



Does transacting electronically afford more rights to consumers?

It is not only imperative for consumers to know their rights, but also for retailers to comply with consumer legislation and respect the rights of consumers.

In terms of the Consumer Protection Act 68 of 2008 (CPA), a consumer may:

- cancel a transaction resulting from any direct marketing without reason or penalty, within 5 business days after the later of the date on which-
 - the transaction or agreement was concluded; or
 - the goods that were the subject of the transaction were delivered to the consumer.
- return goods to the supplier and receive a full refund, if the supplier has delivered-
 - goods in terms of an agreement arising out of direct marketing, and the consumer has cancelled that agreement during the cooling-off period;
 - goods that the consumer did not have an opportunity to examine before delivery, and the consumer has rejected delivery of those goods;
 - a mixture of goods, and the consumer has refused delivery of any of those goods; or

- goods intended to satisfy a particular purpose communicated to the supplier and within 10 business days after delivery to the consumer, the goods have been found to be unsuitable for that particular purpose.

Therefore the cooling off period in terms of the CPA is only applicable in instances of direct marketing and the return of goods are conditional. The CPA however, is silent on the return of goods without defect as well as a cooling off period where direct marketing is not applicable. It would appear that the "no cash refund" policy has become prominent amongst retailers, leaving the consumer with little recourse. More often than not, the retailer does not bring the return policy to the attention of the consumer before the purchase is concluded and relies on the printed till slip, on which the return conditions are usually printed. A consumer therefore only has access to the return conditions/policy subsequent to the conclusion of the transaction, which the retailer relies on when returning goods and expecting a cash/card refund. What is important to note, is that the CPA does not afford a general right to a refund or return to a consumer.

However, when transacting electronically, consumers are afforded other rights. In terms of the Electronic Communications and Transactions Act 25 of 2002 (ECT), a consumer may:

- cancel without reason and without penalty any transaction and any related credit agreement for the supply -
 - of goods within 7 days after the date of the receipt of the goods; or
 - of services within 7 days after the date of the conclusion of the agreement.

Furthermore, the ECT Act requires a supplier/retailer offering goods or services for sale, for hire or for exchange by way of an electronic transaction to make the return, exchange and refund policy of that supplier available to consumers on the website where such goods or services are offered. In terms of legislative provisions, it would appear that a consumer is afforded wider protection in terms of the ECT Act when transacting online than the CPA when transacting in-store.

Contact us for advice and guidance on the implementation and application of the Consumer Protection Act and Electronic Communications and Transactions Act