

CONSUMER PROTECTION REGULATIONS

(under section 19)

(12th October, 2001)

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S.I. 67, 2001.

PART I

Preliminary (regs 1-2)

1. Citation

These Regulations may be cited as the Consumer Protection Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"merchantable quality" in relation to a commodity means a commodity that is fit for the purposes for which commodities of that kind are usually purchased, as it is reasonable to expect in light of the relevant circumstances;

"supplier" means the person with whom the consumer concludes a contract for the sale of a commodity or for the purchase of a service, and includes the manufacturer of a commodity.

PART II

Lodging of Complaint and Investigation (regs 3-12)

3. Lodging of complaint

(1) A complaint of unfair business practice to be lodged in accordance with section 7(1) shall be made to the Director in Form 1 set out in the Schedule.

(2) The Director may require that the complaint be accompanied by such documentation, in

the possession of the consumer, as may be necessary.

(3) Documentation that may accompany the complaint in terms of subregulation (2) may include any or all of the following purchase vouchers-

- (a) an invoice;
- (b) a warranty; or
- (c) a purchase agreement.

4. Contents of complaint

A complaint shall contain the following information-

- (a) the name, address and contact telephone numbers of the complainant;
- (b) the name and address and contact telephone numbers of the supplier;
- (c) the time of purchase of the commodity or service;
- (d) the trademark of the commodity purchased, where available;
- (e) the place of origin and other specifications of the commodity;
- (f) the quantity and price of the commodity;
- (g) details of how the complainant's rights have been infringed upon;
- (h) date and time of finding the problem; and
- (i) the course of negotiation or stage negotiations have reached with the supplier.

5. Analysis of complaint

(1) A preliminary analysis of a complaint, to be carried out as provided in section 7(3), shall determine whether-

- (a) the complainant was a consumer, in terms of the Act, in relation to the complaint;
- (b) the supplier was informed of the complaint;
- (c) any available process, as may be provided by the supplier, other than a court action, of resolving the dispute that is the cause of the complaint, has been exhausted; and
- (d) any further step or action that could have been taken to resolve the dispute has been taken.

(2) A process for resolving the dispute, in terms of subparagraph (1)(c), shall be considered available if such process enables a resolution of the dispute to be arrived at within a period not exceeding three months, and if it would not necessitate the incurrence, by the complainant, of further expense or costs.

(3) Upon completion of the analysis a report shall be made containing recommendations as to whether there are sufficient grounds for the alleged unfair business to be investigated.

6. Investigation for purposes of preliminary analysis

(1) The Office may, while conducting a preliminary analysis of a complaint of an unfair business practice, forward the complaint to the supplier for comment and further information.

(2) The Office may forward any comment and further information it has received from the supplier to the consumer for his comment.

(3) The Office may, for the purpose of making further enquiries, contact both the consumer and the supplier at any time during the official hours of business of the consumer or the supplier by-

- (a) making personal visits;
- (b) making telephonic contacts;
- (c) sending facsimile messages; or
- (d) sending electronic mail.

7. Institution of investigations

Where the Office is satisfied, upon a preliminary analysis of a complaint made, that an unfair business practice has been conducted, the Office may institute an investigation of the complaint in terms of the Act and these Regulations.

8. Service of summons

(1) A person summoned, in terms of section 9, to furnish any information on the subject of an investigation, shall be summoned in Form 2 set out in the Schedule.

(2) Service of the summons on the person to be served, shall be effected in one or other of the following manner-

- (a) by delivering a copy thereof to the said person personally;
- (b) by leaving a copy thereof at the place of residence, employment or business of the said person with the person apparently in-charge of the premises at the time of delivery, being a person apparently not less than 16 years;
- (c) in the case of a corporation, by delivering a copy to the company secretary or other person in charge of administration at the corporation's registered office

or principal place of business; or

(d) where a local authority or statutory body is to be served, by delivering a copy to the town clerk or assistant town clerk of such local authority, or to the secretary of such body.

