

Franchise agreements under the South African Consumer Protection Act

June 29, 2017

Introduction

Prior to the enactment of the Consumer Protection Act 68 of 2008 (the CPA), there was no specific piece of legislation that regulated franchises. In this article, we provide a brief overview of some important aspects related to the regulation of franchises under the CPA.

What is a franchise agreement?

The CPA defines a franchise agreement as an agreement:

- in which, for consideration paid, or to be paid, by the franchisee to the franchisor, the franchisor grants the franchisee the right to carry on business within all or a specific part of South Africa under a system or marketing plan substantially determined or controlled by the franchisor or an associate of the franchisor;
- under which the operation of the business of the franchisee will be substantially or materially associated with advertising schemes or programmes, or one or more trademarks, commercial symbols or logos or any similar marketing, branding, labelling or devices, or any combination of such schemes, programmes or devices, that are conducted, owned, used or licensed by the franchisor or an associate of the franchisor; and
- that governs the business relationship between the franchisor and the franchisee, including the relationship between them with respect to the goods or services to be supplied to the franchisee by or at the direction of the franchisor or an associate of the franchisor.

Of importance to note is that all of the three elements set out above must be met for an agreement to fall within the ambit of the definition of a franchise agreement. Accordingly, it is possible that an agreement would not be regarded as a franchise agreement despite the business being associated with particular advertising schemes and trademarks.

If an agreement falls within the franchise definition provided above, it will be governed by the CPA and its regulations.

Requirements for franchise arrangements

The CPA provides the following in respect of franchise arrangements:

- the franchisee may cancel a franchise agreement without cost or penalty within 10 business days after signing such agreement, by giving written notice to the franchisor;
- the franchisor must provide a potential franchisee with a disclosure document at least 14 days before the

franchisee signs the franchise agreement – this document must include information relating to the franchisor's turnover and net profit and projected sales, income and profits for the franchised business or franchises of a similar nature;

- the franchisor may not require a franchisee to agree to purchase any goods or services from a designated third party, unless the goods are reasonably related to the franchisor's trademarks;
- that false or misleading representations concerning the performance, characteristics and benefits of the business are not allowed and that unfair, unreasonable or unjust contract terms are not allowed; and
- franchise agreements must contain provisions that prevent unreasonable fees, prices or other consideration and conduct that is not reasonably necessary for the protection of the legitimate business interests of the franchisor, franchisee or franchise system.

The authors acknowledge and thank Bongani Memani for his contribution in the writing of this article.

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