

The Consumer Protection Act, No. 68 of 2008 (“the CPA”) Cooling off period

Scope

Section 16 of the Act addresses the consumer’s right to rescind a transaction that occurred as a result of direct marketing. The consumer may do this without incurring any penalty. The supplier will have to return any moneys paid. The section is applicable in addition to any other existing right that a consumer may have to rescind a transaction or agreement.

Who does it apply to?

This section applies to anyone who has concluded a transaction as a result of direct marketing, unless section 44 of the Electronic Communications and Transactions Act applies to that transaction.

How does it apply?

The consumer may rescind the goods, in writing or any other recorded manner or form, within five 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.

The supplier must return any payments received within 15 business days after receipt of the rescinding notice or, if the goods had already been delivered, within 15 business days of receiving the supplied goods back.

Implications for business

The impact this will have on businesses is that the cooling off period should pass before the transaction is recorded, as there is a possibility of it being voided within five business days. When this occurs over a year-end, one may find that sales could be grossly overstated. Commissions to sales people will also have to wait until the cooling-off period passes before being paid.

This article was written by Tumeka Matshoba, Senior lecturer at the University of Johannesburg and member of the SAICA Legal and Compliance Committee.