(3) A person appearing before the Office in response to a summons shall be paid a daily rate of P100 00 as a witness fee.

9. Contents of summons

A summons to be served to a person under regulation 8 shall state-

(a) the name and address of the person to give a testimony or to be examined, and where the name is not known a general description sufficient to identify the person;

(b) the time and place for the taking of the testimony of such person or the examination of such person;

(c) the subject matter under investigation; and

(d) the documentary material to be produced and the return date for the production of the documentary material.

10. Oath or affirmation to be given by person summoned

A person summoned in terms of regulation 8 shall take an oath or give an affirmation in Form 3, set out in the Schedule, before the Director or other person representing the Director at the hearing of the matter.

11. Consent of owner of premises to entry, search and seizure

(1) To enable the Director or an investigating officer to enter premises and conduct a search and, where necessary, to seize items found therein, in terms of section 10(2)(a), where the owner of the premises or the person in charge of the premises has given his consent to such entry, search and seizure, the owner of the premises or the person in charge of the premises shall consent to such entry, search and seizure in Form 4, set out in the Schedule.

(2) The owner of the premises or the person in charge of the premises shall be given an official receipt by the Director or an investigating officer, for the items seized in terms of subparagraph (1).

12. Investigating officer to produce identity card

(1) An investigating officer shall identify himself with the identity card issued in terms of subparagraph (2) before commencing any function of investigation in accordance with the Act and these Regulations.

(2) An investigating officer shall be issued with an identity card in Form 5, set out in the Schedule, duly signed by the Director, in accordance with section 6(3).

PART III

Minimum Specifications, Performance, Quality and Safety Standards (regs 13-17)

13. Minimum standards and specifications

(1) Any supplier who offers a commodity or service to a consumer fails to meet minimum standards and specifications if-

(a) the commodity sold-

(i) does not match any sample or description given to the consumer;

(ii) is not fit for any particular purpose made known by the consumer; or

(iii) is not of merchantable quality;

(b) the commodity or service causes a probability of confusion or misunderstanding as to its source, sponsorship, approval, or certification;

(c) representation is made that the commodity is new when in fact it has deteriorated, or it has been altered, reconditioned, used or is second hand;

(d) representation, that cannot be substantiated, is made that the-

(i) commodity or service is of a particular standard, quality, or grade; or

(ii) commodity is of a particular style or model; or

(e) the advertisement or representation of a commodity or service is made with the intent not to dispose of the commodity or service as advertised or represented.

(2) Upon the recommendations of the Director, the Minister may, by Order, determine any other business practice as failing to meet the minimum standards of specification.

14. Failure to meet minimum specification to constitute unfair business practice

Any supplier who fails to meet the minimum standards and specifications under any of the provisions of regulation 14 shall have conducted an unfair business practice, and the Office may, where the Office fails to amicably resolve the complaint, institute proceedings against such supplier in accordance with the provisions of the Act and these Regulations.

15. Minimum standards of performance

(1) A supplier of a commodity or of a service shall fail to meet minimum standards of performance if-

(a) the service is not rendered with reasonable care and skill and such service and any materials used are not fit for any particular purpose made known by the

consumer;

(b) the supplier quotes scientific or technical data in support of a claim unless the data can be readily substantiated;

(c) the supplier promises outcomes where those outcomes have no safe scientific, medical or performance basis;

(d) the commodity or service is advertised with intent not to supply reasonably expected public demand, unless the advertisement discloses a limitation of quantity in immediate conjunction with the advertised commodity or service;

(e) in a consumer transaction that is rescinded, cancelled, or otherwise terminated in accordance with the terms of an agreement, advertisement, representation, or provision of law, failing to promptly restore to the consumer entitled to it a deposit, down payment, or other payment, or in the case of property traded in but not available, the agreed value or the fair market value of the property, or to cancel within a specified time or an otherwise reasonable time an acquired security interest; or

(f) the supplier represents that a product or package is degradable, biodegradable, or photo degradable unless it can be substantiated by evidence that the product or package will decompose into elements found in nature within a reasonable short period of time after consumers use the product and dispose of the product or the package in a landfill or composting facility, as the case may be.

