing those industry players who continue to refuse to register with CGSO.

Certain of the latter have challenged the legality of the code provision that makes it compulsory for eligible businesses to register with CGSO.

Rather than fighting it out with the non-participating businesses in a multiplicity of cases at magistrates court level, it was decided rather to get a definitive ruling from the High Court. Armed with that ruling, CGSO will find it easier to chase up those businesses that are holding out and flouting the law.

Should you wish to join the court matter, you should seek the advice of your legal counsel. The contact details of CGSO's attorneys of record appear on the Notice of Motion referred to above. All correspondence should be directed to them.



In a recent determination, CGSO had to consider whether a retailer could be held liable under the Consumer Protection Act (CPA) for errors regarding price made by their advertising agency or the publication in which an advert is placed.

A consumer saw portable gazebos "advertised" at the price of R399 each in an outdoor magazine.

The camping goods retailer referred to in the magazine refused to meet the consumer's order for 10 gazebos, saying that the magazine had made an error: The correct price for was R3 499 each. The magazine agreed it was not the retailer's fault but its own. Further, the gazebo was mentioned not in a paid advertisement but in a feature.

CPA section 30 governs the advertisement of goods in the media. A supplier may not advertising goods as being available at a specified price in a manner that is misleading. The CGSO held that the publication was not misleading because of the large discrepancy in the "advertised" price and the true price (R 399 as opposed to R3 499).

## Forum Shopping

Forum shopping is the informal name given to the practice adopted by some litigants to have their legal case heard in the court thought most likely to provide a favorable judgment.

The term has become adopted in a wider context for the activity of repeatedly seeking a venue or willing listener for a concern, complaint or action, until one is found.

The Consumer Protection Act (CPA) to some extent facilitates forum shopping as it is not entirely prescriptive as to the route a complainant must take through the various alternative dispute resolution mechanisms provided for by it.

There is not a problem with forum shopping in the sense of a complainant approaching the most appropriate mechanism to deal with a particular complaint. But if a complainant approaches multiple mechanisms simultaneously, not only is this a waste of scarce resources, but it also has the potential of undermining the integrity of the whole system by pitting one mechanism against another with the associated potential for contradictory rulings.

Naude & Eiselen et al submit in *Commentary on the Consumer Protection Act* Section 69-2 para 3 that there is an implied hierarchy: The preferred route of redress is:

–Approach the ADR mechanism first (this includes the ombud)

–Then approach the Commission.

A complainant still not satisfied after approaching the Commission may obtain a notice of non-referral from it and then apply to the Tribunal for leave to appear before it.

The Constitutional Court has ruled that parties must pursue their claims primarily through the specialised framework which has been created for dispute resolution.

### Off to court we go

Very few CPA related matters have as yet reached the courts and there is a good reason for this: CPA section 69(d) permits a party to approaching a court with jurisdiction over the matter only if all other remedies available to that person in terms of national legislation have been exhausted.

In a recent court decision, it was held the consumer may approach the court only if all the avenues of redress listed in section 69 have been exhausted, including the Tribunal; the applicable ombud with jurisdiction; the applicable industry ombud [e.g. CGSO]; the consumer court; alternative dispute resolution or the Commission.

## Terminology

Q: What does Jurisdiction mean?

A: “Jurisdiction” means:

The authority given by law to a court [or other body] to try cases and rule on legal matters within a particular geographic area and/or over certain types of legal cases. <http://dictionary.law.com>



### Response times

The response times expected by consumers are accelerating.

In 2014, only 4% of people said they expected a response within 15 minutes; by 2015, 14.5% expected that and 80% of people were still happy with a two-hour response time. (<https://www.fastcompany.com>)

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## Turn-around times

AGE BUSINESS DAYS	NUMBER OF CASES
+ 120	47
90-120	78
60-120	195

### Tail Piece

Customers don't expect you to be perfect. They do expect you to fix things when they go wrong.

~ Donald Porter

**CONSUMER GOODS AND**

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