(2) Upon the recommendations of the Director, the Minister may, by Order, determine any other business practice as failing to meet the minimum standards of performance.

16. Failure to meet minimum performance to constitute unfair business practice

A supplier who fails to meet the minimum standards of performance under any of the provisions of regulation 15 shall have conducted an unfair business practice and the Office may, where the Office fails to amicably resolve the complaint, institute proceedings against such supplier in accordance with the provisions of the Act and these Regulations.

17. Deceptive methods, acts or practices

(1) The following deceptive methods, acts or practices shall constitute acts of unfair business practice-

(a) making false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(b) representing that a part, replacement or repair is needed when it is not;

(c) causing a probability of confusion or of misunderstanding with respect to the authority of a salesperson, representative, or agent to negotiate the final terms of a transaction;

(d) causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction;

(e) disclaiming or limiting the implied warranty of merchantability and fitness for use, unless a disclaimer is clearly and conspicuously disclosed;

(f) entering into a transaction in which the consumer waives or purports to waive a right, benefit or immunity provided by law, unless the waiver is clearly stated and the consumer has specifically consented to it;

(g) taking advantage of a consumer's inability reasonably to protect his interests by reason of disability, illiteracy or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know of the consumer's inability;

(h) describing goods or samples as "free" unless the goods or samples are supplied at no cost or no extra cost to the consumer other than actual postage or carriage when specified and applicable;

(i) advertising courses of instruction and implying the promise of employment or remuneration where this cannot be guaranteed; or

(j) any other method, act or practice that the Minister may, upon the recommendations of the Director, determine, by Order, to be an unfair business practice under this regulation.

(2) A supplier who employs any deceptive method, act or practice that constitutes an unfair business practice under subsection (1) commits an offence and the Office may, where the Office fails to amicably resolve the complaint, institute proceedings against such supplier in accordance with the provisions of the Act and these Regulations.

PART IV

Resolution or Settlement of Complaint (regs 18-21)

18. Resolution of complaint

(1) Upon completion of an investigation, the Office shall decide, on the basis of the facts of each case, what is a fair and reasonable resolution of the complaint.

(2) In arriving at a resolution of a complaint the Office shall take account of the supplier's explanation, the reasons for the complainant's dissatisfaction and the action the complainant would like taken to resolve the matter.

19. Arrangement to settlement of complaint

(1) A party to a complaint of an unfair business practice may, in terms of section 11, at any stage of the investigation, inform the Director, in writing, of his willingness to have the Director negotiate an arrangement to settle the complaint on given terms to be agreed by both parties to the complaint.

20. Form of arrangement to settle complaint

A settlement reached in accordance with regulation 19 shall be in Form 6 and shall be signed by the parties to the settlement and witnessed by the Director or such employee of the Office as the Director may assign.

21. Costs of investigation

Where a settlement is reached between the parties to the complaint the Director may order the supplier to pay the aggregate costs of the investigation or any part thereof.

SCHEDULE

Form 1
COMPLAINT FORM

(section 7(1) and regulation 3)

CONSUMER PROTECTION ACT,
(Chapter 42:07)
INSTRUCTIONS

Please-

- (a) print or type;
- (b) provide all particulars;
- (c) be brief and concise in Sections D and E;
- (d) note that the reverse side must also be completed; and
- (e) include copies of all relevant documents.

A. PERSONAL PARTICULARS

Name:

Residential Address:

Postal Address:

Home Tel:.....Work Tel:

B. PARTICULARS OF PARTY AGAINST WHOM/WHICH COMPLAINT IS BEING LODGED

Name(s) of person dealt with

Address:.....

Tel:

C. PARTICULARS OF COMMODITY

1. Date of purchase of commodity or service

2. Trademark and place of origin of commodity or service

.....

3. Quantity and price of commodity or service.....

4. Account No/Invoice No/Contract No

5. Insurance:

Policy HolderPolicy No

6. Motor Vehicles

ModelReg. NoKm Reading.....

D. PARTICULARS OF COMPLAINT (This Section MUST be completed)

NB: Please single out the main points of the complaint, providing names and dates where possible.

Indicate what steps you have taken to resolve the complaint. Describe the reasons for your continued dissatisfaction. Extra paper may be used for more information.

E. STATE WHAT YOU THINK WOULD BE A REASONABLE SOLUTION TO THE PROBLEM

DATE: SIGNATURE:

Send the form to:

Consumer Protection Office

Private Bag 0048
Gaborone
Tel: 352571

Form 2
SUMMONS

(section 9 and regulation 8)

CONSUMER PROTECTION ACT,
(Chapter 42:07)

Office Ref

TO:

ADDRESS:

.....
in the matter of the alleged <!--[if !supportFootnotes]-->[i]<!--[endif]-->*

.....

.....

You are hereby summoned to appear before a person in the service of the Office for the investigation of
the matter of alleged unfair business practice stated above:

on the day of 20

at (place) at(hrs)

Your appearance is for the purpose of-

(a)<!--[if !supportFootnotes]-->[ii]<!--[endif]-->**answering questions in connection with the matter stated
above; and

(b)<!--[if !supportFootnotes]-->[iii]<!--[endif]-->** producing the following-

..... (describe books, documents or objects) and be questioned therewith.

..... (date)

.....
Director Consumer Protection Office

Form 3
OATH OR AFFIRMATION

(regulation 10)

CONSUMER PROTECTION ACT,
(Chapter 42:07)

Oath or affirmation by person summoned to appear before a person in the service of the Office shall be as
follows-

"I,solemnly swear <!--[if !supportFootnotes]-->[iv]<!--[endif]-->** /affirm<!--[if !supportFootnotes]-->[v]<!--[endif]-->* that the answer that I shall give
shall be the truth, the whole truth and nothing but the truth.

So help me God."

Dated this day of 20

.....
Signature of person giving oath

.....
Signature of Director or representative

Form 5
 INVESTIGATING OFFICER'S IDENTITY CARD

(section 6(3) and regulation 12)

CONSUMER PROTECTION ACT,
 (Chapter 42:07)

FRONT SIDE		
CONSUMER PROTECTION LOGO	MINISTRY OF TRADE INDUSTRY AND CONSUMER PROTECTION OFFICE	COAT OF ARMS
IDENTIFICATION CARD		
PASSPORT PHOTO	NAME OF OFFICER:	
SIGNATURE OF OFFICER:		
REVERSE SIDE		

Issued under section 6 of the Consumer Protection Act, 1998 This officer is engaged by the Government of Botswana under the powers granted by the Consumer Protection Act, Chapter 42:07 and has been authorised to exercise the powers vested in him under the Act.	
DATE OF ISSUE	SIGNATURE OF DIRECTOR
Property of the Government of Botswana. If found, hand it to an officer of the Consumer Protection Office or to any Police Officer or mail it to Director, Private Bag 00252, Gaborone	

Form 6
 AGREEMENT TO SETTLE COMPLAINT

CONSUMER PROTECTION ACT,
 (Chapter 42:07)
 (section 11 and regulation 20)

AGREEMENT TO SETTLE COMPLAINT

Made and entered into between

THE CONSUMER PROTECTION OFFICE

Represented herein by

.....

AND

.....

SUPPLIER

Represented herein by

.....

WHEREAS the parties having negotiated and concluded the following arrangement:

1. The supplier has engaged in unfair business practices, namely-

.....

2. The supplier shall:

.....

.....
.....
.....
.....
.....
.....

he Consumer Protection Office shall not act under Part IV of the Consumer Protection Act Chapter 42:07 or institute any other legal proceedings against the supplier (*name*) in relation to this complaint that has been resolved as aforesaid.

Dated at this day of 20

WITNESSES

.....
For and on behalf of
CONSUMER PROTECTION OFFICE

WITNESSES

.....
For and on behalf of the SUPPLIER